

The complaint

Mr H has complained The Co-Operative Bank plc won't refund money he lost from his account after being the victim of an investment scam.

What happened

In 2022 concerned about the rising cost of living, Mr H searched online for investment opportunities. He found a website he believed looked slick which claimed it was appropriately regulated and supposedly recommended by a personal finance expert. He most likely filled in an online form and got a call from someone who recommended how he could invest in cryptocurrency.

Mr H started small in making investments, then made a payment of £12,100 but could see how the value of these grew. He was also receiving credits from his supposed investment account.

The fraudsters took their time to persuade Mr H they knew what they were doing. So much so that Mr H allowed them to download software which gave them control over his accounts. They also encouraged him to change the investment strategy and change what he was investing in.

This meant Mr H wanted to make a payment of £11,750 to a new payee. This payment was sufficiently unusual that Co-Operative blocked the payment and spoke to Mr H. They discussed investment scams and encouraged Mr H to carry out further research. Mr H called them back two days later to confirm he was happy with what he'd found out and felt secure in what he was doing.

Over the next month, Mr H made two smaller value payments towards his investment. Following this, the scammers took control of Mr H's computer and made transfers themselves into and out of his account. This took the form of payments from Mrs H's account or loans the scammers conned Mr H into believing were necessary to ensure payments weren't blocked from his account.

Mr H realised in July 2022 when he couldn't access his investment account that he'd been the victim of a scam. He asked Co-Operative to refund him.

After a detailed investigation, Co-Operative refunded £33,000 to Mr H as they believed they should have sent individual text warnings as payments were being made without his authority. They wouldn't refund any further amounts.

Mr H brought his complaint to the ombudsman service. Our investigator felt Co-Operative had properly flagged the early payments but not those later on. However after reviewing the phone conversations Mr H had had with his bank, she didn't feel that any additional intervention by Co-Operative would have made any difference as Mr H was so firmly involved in the scam.

Still dissatisfied, Mr H asked an ombudsman to consider his complaint. His representative

subsequently confirmed that Mrs H had been refunded £56,700 by her own bank so Mr H's own loss now stood at £45,778.98.

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've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don't dispute Mr H was scammed and has lost a considerable amount of money from his pension and savings. He has my sympathy about what he has gone through.

There's no dispute that Mr H made and authorised the initial payments. Mr H believed he was making financial investments in cryptocurrency.

I'm satisfied those initial transactions were authorised under the Payment Services Regulations 2017 (PSRs).

I've also reviewed the following payments that the scammers were able to make because Mr H had allowed them to download software onto his computer and access his accounts. Co-Operative suggested Mr H had acted with gross negligence. I'm wary of this approach as gross negligence is a high bar to get over. However as our investigator suggested, Mr H provided the scammers with apparent authority to act on his behalf.

The PSRs say that someone acting as an agent on behalf of Mr H can be treated as acting with apparent authority when making transactions on their account.

Authority consists of two elements. The transactions must be authenticated, and Mr H needs to have consented to the payments being made.

I'm satisfied the payments were authenticated from the information provided to us by Co-Operative. In other words, Mr H's genuine details logon details were used. Payments were also properly authenticated.

Turning to consent, the evidence from Mr H suggests he was aware that the scammers had downloaded software onto his computer which gave them access to his accounts. It's clear from the evidence Mr H shared with us from conversations with the scammers, that he questioned what they were doing. However, at no stage did he stop their activities or report them to any authorities.

I appreciate he was won over by their convincing story, but I do wonder why he didn't think that allowing these individuals (whom he didn't know) full access to his finances was potentially dangerous.

I would suggest this means Mr H provided apparent authority to the scammers to make the transactions. Whilst apparent authority can be withdrawn or annulled by the payment service user (Mr H in this context), I've seen nothing to suggest this was the case here.

It's also accepted that Co-Operative has an obligation to follow Mr H's instructions. So in the first instance Mr H is presumed liable for his loss. But that's not the end of the story.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that Co-Operative should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions 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 its customers from the possibility of financial harm.

Mr H fell victim to an investment scam. These unfortunately aren't particularly unusual and are invidious in the way those carrying out the scam inveigle themselves into someone's trust.

It is clear from the detailed testimony I've seen from Mr H that he firmly believed he was making genuine investments. But it's also clear that he didn't carry out due diligence on those who were advising him to spend thousands of pounds. Despite being prompted to check out whether the investment company was regulated with the Financial Conduct Authority, I don't believe Mr H did so otherwise he'd have been aware of regulatory warnings about the company he was dealing with.

I've noted the conversations Mr H had with Co-Operative on 28 and 30 May. He was adamant that he was aware of what he was doing, and he'd not been duped in any way or persuaded to carry out these investments. Apart from refusing to carry out his instructions, I'm not sure what else Co-Operative could have done.

I've also considered whether Co-Operative should have taken other steps or made additional checks before processing any of the future payments which might have included providing warnings to Mr H.

Co-Operative has confirmed they do have mechanisms in place to check unusual transactions. I can see this is the case as they took further action later on to delay Mr H's payments.

Payments of £18,000, £6,900, £18,000, £10,000 and £15,000 made in June 2022 were stopped. Mr H authorised these subsequently by text. I should stress that Co-Operative refunded £33,000 to Mr H because they didn't provide single alerts for these five payments and felt this could mean that the two later individual payments of the pairs (£18,000 and £15,000) weren't appropriately authorised.

As stated above, I'm satisfied that Mr H provided apparent authority to the investment company. This refund forms a substantial part of Mr H's losses.

I say this because I'm not convinced that £56,700 of those losses were, in fact, Mr H's. Payments were transferred from Mrs H's account to Mr H. I understand from Mr H's representative that Mrs H has subsequently been refunded this amount by her own bank.

Mr H's representative has suggested that more should have been done to demonstrate to Mr H that he was the victim of a scam. However I'm satisfied with the steps Co-Operative took to identify potential risks to Mr H. It is clear from the earlier phone conversations that Mr H ignored what he was being told.

This means that whatever further actions Co-Operative may have taken would have meant having, what I suspect would have been very similar conversations with Mr H.

As noted above, Mr H knew that the scammers were making payments and transferring loans into his account. At this stage, he should have realised what was going on. He didn't and I'm sure whatever further warnings Co-Operative issued, these would have also been disregarded by Mr H.

Overall I think there's enough evidence to suggest Co-Operative took the appropriate steps to probe what was going on here. Whilst a bank is always in a better place than an individual customer to appreciate the complexity of scams, as stated earlier, it is also accepted a bank's required to follow its customer's instruction. Co-Operative warned Mr H that his payment had all the hallmarks of an investment scam. Mr H took no notice of them.

I have considered, in the light of Co-Operative's warning and knowledge, whether they should have stopped Mr H from making the payment at all. But I don't believe they acted improperly here.

Overall I can't fairly tell Co-Operative to refund Mr H's money.

My final decision

For the reasons given, my final decision is not to uphold Mr H's complaint against The Co-Operative Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 November 2023.

Sandra Quinn
Ombudsman