

## **The complaint**

Mr K complains that The Co-operative Bank Plc has unfairly registered a marker at CIFAS the national fraud database.

## **What happened**

Mr K contacted The Co-op in December 2018 to say that he didn't recognise three payments made using his debit card in October 2018. These weren't refunded, and his account was closed. He later found that The Co-op had added the marker too and says that this is affecting his ability to get an account elsewhere. He complained about this in April 2020.

The Co-op said that the payments disputed were all to a gambling business and totalled £704.50. It had contacted that business which had provided evidence that the payments were authorised. And that these were made with an account Mr K had used for other genuine payments. So, The Co-op had declined the refund, decided that Mr K had made a fraudulent claim and added the marker.

Our investigator didn't recommend that the complaint be upheld. Mr K had now said that his flatmate at the time must have made the transactions. That person he said had access not only to his device but also to his online banking and online gambling account. But Mr K hadn't mentioned this at the time he reported the fraud and during multiple calls with The Co-op. He also had no evidence of this flatmate. And although Mr K had said that the arrangement had been that the flatmate paid him back for the gambling transactions he authorised there was no record of this on his bank statement. Even if as Mr K said a flatmate had been allowed to make some payments it was unclear why he would make these other ones behind Mr K's back. It may be that he stopped paying and that Mr K had then tried to recoup his money. If that had been the case it was difficult to see why Mr K wouldn't have mentioned this. So, our investigator didn't accept Mr K's account now as most likely and he decided that The Co-op had sufficient evidence to add the marker at CIFAS.

Mr K didn't agree and wanted his complaint to be reviewed. He said that he had asked his flatmate at the time about the payments and trusted him. He didn't think that the flatmate had ever not asked his permission. He only more recently realised it must have been him when he found out that the IP address used for the transactions was the one linked to his property and devices. He had no evidence such as a tenancy agreement to prove his flatmate lived there as it was his mother's flat. He is happy to pay back any money to The Co-op and he apologised for the mismanagement of his account. The impact of not being able to have a bank account is significant and was because he trusted someone. He wanted the marker to be removed.

## **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 need to take into the Payment Services Regulations 2017 in considering this complaint. It has been shown that the disputed payments were authenticated using Mr K's correct card details and security information. But I need to decide if he consented to them and so authorised them.

I note from his bank statement that a number of significant payments were made from Mr K's account to this gambling website. He had set up a genuine account in his name. He didn't dispute these other specific payments for nearly two months, and it is unclear why. As our investigator has said he didn't give any explanation about his flatmate having access to his account at the time he reported the fraud. I agree that this was highly material information even if he thought that this wasn't down to his flatmate.

He has no other evidence to support that he had a flatmate; that he allowed him to make genuine payments and pay him back; and that this flatmate made these specific payments. Even if that was all the case then as our investigator says the arrangement seemed to be to pay Mr K back later. So, taking all this into account I think it would be difficult to determine exactly what transactions were and weren't allowed by Mr K and whether the dispute arose solely because he wasn't paid back as agreed. If this was the correct explanation then I think this would likely be a civil dispute with this individual especially as it would have involved Mr K allowing that person access to his security information and so consenting to him using his account.

But I don't find this to be the most likely explanation in any event. That's because of the lack of evidence and that this explanation wasn't given at the time the fraud was reported. So, I conclude that Mr K most likely consented to and authorised the payments himself.

The bar for reporting to CIFAS is a high one. I've looked at whether The Co-op was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that The Co-op needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr K's account of events and the evidence The Co-op has provided, I'm satisfied that The Co-op had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr K made a claim for a refund of payments he had authorised.
- This claim wasn't a genuine one and was for his personal gain.
- The Co-op had grounds to believe that Mr K had tried to obtain money fraudulently based on the evidence it had and closed his account.

I appreciate that Mr K will be very disappointed when I say that I don't have a reasonable basis to require The Co-op to do anything further. If he doesn't accept my decision he remains free to pursue this in court subject to any relevant time limits.

**My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 February 2021.

Michael Crewe  
**Ombudsman**