

## The complaint

The estate of Mr A complains that The Co-operative Bank Plc did not do enough to protect Mr A when he fell victim to fraud.

Mr A sadly passed away after his complaint had been brought to our service. At the time, his son, who I'll call Mr A2 was his representative. And now in his capacity as an executor of Mr A's estate he has asked for this complaint to be progressed.

## What happened

The circumstances that led to this complaint are well known to all the parties, so I won't repeat them in detail.

Mr A2 says Mr A has been the victim of fraud. Between September 2018 and December 2018 six cheque payments totalling £29,000 debited Mr A's account. In addition to this several debit card payments totalling around £1,400 were made from another account he held with Co-op. A refund for these debit card payments was given in February 2019. But Co-op didn't agree to providing a refund for the six cheque payments.

Mr A2, on behalf of the estate of Mr A ('the estate'), says Co-op failed to protect Mr A who was elderly and vulnerable by not querying unusual account activity. He is of the opinion that it failed in its duty of care, whether wholly or partly and needs to accept some liability and admit to its negligence.

Co-op doesn't agree. In short, it says that it didn't do anything wrong, it processed cheques which it believes Mr A willingly wrote and had issued, and it attempted to recover all the money it could on being advised of the fraud. Our Investigator reviewed the complaint and was of the view that it should be upheld. She said, in summary that Co-op ought to have identified that Mr A was at risk of financial harm from fraud and in her opinion, it could have prevented part of Mr A's loss. Mr A2 accepted the Investigator's opinion, but Co-op did not. In the main it said, there wasn't enough evidence to support that the disputed cheque payments had been obtained fraudulently. It asked for an Ombudsman's decision.

The case was passed to me to decide. I wrote to Co-op to share my provisional decision. I said:

*"Sadly, since bringing his complaint to our service Mr A has passed – so the estate is acting on his behalf.*

*I accept under the account mandate Co-op should process payment requests made by the account holder without undue delay. So when presented with a valid payment instruction (which Co-op say was the case as Mr A had issued and signed the disputed cheques) the starting position would be for it to comply with the instruction given.*

*But taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think Co-op should fairly and reasonably:*

- have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- have taken proactive steps to: identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something recognised by the FCA in recent years by the British Bankers Association's February 2016 report 'improving outcomes for customers in vulnerable circumstances');
- have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams, which banks are generally more familiar with than the average customer; and
- 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 customers from the possibility of financial harm from fraud.

*I do not consider there to be a material difference between the reasonable, good-practice requirements on firms when processing either cheques or electronic payments when it comes to monitoring accounts for the prevention of financial crime and having adequate systems and controls in place to prevent misappropriation of funds. I have seen nothing to persuade me that a bank should be less vigilant, or fail to carry out due diligence, just because the payment is by cheque.*

*I appreciate the practicalities around cheque payments would look different to electronic or card payments. But it seems to me here there was a reasonable window of opportunity to interrupt and investigate a potentially fraudulent cheque payment – that is, between receipt of the request for settlement from the payee's bank (through the clearing house) and day three when the drawer's bank provides an update on the status of the cheque. And like in these circumstances where there is a series of payments it could be argued that it reasonably could've prevented the issuing of subsequent cheques had appropriate action been taken and scam warnings given.*

*I agree with the Investigator that the first two cheques wouldn't have stood out as uncharacteristic or sufficiently unusual as Mr A had in the recent past made a genuine cheque payment for a similar sum. But the third cheque for £5,000 would've meant a total spend of £11,000 over a relatively short period of time (a few weeks). A closer look would've identified that whilst the cheques had been signed by Mr A, they were not written by him – which should've given some cause for concern. I'm also led to believe that Mr A usually wrote his own cheques out – so I'm surprised the cheque image checking system intelligence didn't identify this change and flag the cheques for further assessment.*

*The cheques were also issued to individuals not an incorporated firm. So I think there were enough red flags that ought to have given Co-op cause for concern that Mr A could be at risk of financial harm as a result of fraud or financial abuse. I think Co-op ought reasonably to have contacted Mr A to ask him questions about the payments.*

*I also note (and which I consider to be an important factor) that, at the time of the scam, Mr A was in his nineties. It has long been accepted by the industry that this age profile is one that is disproportionately targeted by scammers. Aside from being particularly susceptible as targets for investment fraud and other forms of financial crime, this age group at the present time more commonly uses cheques. So, I think in the particulars of this case, Mr A's age is a relevant factor that the bank should have been mindful of, as it materially increases the risk of loss due to fraud or scams.*

