

The complaint

Mr J, on behalf of the estate of Mrs T, complains that The Co-operative Bank Plc (“Co-op”) failed to identify and intervene in compulsive spending on Mrs T’s account resulting from a gambling addiction.

Mr J also complains that Co-op failed in its money laundering obligations to question the legitimacy of funds that entered Mrs T’s account.

What happened

Mr J says that following the death of Mrs T, he was responsible for administering her estate; including her financial affairs. While doing so, he discovered that Mrs T had a chronic gambling addiction and had spent large sums of money from her Co-op account on this.

Mr J also discovered that some of the money Mrs T used to gamble with originated from encashed shares belonging to him that she’d obtained fraudulently using falsified signatures. Unhappy that Co-op allowed this, he complained to it on behalf of the estate of Mrs T.

Mr J felt that Co-op didn’t do enough to identify or assist Mrs T with her gambling addiction and felt this was exacerbated by its failure to question the legitimacy of the large and unusual transactions entering her account. He felt that this failure was a breach of Co-op’s money laundering obligations; as the transactions into her account fell outside of her normal account usage and income.

Co-op looked into Mr J’s concerns but didn’t think it’d made an error. It said that that while it does check a customer’s credit file when opening an account for any adverse information, it’s unable to track over time what other income a customer may have. It pointed out that customers may have other accounts held with different financial businesses or receive income from sources such as investments or pensions.

Co-op concluded that it couldn’t have reasonably been aware that the credits Mr J had complained about had originated from non-legitimate sources. And it added that these payments didn’t meet the specific criteria for them to be flagged as potentially fraudulent.

It felt that the account was ran satisfactorily in the eight years it was open and pointed out that Mrs T hadn’t contacted it at any point to advise of problem spending or financial difficulties. As such, it didn’t uphold the complaint.

Mr J, unhappy with this response, brought the complaint to our service. An Investigator looked at the evidence provided by both parties but concluded that Co-op hadn’t made an error.

In coming to her conclusions, the Investigator highlighted the following reasons:

- There didn’t appear to be any reason for Co-op to be concerned about the credits into the account.
- Even if the credits were deemed to be suspicious in nature, Co-op couldn’t have

- been expected to identify they were from fraud if it questioned them further.
- While there was a large number of gambling transactions on the account, this wouldn't have appeared concerning to Co-op considering that Mrs T was generally able to manage the account with either a credit balance or within the agreed overdraft limit.
- She didn't find it reasonable for a bank to be expected to monitor all transactions or to automatically be aware of a customer's financial difficulties or vulnerabilities unless these had been flagged to them.
- Customers are entitled to spend their own funds as they wish.
- While acknowledging that it would have been reasonable for Co-op to have sign-posted Mrs T to support regarding her persistent gambling, it wasn't clear whether this support was offered or not. Due to the passage of time, only limited evidence was available of what was discussed with her.

Mr J didn't agree. He remained of the opinion that the credits into the account were suspicious in nature and this was ignored by Co-op. He pointed out that Mrs T was written to by Co-op on over thirty occasions and the account was suspended twice; furthering his submission that there were concerns. Additionally, he pointed that Mrs T was a vulnerable customer due to her gambling addiction and said that Co-op were aware of this. Despite this fact, Mr J felt that Co-op had done nothing to stop this and in fact encouraged her to continue.

As Mr J, on behalf of the estate of Mrs T, disagreed with the Investigator's findings, the matter has been passed to me to make 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.

Before I begin outlining my findings on this complaint, I feel that it's important to highlight what I can and can't consider in these circumstances. I say this as I've noted from the evidence and responses provided by Mr J that as well as the concerns he's raised relating to Co-op's failings toward Mrs T, he's also highlighted concerns which he says has impacted him directly as a result of the failures.

Mr J has brought this complaint on behalf of Mrs T's estate as she was a customer of Co-op. I can only look at matters which originate from her customer relationship with Co-op. I can't look at any of the concerns that Mr J has raised that relate to him personally.

While I acknowledge and empathise with Mr J's position—and the fact that he appears to have fallen victim to a fraud—my findings will solely consider the bank's obligations toward its customer—Mrs T—at the time.

Mr J has highlighted two specific concerns he has in the way the bank failed in its obligations to protect Mrs T; these can be summarised as:

- It failed to question the legitimacy of payments into the account that he says originated from fraud.
- It also failed in its duty to help and protect Mrs T who suffered a gambling addiction.

For ease, I'll address these issues separately.

Questioning the legitimacy of credits into the account

In coming to my findings I've considered a number of obligations financial businesses have when dealing with transactions in and out of a customer's account. I want to acknowledge that this can sometimes be a complex and difficult balance for financial businesses to weigh up.

Broadly speaking, businesses are obliged to fulfil the instructions of its customer when managing their account and making payments. However, there are times where we'd expect a business to question the legitimacy of these instructions or the source/destination of certain payments.

The obligations referred to above are set out in the Money Laundering Regulations and are generally considered to be good practice in the industry. In the circumstances of this complaint, Mr J has pointed out that Mrs T was receiving funds that were obtained from fraud. Having reviewed the evidence provided on linked matters relating to this complaint, I find it likely that these funds were obtained fraudulently; but that doesn't necessarily mean Co-op would reasonably have been aware of this fact.

