

The complaint

Mr H complains that The Co-operative Bank Plc (Co-op) won't refund the money he lost when he was the victim of a scam.

What happened

Mr H says he was cold called in June 2016 by someone from a company offering advice and other investment services. He was persuaded the investment company was legitimate and so agreed to make a number of card payments to them from his Co-op account. I've set out the payments made from Mr H's account below:

| Date | Amount |
|--------------|--------|
| 27 June 2016 | £4,200 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |
| 28 June 2016 | £500 |

Mr H was given access to a website where he could monitor his investment. But, at some point, he says he tried to make a withdrawal but was told by the investment company that it wouldn't let him withdraw and he had to pay more money in. In February 2022, Mr H then reported the payments to Co-op as a scam and asked it to refund the money he had lost.

Co-op investigated but didn't agree to refund the money Mr H had lost. It said he hadn't told it about the scam soon enough for it to be able to take any action. Mr H 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 Mr H had told Co-op about the scam soon enough for it to be able to take any action. And they didn't think Co-op would have been able to uncover the scam at the time or that it was unreasonable that Co-op only had limited information about the payments now. So they didn't think Co-op should have to refund the payments. Mr H 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 made out of Mr H's account. I'll explain why below.

Did Co-op do enough to protect Mr H?

Banks are expected to make payments in line with their customers' instructions. And Mr H accepts he authorised the payments here. So while I recognise he didn't intend for the money to go to scammers, the starting position in law is that Co-op was obliged to follow his instructions and make the payments. So Mr H isn't automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think Co-op should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

And so I've also considered whether Co-op should have identified that Mr H was potentially at risk of fraud as a result of these payments.

But none of the payments weren't for what I'd consider to be particularly large amounts of money. The account was used fairly frequently, and there had been other payments into the account for similar amounts to these payments in the previous months. And the payments didn't leave the balance of the account at a particularly unusual or suspicious level.

So I don't think it would have been unreasonable for none of the payments to have looked particularly suspicious or unusual to Co-op at the time. And I don't think it would have been unreasonable for Co-op not to identify that Mr H was potentially at risk of fraud as a result of these payments, or not to ask any further questions or carry out any additional checks before allowing them to go through.

Co-op's evidence shows that other payments attempted on Mr H's account around the same time were flagged by its security system. But, due to the amount of time that has now passed, it can't send us any further evidence of what happened with these attempted payments. As the payments were attempted nearly six years before Mr H reported the scam to Co-op, I don't think it's unreasonable that it can't now send us any further information about them. And I also don't think it would be fair to say Co-op didn't do enough at the time, or should have done more, because it can't now provide evidence of what action it did take.

Did Co-op do enough to recover the money Mr H lost?

Once they have been notified of a scam, we expect businesses to take reasonable steps to try to recover any money their customers have lost – including making use of any available chargeback scheme.

A chargeback is a process by which card payments can be disputed with the merchant who took the payment. But there are time-limits for carrying out a chargeback. And as nearly six years had passed since the payments were made when Mr H reported the scam to Co-op,

these time-limits had passed. And so I don't think Co-op acted unreasonably in not carrying out a chargeback here.

Fraudsters also typically move money on from the account it was sent to soon after it is received, to avoid it being traced or recovered. And so I think it's extremely unlikely that any efforts Co-op could have made to recover the money from the account it was sent to would have been successful.

And so I don't think anything we would reasonably have expected Co-op to do would have recovered the money Mr D lost.

I sympathise with the position Mr H has found himself in and I understand that my decision will come as a disappointment to him. He has been the victim of a cruel scam and I'm in no way saying he did anything wrong himself. But, for the reasons I've set out above, I don't think Co-op has acted unreasonably or that anything we would reasonably have expected it to do would have prevented or recovered his loss.

So I don't think it would be fair to hold Co-op responsible, or that it should have to refund the money Mr H lost here.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 November 2023.

Alan Millward
Ombudsman