*I think had Co-op contacted Mr A he would've disclosed that the cheques were payments due to the IT company that were fixing his computer. At this point given the cheques had been made payable to individuals and not an IT firm and were for disproportionate amounts relative to the services Mr A was paying for (fixing of a computer), I think it's fair to say that any prudent banker would've identified that Mr A was being scammed and would've had a permissible reason to return the £5,000 cheque unpaid. And had Co-op explained this to Mr A I think he would've informed his son (who would've reported this to the Police as he did later when he discovered what had happened) and Mr A's subsequent losses would've also been prevented.*

*I've also considered whether Mr A should bear some responsibility as he did hand over blank signed cheques. But taking into consideration his vulnerability due to age I agree with the Investigator that I don't think he should. I don't think I can fairly conclude that he was knowingly careless or negligent when issuing the cheques.*

*To put things right I think Co-op should do the following:*

- *Refund the preventable loss of £23,000.*
- *Pay 8% simple interest per annum from the date the cheques debited the account to settlement.*
- *I agree with the Investigator that the whole matter could've been handled better, so a compensatory award of £100 for trouble and upset caused to Mr A is fair."*

Mr A2 continues to accept the outcome. However, he feels it would have been humbling for Co-op to have made an apology for its lack of care and attention towards Mr A. And regarding the compensatory award recommendation, whilst this wasn't something he was challenging he just wanted to make known that he considers it to be a derisory sum.

Co-op continued to defend its position. It maintained that there was a lack of evidence to support, that Mr A had been the victim of fraud. It made several points in response to my provisional decision. Most of which, I note, it has made before, and which I'd taken into consideration. It said:

- It was Mr A2 – not Mr A's testimony that the cheque payments were intended for an IT company.
- During the period in which the cheque payments had debited Mr A's account, his online banking details had been used 19 times to log in. Each log in was error free, which it believes suggests that Mr A was able to remember his security and able to see his keyboard and screen.
- It said that, at the material time, it appears that Mr A was managing his own financial affairs. It pointed out that according to Mr A2's own testimony, when he offered to help Mr A he refused to share his bank statements with him.
- Mr A had issued (excluding those which have been disputed) other large cheques which were signed by Mr A but not written in his handwriting.

- Co-op highlighted a large cash withdrawal Mr A2 had made from Mr A's account.
- It pointed out what it felt were inconsistencies that it believed called into question the reliability of Mr A2's testimony as evidence.

I shared with Co-op further reasoning and addressed each of the points they'd raised to provide assurances that I'd thought about things carefully and taken the wider circumstances into consideration when reaching my intended outcome. I explained:

- I have seen no reason to dispute Mr A2's testimony about what Mr A had told him (albeit limited information) about the cheque payments.
- Co-op wasn't willing to accept that Mr A had been the victim of fraud because the Police had not made any arrests or charged anyone. But I'm satisfied the matter was reported to the Police and referred to the Crown Prosecution Services (CPS). The CPS decided it wasn't going to take the case further because in their opinion there wasn't enough evidence to prove the allegations 'beyond reasonable doubt' – which is the bar for criminal matters. This isn't uncommon and is often seen to happen in many fraud and scam cases. So the case not being taken forward does not confirm nor automatically mean, that Mr A hasn't been the victim of fraud. Actually, from everything I've seen, I'm persuaded that, on balance, Mr A had most likely been a victim of fraud and had been taken advantage of due to his vulnerability owing to age. Something which, as I've explained in my provisional decision is an important factor that Co-op should have been mindful of, as it materially increases the risk of loss due to fraud or scams.
- Ultimately, Mr A at the time was a customer in his nineties, with cheque payments leaving his account in a short space of time which were significantly uncharacteristic for him. Those cheques were made to named individuals and not written in Mr A's handwriting. Taking this together there was enough going on here to have given Co-op a cause for concern that Mr A might have been at risk of financial harm from fraud. So it ought to have intervened and done more to safeguard Mr A. And by not doing so, Co-op has missed an opportunity to better understand what was going on and protect Mr A.
- I highlighted the papers issued by the regulator around consumer vulnerability. This has more recently featured as guidance on fair outcomes for vulnerable customers. In short, by the time these payments took place banks such as Co-op should've had measures in place to understand the nature and scale of characteristics of vulnerability that exist in their target market and customer base. This includes customers that have a vulnerability due to age. I'd expect Co-op to have been aware that this group of individuals utilise cheques as a method of payment and are at a greater risk of losses as a result of fraud or financial abuse. And I'd reasonably expect it to have systems/measures in place to spot suspicious activity which signals fraud or abuse and have staff trained to respond to and support individuals if this was identified.
- At the time of the disputed transactions, it is understood that Mr A was taking care of his own affairs. So had Co-op intervened and questioned him when processing the third cheque for £5,000, I think he would have told it that he'd given signed (but incomplete) cheques to an unknown third party and he would have explained the reason for the payments. Based on the above and Mr A's vulnerability due to age I think Co-op ought to have intervened; returned the £5,000 cheque unpaid; and given Mr A appropriate fraud warnings. And on balance, taking everything into consideration I do think, had Co-op taken these steps, it would've made a difference and prevented further losses (from the third cheque payment onwards).