As I've said above, Co-op does have an obligation to monitor and question unusual transactions, but it's unreasonable to expect a business to question the vast majority of transactions in and out of a customer's account. Such a task would be logistically impossible, given the sheer number of transactions being processed by a bank at any moment in time. Furthermore, it would likely be to the detriment of its customers carrying out regular payments and going about their day to day activities.

A bank will typically rely upon information from the sending bank to inform it if a credit is the benefit of crime or suspicious activity. Without this information, there tends to be a lack of reasonable grounds to question it. But there are times a bank could identify unusual or suspicious transactions entering an account. This may include, but is not limited to, an uncharacteristic sum or pattern of money entering the account or if the account is clearly being used for a purpose other than that which was given when it was opened.

In the circumstances of this complaint, Mrs T's account was in receipt of a number of credits—not of any substantial value when considered in isolation—over a prolonged period of time. While I take onboard Mr J's point that this was unusual considering Mrs T only had the benefit of a pension that she was paid each month, I can't say that Co-op should reasonably have been aware of all Mrs T's sources of income. It's not uncommon for customers to have several financial accounts with a number of businesses. Nor is it unusual for customers to draw on other sources of income in sporadic patterns. While in aggregate, the sum credited was substantial, I think the way in which it was paid into the account in smaller and infrequent amounts shouldn't reasonably have caused suspicion or concern.

Furthermore, I don't find that the accounts from which the credits originated appeared suspicious as they tended to originate from the same source. Mr J has also pointed out that the money originating from fraud was paid into Mrs T's account indirectly. This means that they weren't paid to her Co-op account directly from the source, but transferred to another account and then forwarded on. Having looked through each credit, these are sourced from an account bearing the name of Mrs T and persons legitimately associated with her. I don't think this looked suspicious in the circumstances, particularly when considering the amounts. And I'd only expect Co-op to have picked up on these and questioned them if those characteristics were present.

For the reasons I've given above, while I know this may come as a disappointment to Mr J, I don't think it reasonable for Co-op to have questioned the credits he refers to. And for clarity, even if it had, I find it unlikely any wrong-doing would have been uncovered. By Mr J's own admission, Mrs T had access to the accounts in question and likely would have been able to

successfully challenge any request for proof of entitlement to the credits.

Protecting and providing support on gambling concerns

Having reviewed Mrs T's account and notes available, I can find no evidence that she made Co-op aware of her gambling problems throughout the time it was open. Having said this, Mrs T's bank statements are quite clear in that she spent a large proportion of the funds in the account on gambling transactions. And there are a number of occasions where this expenditure could reasonably be identified as excessive.

While it's true that a consumer can't—in most circumstances—be restricted in what they spend their money on, there are certain circumstances where it's considered good practice and reasonable for a bank to step in and offer support.

As there is no evidence to suggest Mrs T had informed Co-op of any gambling issues or vulnerability, I don't think it fair to say that Co-op should have intervened in the payments or prevented them from taking place. Had Mrs T specifically asked it to do this I may have taken a different view, but I can't see that she did. However, I do think that the spending should have been picked up by Co-op and flagged as a potential concern. And I think it would have been reasonable in the circumstances to discuss this expenditure with Mrs T and offer support either through a specialised team or external agencies.

Co-op has provided evidence of letters sent to Mrs T each time she made payments above her arranged overdraft limit. And these do set out advice on debt management and the details of an external agency that can help. But it didn't contain any information relating to gambling related charities or advice services. I think Co-op could have included this information considering that a number of the transactions that were taking her beyond her overdraft limit were gambling transactions.

I've also noted occasions where Co-op has blocked the account for further security checks on some transactions to ensure they were authorised by Mrs T. I think this also presented an opportunity for Co-op to identify the high number of gambling transactions and offer support.

However, it's difficult to know if any intervention would have made a difference. Even if Co-op had signposted Mrs T to support relating to her gambling difficulties, there's no guarantee how she'd have responded to that. It's significant that she doesn't appear to have mentioned gambling difficulties when Co-op contacted her about specific payments and that she didn't respond to attempts to offer support relating to financial hardship. I've also considered that Mrs T hadn't disclosed any gambling difficulties with family members and had asked Co-op for paper statements to be stopped being sent to her address. So, it seems more likely that she was actively attempting to mask this behaviour rather than seek help for it.

Furthermore, I can't confidently determine that Co-op's lack of support was a causal factor in any potential distress caused by the gambling. It's a very difficult case to determine—considering Mrs T has now tragically passed away—if any offer of support or signposting may have provoked change. I say this as Mrs T was at the time using funds that were allegedly stolen, had been gambling over a considerable period of time and had not asked for help from the bank at any stage.

I therefore can't reasonably determine that Co-op has caused any additional distress as a result. But I do find it more likely than not that the pattern of expenditure would have continued regardless; and Co-op can't reasonably be held accountable for this considering its obligations.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J, on behalf of the estate of Mrs T, to accept or reject my decision before 12 November 2021.

Stephen Westlake
Ombudsman