

## **The complaint**

Mr B is unhappy that The Co-operative Bank Plc (trading as smile) won't refund money he paid to a sole trader for home improvement work which hasn't been completed.

## **What happened**

In early 2022, Mr B paid a sole trader (I'll refer to them as G) to carry out work on two bathrooms, to include refurbishment and replacement of the fittings.

Mr B says he'd employed G the previous year for work on his living room, dining room and kitchen. That work had been completed to a satisfactory standard, so Mr B had asked G to carry out the work he wanted done on the bathrooms.

G provided Mr B with an emailed quotation. He asked for payments up front to cover the cost of purchasing materials, including the bathroom fittings.

Mr B sent a bank transfer from his smile account on 25 March 2022 for £6,433. A start date of 18 April was agreed. G hired a skip. He then turned up and carried out work, removing the old fixtures, most of the tiling and the old flooring. On 24 April 2022, Mr B sent a further transfer of £3,150.

However, G then said he'd fallen ill. He told Mr B that he'd been hospitalised and later that he was suffering from pneumonia. Mr B waited and G was apparently discharged from hospital in October 2022. But despite Mr B being told G would attend and finish the work, this didn't happen.

In February 2023, the skip company contacted Mr B. It couldn't get hold of G and Mr B had to pay for the time he'd had the skip at his property.

Mr B says he last spoke to G in mid-March 2023. He was told G would attend to carry out the work that weekend. But yet again, this didn't happen.

Ultimately Mr B contacted smile to report the matter. He said he didn't think G had set out to scam him, and he actually thought G had likely bought the materials and fittings he'd said he was purchasing, but said G needed to refund him or complete the work.

Smile recommended Mr B should contact Trading Standards, and report this to the Police and Action Fraud. However, Mr B says the Police (and Action Fraud) didn't think it was viable to pursue the matter.

Smile wrote to Mr B explaining that it thought he had a civil dispute with G. In other words, it didn't consider he'd been the victim of an Authorised Push Payment scam (APP scam). Because Mr B had paid G by bank transfers, the protections that would apply against breach of contract or misrepresentation if he'd paid by card payment weren't available to him. Smile couldn't help and didn't consider it was liable to refund Mr B.

Mr B referred the matter to our service, but one of our Investigators didn't uphold his complaint. They sympathised with the situation Mr B now found himself in but agreed with smile that the matter was a civil dispute rather than an APP scam. The Investigator said the bank had no obligation to provide Mr B with a refund.

Mr B disagreed. He thought G had deliberately not carried out the work and so thought this should be seen as a criminal scam. However, the Police and Action Fraud weren't pursuing G, and Mr B had found out that if he took G to court it might cost more in fees than he'd paid. He needed his bank to pay for what he'd lost.

As no agreement could be reached, the case was passed to me for a final decision.

### **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.

I'm sorry to hear about the situation Mr B is in. He has paid a considerable sum and received very little in return. Despite showing considerable patience in waiting while G said he was ill, no progress has been made in G fulfilling the agreed work. This has meant Mr B has had little choice but to cancel and look for someone else to complete the work.

Mr B has repeatedly asked G to return and finish the work he'd started, and he's also asked G to refund him. But G has not complied with either option.

It seems hard to argue other than that G has breached his contract with Mr B and owes him redress. But I'm not deciding a dispute between Mr B and G – I don't have the power to look into a complaint about G. My role is limited to deciding the dispute between Mr B and his bank.

Of course, smile didn't contract with Mr B for the works he wanted done, and I can't hold it responsible for any breach of contract or other failings on G's part. As a starting point in law Mr B is responsible for payments he's instructed smile to make for him. Unfortunately, there's little protection available for bank transfer payments, like these were.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it excludes private civil disputes.

Simply put, in order to find smile was somehow liable to Mr B under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate criminal scam from the outset rather than it being a private civil dispute between Mr B and G.

The question therefore, is whether G was acting fraudulently from the outset - deliberately setting out to deceive Mr B into making the payments he did whilst never having intended to buy the materials or carry out the agreed work. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of G breaching his legitimate contract with Mr B.

Put another way that means deciding whether the available evidence shows it is most likely that G set out to defraud Mr B with criminal intent. That is a high bar to meet.

It's important to note that it isn't for smile to investigate G, neither does it need to prove that G wasn't operating fraudulently. It is for Mr B to provide evidence to support those allegations. While Mr B has provided evidence showing that the work was not completed and that the skip provider was not paid, these could both be consistent with G having suffered

serious ill-health as much as with G never having intended to complete the work from before the payments were made.

In an attempt to shed some light on the matter, our Investigator contacted the firm holding the account that received Mr B's payments. While I cannot detail the information that the recipient firm has provided in response, that information is not consistent with G having set out to defraud Mr B.

All considered I simply can't safely conclude that G took Mr B's money without ever having any intention of carrying out the work or purchasing the items he'd paid for. The evidence available to me simply isn't enough to support such a finding.

I appreciate how frustrating and disappointing this answer will be. Mr B has lost a lot of money as a result of G's failure to complete the agreed work. But I can't exclude the possibility that G entered the agreement in good faith, intending to fulfil the work (as he had apparently done for Mr B previously) and then was unable or unwilling to fulfil the agreement through unanticipated ill-health or some other reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that G intended to steal his money from the outset and never had any intent of fulfilling the arrangement in full or in part.

That means that I can't fairly hold smile responsible for the loss suffered here by Mr B. It also means I find the bank had no ability or obligation to try and recover his money. In saying that I don't underestimate the impact this whole matter has had on Mr B – I am sorry he has lost out through no fault of his own. It does seem his trust and his patience has been betrayed by G. But it's simply the case that I can't fairly tell smile to pay him the money he's lost, because I don't think smile has treated him unfairly or was otherwise at fault here.

### **My final decision**

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 October 2023.

Stephen Dickie  
**Ombudsman**