

## The complaint

Mr K complains that The Co-operative Bank Plc has accused him of benefitting from fraud and has closed his account and registered a marker at CIFAS, the national fraud database.

## What happened

Mr K contacted The Co-op on 19 March 2020 to say that he had received fraudulent funds of £2,255 into his account because his partner's account had been compromised. He had transferred the money net of his overdraft - an amount of £1,960 - to his account at a different bank to protect this. He was asked to transfer this back and he moved back £1,890 (and so £70 less) the next day. He complains that he didn't have access to his account and had to phone to ask how much he could transfer net of the fraudulent money. He was unhappy to be told that he had benefitted from these funds and that his account would be closed. And later that The Co-op had added a fraud marker and closed his account permanently.

The Co-op said in its final response that it wouldn't have moved the money back to the sender *'on an ad hoc request whilst the matter was under investigation'*. It said that each time the bank reporting the fraud had requested the money back it didn't *'pass them the credit, since not all funds remained as [Mr K] had utilised the funds'*. As this had happened it had decided not to continue to provide him with banking services and this decision was confirmed to him by its call handler on 22 June 2020. It didn't consider it had dealt with this poorly as Mr K and his representative claimed. On 25 August 2020 it wrote to Mr K and told him that there was a CIFAS marker on his account and referred him back to the findings in its final response.

Our investigator recommended that the complaint be upheld in part and the CIFAS marker removed. He considered that Mr K's use of these funds was inadvertent and not with fraudulent intent. So, the high bar for adding the marker hadn't been met. Mr K had probably complicated things by moving the money in the first place, but he had addressed this and the shortfall of £70 in the funds he had initially returned compared to what he'd removed when he spoke to The Co-op on 21 March 2021. The Co-op should probably have returned the funds at this point. After that Mr K didn't have access to what was happening on his account and he relied on his calls with The Co-op about this. Our investigator said that it was though a matter for The Co-op to decide who it wanted to offer an account to and in light of its concerns closed the account in line with its terms and conditions. It didn't seem now that Mr K wanted to continue banking with it either.

Mr K's representative said that what he did was a 'common sense approach' and that he was completely innocent and didn't intentionally benefit from this. And if The Co-op had acted more quickly and given him guidance this would have been sorted out.

The Co-op said it couldn't comment on the opinion of the investigator until more information had been obtained. It wanted to see Mr K's bank statements at his other bank showing why he only sent £1,890 rather than £1,960 back. It wanted to see whether his salary was now paid into that account. And it wanted to know if it should now explain to this service whether it had reported the matter to police and more about the CIFAS marker. Our investigator said

that he wouldn't be asking Mr K or his other bank for any more information as he thought he had what was required to make a decision. So, he told The Co-op that the matter would be referred to an ombudsman and gave it the opportunity to make any further comments.

### **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 think The Co-op has had a reasonable opportunity to respond to the view of our investigator. It is a matter for this service to decide on what information we require to assess a complaint. I will be considering the way The Co-op dealt with this report of fraud and whether it acted reasonably. I also need to consider whether the report to CIFAS was made fairly. On this point, The Co-op needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I have to say that this is a complex sequence of events but that The Co-op was the expert here and that Mr K believed he like his partner had been the victim of fraud. I've reviewed the record of calls he had with The Co-op about this and listened to the available recordings I note in particular the following:

- On 19 March 2020 Mr K reported this credit as fraudulent. He explained what he had done with £1,960 of the money and the person he spoke to told him not to pay it back, that it was safe and thanked him for doing that. He was told his account is under investigation.
- On 20 March 2020 when Mr K called again he was asked to transfer the money back and he did send £1,890 back. Had The Co-op later wanted to know why this wasn't the full £1,960 it could have asked him and for any evidence.
- On 21 March 2020 Mr K asked about when his account will be up and running. He was told that the money had to be sent back to the other bank. He asked specifically how much of the balance is his money taking this into account and is told that he can have £230 and which is transferred for him. To me that resolves any implication that he had tried to use any of this money by that point. He also asked if this meant any of his overdraft would be used and he was told not.
- On 28 March 2020 he asked about his account and was told that there is no money and that the fraud team will be in touch.
- On 17 April 2020 he called and said he wants to transfer some money. He asked what is available and the person he spoke to checked that in detail with the fraud team. He's told he can have the full balance of just over £1,358. He said he doesn't know where he is with the account and that he got dragged into this. He said that the issue with his partner's account at a different bank is resolved. I note he has since provided a copy of her statement showing this and that he transferred £1,400 to her account that day.
- In subsequent calls he accepted that direct debits and withdrawals from his account have effectively meant that the other element of the money – some £900 has been spent by him. He was also unhappy to find that his account is in overdraft by nearly £200 and was expected to pay this back.

Frankly having listened to these calls it is clear to me that Mr K isn't attempting to be dishonest. He is confused about what is happening, doesn't have a clear understanding of what is happening on his account, at one point thought all entries had been blocked and in my view was relying on The Co-op to sort out this fraud that he had clearly reported.

I can see from its notes that it reported to the other bank that no funds remained and didn't recognise that on 21 March 2020 Mr K had ensured that there were sufficient funds available as set out above. It treated the money going in and out of his account as different elements even though Mr K had clearly explained what had happened and expected the fraud to be sorted out with the other bank. The money that later went out from his account included direct debits that were paid by The Co-op.

I'm not satisfied that it was fair to add the marker because I don't believe Mr K was attempting to carry out fraud – in fact quite the opposite. Having said that I can see why The Co-op no longer wanted to offer him a bank account having suspected fraud and because he did access those funds.

### **Putting things right**

I agree that the CIFAS marker should be removed. As I say The Co-op had grounds to close his account.

Mr K through his representative originally asked for compensation for the inconvenience caused, the time the account was restricted and the impact of the marker and didn't think he should have to pay back the overdraft. I'm afraid that I don't agree that this is all warranted. The person responsible for a significant part of the inconvenience was the fraudster. And it isn't in question that Mr K has for the reasons explained received at least part of this money despite his intentions. The overdraft balance on the account reflects how it was used and again he is fairly responsible for repaying that. He has mentioned his financial circumstances have changed and I would expect The Co-op to take this into account in discussing repayment with him.

### **My final decision**

My decision is that I uphold this complaint in part, and I require The Co-operative Bank Plc to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 July 2021.

Michael Crewe  
**Ombudsman**