- Mr A2 has explained that he set up Mr A's online banking and used this to make payments to help him from time to time. He wasn't monitoring the accounts or checking them as Mr A wanted to remain as independent as he could. He maintains Mr A did not use online banking – so wouldn't have seen the payments leaving his account. Mr A2 has provided some evidence about Mr A's eye condition. I note Co-op does not consider this to be sufficient, but I think Mr A2's willingness to share this as well as any other evidence he has been asked to provide and taking into account Mr A was in his nineties where sight problems are common, it is completely plausible (and more likely) that Mr A didn't access his online banking nor was he able to review his statements diligently. So whilst he'd have been aware that he'd signed and given cheques, I think in all probability, he was unaware of the sums which had debited his account. And whilst the deterioration of Mr A's health meant he couldn't remember or provide much clarity at a later point; had he been contacted by Co-op at the material time to ask about the nature of the cheque payments debiting his account as I've mentioned above, I think he would've honestly and openly shared the reasons. And I think either Mr A would've come to the realisation himself that he'd been taken advantage of, or Co-op ought to have reasonably ascertained that he was at risk of financial harm from fraud, and it should have taken the appropriate steps as detailed above.
- Mr A2 says when Mr A's health started to deteriorate, he sat down with him to review his statements, which is when he noticed these payments. His suspicions arose further because Mr A mentioned someone had come round a few times to fix the computer. Mr A2 says he asked Mr A further questions, but he couldn't remember much detail. He says he requested statements so that he could see how long this had been going on for and/or if there were any other payments.
- I appreciate Co-op have said that Mr A issued large signed incomplete cheques before the disputed cheques. But it doesn't change my finding that Mr A was in his nineties and susceptible to financial harm and/or abuse. And the velocity of spend and increasing size of cheque payments ought to have given Co-op cause for concern.
- Co-op made known to me its concerns about funds which were transferred from Mr A2's brother's account to Mr A's account and then withdrawn by Mr A2 in cash. I'm not entirely sure what bearing this has on the outcome of this complaint, or its intention. Nonetheless I asked Mr A2 about this, and he explained that he had lasting power of attorney (LPA) for Mr A and power of attorney (POA) for his brother. He said his brother was disabled and suffered from cerebral palsy (he has also sadly passed). He lived independently, but Mr A financially supported him, and cash was generally withdrawn to pay for things he needed and for his care. Mr A2 said his brother also banked with Co-op, so it should be aware of this background.
- With regards to inconsistencies which Co-op pointed out. These appear to be how things have been interpreted by the Investigator – not Mr A2 providing inaccurate or differing versions of events.

Co-op did not respond to my 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 want to start by acknowledging that I do appreciate Co-op's strength of feeling about this complaint, as it relies almost entirely on what Mr A2 thinks happened rather than Mr A's own recollections. This factor has made this decision somewhat difficult to make. But I'd like to assure Co-op that I haven't taken this decision lightly and that I have thought about everything carefully. And I have based my decision on the balance of probabilities. In other words, on what I considered most likely to have happened, in the light of the available evidence—my role allows me to do this when reaching what I consider to be a fair and reasonable outcome.

As neither party has provided further evidence for me to consider, I see no reason to deviate from the conclusions I reached in my provisional decision.

### **My final decision**

For the reasons outlined above, my final decision is that I uphold this complaint.

To put things right the Co-operative Bank Plc must pay the estate of Mr A:

- The preventable loss of £23,000 (less any sum which may have already been recovered and returned).
- 8% simple interest per annum from the date each cheque debited the account to date of settlement.
- A compensatory award of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr A to accept or reject my decision before 28 April 2023.

Sonal Matharu  
**Ombudsman**