

The complaint

Mr P complains that The Co-operative Bank Plc trading as Smile (“Co-op”) won’t refund over £20,000 he says he lost to an investment scam in February 2022.

The details of this complaint are well known to both parties, so I won’t repeat everything again here. Instead, I will focus on giving the reasons for my 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.

- The relevant regulations and industry guidance makes it clear that banks should fairly and reasonably protect consumers from the risk of financial harm, including fraud and scams. But the expectation for a bank to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Co-op could have delayed the payments while concerns about the payee were discussed with Mr P.
- So, I would need to be satisfied that the investment company (“A”) was operating a scam when the disputed payments were made in February 2022 in order to expect Co-op to have done anything further here. When determining this, I’ve borne in mind that certain high-risk investment traders (such as CFD merchants) may use sales methods, or communication styles that can be seen to be unfair. Especially when considering the financial losses incurred because of a disappointing return on an investment that’s been promoted. Even so, not all complaints to us involving CFD merchants are in fact a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn’t necessarily mean they amount to the high legal threshold or burden of proof for fraud.
- I’ve consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), as well as the FCA’s own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about A at the time these payments were made. In fact, research suggests that A was actually regulated by the Australian Securities and Investment Commission, as well as the Vanuatu Financial Services Commission at the time. It would be extremely rare for a scammer to submit themselves to any sort of regulation.
- So, overall I’m not persuaded that A can be said to have been fraudulent or operating a scam at the time in question. I appreciate there may be some negative reviews about A on review websites such as Trust Pilot. However, these are vastly outnumbered by positive reviews, so I don’t think this is enough to suggest that A is likely to be a fraudulent company. Its website explains that its investment products carry significant risk, so it seems inevitable that some people will be dissatisfied with A if they end up losing their money through a risky investment. There’s also no persuasive evidence to suggest that Mr P was dealing with a clone of the legitimate investment company either.

- As a result, Co-op's obligation to intervene wasn't triggered. There was the inevitable risk of Mr P's investments returning a loss based on market performance. But Co-op isn't required to protect its consumers from the risk of financial loss due to investment advice or bad bargains. Therefore, I don't consider Co-op acted unfairly by failing to intervene in these payments.
- Even if I were to accept that A was operating a scam at the time and that Co-op should have intervened to ask questions about the payments, there would have been very little to suggest that the investment firm was operating a scam, given it was regulated overseas at the relevant time. So, any warning from Co-op to carry out further research on the investment firm's legitimacy would have been unlikely to yield any results that would have ultimately prevented the payments from being made.
- Co-op has also confirmed that the payments have gone through the full chargeback process with the merchant but have been declined. And in the circumstances, I've not seen enough evidence to suggest that a chargeback would've had any further prospect of succeeding at arbitration stage, so I don't think Co-op has acted unreasonably by failing to pursue it further.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 February 2024.

Jack Ferris
Ombudsman