

## **The complaint**

Mr R complains that The Co-operative Bank Plc won't refund the money he lost when he was the victim of what he feels was a scam.

## **What happened**

In June 2019, Mr R says he met a man in a hotel he was working from. He says they began talking and, during the conversation, the man offered him a job as part of a company he ran and invited him to join him and some friends at an event they were attending. Mr R went along and says he discussed the potential job with some of the man's friends. And Mr R then met the man several more times over the following weeks, both professionally and socially, and their relationship developed to the point where Mr R thought they were friends.

Mr R says the man had paid for him to attend the first event, as well as for dinner that evening and for Mr R's hotel stay that night. But when they next met, the man told him he had misplaced his keys and credit card and so asked Mr R to pay for him. And over the next few weeks, Mr R also paid for a number of other expenses the man asked him to. Mr R says the man then told him he needed to buy some left over stock from his business partners, and so he agreed to lend him £10,000. And Mr R continued to pay for a number of other expenses over the following weeks too and so, in total, had sent him around £20,000.

But, despite promising to do so on a number of occasions, the man never paid the money back to Mr R. And Mr R then felt he'd been the victim of a scam and reported the payments he had made to Co-op.

Co-op investigated but said it believed this was a civil dispute between Mr R and the man, and so it didn't agree to refund the payments Mr R had made. Mr R wasn't satisfied with Co-op's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think there was enough evidence to say Mr R had been the victim of a scam. And they also didn't think Co-op would've had concerns about the payment even if it had intervened. So they didn't think Co-op should have to refund the payments Mr R had made. Mr R disagreed with our investigator, so the complaint has been passed to me.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think it would be fair to require Co-op to refund the payments Mr R made here. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mr R accepts he made the payments here. So while I recognise he now feels he has been scammed by the man he was sending the money to, he did authorise the payments. And so the starting position in law is that Co-op was obliged to follow his instructions and make the payments. So Mr R isn't automatically entitled to a refund.

There are certain activities banks are expected to carry out to try to protect their customers from falling victim to scams, and certain protections in place for customers who do fall victim to scams. But, before looking at whether Co-op has done what we'd expect it to do or whether these protections apply, I must first be satisfied that Mr R has been the victim of a scam.

The relevant test for whether someone has been the victim of a scam comes from the FCA handbook. This defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

So in order to determine whether Co-op should refund the money Mr R lost, I first need to consider whether he has been the victim of a scam – or, in other words, whether he was deceived about the purpose of the payments to the point where he and the man he was paying intended different purposes for the payments and the man set out from the beginning with the intent to defraud him.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr R has argued the man targeted him as a potential source of money and never intended to be his friend or to pay back any of the money he sent. But I don't think the other evidence we have supports this.

I've seen copies of the text messages between Mr R and the man he sent the payments to. And while these do mention the £10,000 loan Mr R agreed to make to help the man's business, there are no clear details on how the money would then be spent. And there appears to be a suggestion that Mr R would receive some of any profit the man made with the money, rather than it just being a straightforward loan. We also don't have any evidence to suggest the man didn't spend the money in the way Mr R understood it would be. So I don't think there's enough evidence here to say Mr R and the man intended different purposes for this payment, or that Mr R was deceived about the purpose of the payment and the man never intended to repay him.

The smaller payments the man asked Mr R to make were for hotel rooms, food or other similar expenses. And there also doesn't appear to be any evidence to suggest the money from these payments wasn't used for these things, and so for the purposes Mr R understood they would be used for. So I don't think there's enough evidence to say Mr R was deceived about the purpose of these payments either.

The copies of the text messages I've seen between Mr R and the man also show them arranging a number of both business and social meetings and discussing previous times they had met. So it appears they did meet a number of times socially and had a relationship beyond just the payments the man asked Mr R for.

Mr R also accepts that the man paid for the first event they attended, as well as his dinner and hotel that evening. The man paid back some of the money he owed Mr R, albeit a very

small percentage of the amount Mr R ultimately says he was owed. And the messages between them show the amounts Mr R says he is owed fluctuating significantly and the man suggested paying some money back in cash when they met in person. So it appears Mr R received at least some benefit from their relationship, and I don't think I can say for sure what their financial agreement was or how much the man should owe Mr R.

I appreciate how Mr R feels about this case, but I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I don't think I can safely conclude that he has been the victim of a scam here. While I think the evidence suggests he thinks the man owed him money and that the man said he would pay him this money but then continually delayed doing so, I don't think it shows that Mr R and the man intended different purposes for the payments or that the man always intended to defraud him. I think it's most likely this is a personal dispute between him and the man he sent the payments to, following the breakdown of the relationship between them – which doesn't meet the definition of a scam from the FCA handbook.

So I don't think the protections in place for victims of scams apply here, or that it would be fair to require Co-op to refund the payments Mr R made.

In any event, even if this did meet the definition of a scam, I don't think anything we would reasonably have expected Co-op to have done would have stopped Mr R making the payments.

We expect banks to take steps to protect their customers from fraud and financial harm, including monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

But even if Co-op had identified that Mr R could be at risk of financial harm and intervened in some of these payments, I think he would have told it he was lending money to a friend of his or lending money to help with their business. Mr R had met the person he was sending the money to on several occasions, considered them to be friends and had plausible reasons for making the payments. So I wouldn't have then expected Co-op to have significant concerns about the payments and I don't think it would have been unreasonable for it to allow them to go through.

And so, as Mr R was aware of the payments and was happy for them to be made at the time, I wouldn't have expected Co-op to do anything further or to stop him making the payments.

I sympathise with the position Mr R has found himself in, and I'm in no way saying he did anything wrong or that he doesn't have a legitimate grievance against the man he sent the payments to. But I can only look at Co-op's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Co-op responsible for the money Mr R says he has lost.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 February 2024.

Alan Millward

**Ombudsman**