

## The complaint

Mr G is unhappy The Co-operative Bank Plc, trading as Smile (“Co-Op”), hasn’t refunded him £30,000 he lost in an authorised push payment (“APP”) cloned investment firm scam.

## What happened

The details of this case have been clearly set out by our investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here. All accept Mr G was the unfortunate victim of an investment scam, where fraudsters posed as a legitimate firm.

The fraudsters operated what is known as a cloned firm. That is they copied the genuine branding, information and paperwork of a legitimate firm, and posed as employees, but changed contact details in an attempt to trick victims.

In August 2020, Mr G had been looking to invest and carried out a search online. Mr G provided his information to a website and was then subsequently called from whom he thought was a legitimate company (whom I shall call ‘Company C’) the next day.

Mr G was then provided with paperwork and brochures which all appeared entirely legitimate. Mr G decided to invest and completed the application form. Mr G thought he was investing £30,000 into what he believed was a three-year fixed bond. He made two payments, one of £19,000 and one of £11,000, through online banking. Mr G then received what he thought was legitimate bond certificates.

Later in the month Mr G went to invest with a different company. This was also unfortunately a cloned investment firm scam. However, in that scam, the fraudsters tried to open an account in Mr G’s name with a payment service provider (“PSP”) and get Mr G to route the payment through it. The PSP sent correspondence to Mr G about opening the account and this put Mr G on alert as he hadn’t opened the account. The scam was uncovered and ultimately Mr G received he funds back as the PSP had blocked the account.

Mr G then uncovered that the payments he had made at the start of August 2020 were also as a result of a cloned investment firm scam.

Mr G contacted Co-Op to report the matter.

The case was considered under the Contingent Reimbursement Model Code (“CRM Code”). This is a voluntary scheme Co-Op has signed up to, designed to reimburse customers that have fallen victim to a scam. The starting position under the CRM Code requires Firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

The circumstances where a Firm may choose not to reimburse include (so far as they might be relevant to this complaint) where the Firm can establish that:

- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning; or
- where in all the circumstances, the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay, the payment was for genuine goods or services, and/or that the person or business with whom they transacted with was legitimate.

When assessing whether it can establish these things, a Firm must consider whether they would have had a 'material effect on preventing the APP scam'.

Co-Op, in reviewing what had happened, considered that it had sufficient fraud prevention measures in place and that Mr G hadn't carried out enough checks prior to proceeding with the investment. So under the provisions of the CRM Code, Co-Op considered Mr G wasn't liable for a refund.

Mr G formally complained to Co-Op. Co-Op offered Mr G £150 for the level of service he received after he had reported the fraud. It recognised there were delays in providing him an outcome and for the lack of updates and information provided during its investigation. However Co-Op, remained of the opinion that Mr G wasn't entitled to a refund of the funds he had lost to the scam.

Unhappy that he had not been reimbursed, Mr G referred the matter to our service.

Our investigator looked into things and upheld the complaint. They initially considered that as Co-Op hadn't provided a copy of the warning to our service then it hadn't evidenced that Mr G had ignored an effective warning. So they considered it was unfair to decline reimbursing Mr G on those grounds. And they also considered Mr G had a reasonable basis for belief when making the payment given the sophistication of the cloned investment firm scam. So they didn't think it was reasonable for Co-Op to choose not to reimburse Mr G in full, under the provisions of the CRM Code.

The investigator said Co-Op ought to refund the outstanding amount lost as a result of the scam and either pay 8% simple interest on the amount, or the applicable rate of interest if the funds had come from an interest bearing account such as a savings account – and this should be from the date Co-Op should have reimbursed Mr G under the CRM Code.

Co-Op responded. It accepted that it could have done more to protect Mr G but also felt that he had a duty of care when making the payments. It went on to explain that while it didn't doubt that Mr G had a reasonable basis for believing he was paying a genuine investment firm, he had selected 'investment' as the reason for the payment and would have seen its investment warning. Co-Op say that the warning specifically states to check the Financial Conduct Authority's ("FCA") website. Co-Op considered that had Mr G checked the FCA website he would have seen warnings that Company C had been cloned.

Our investigator responded. They acknowledged there were warnings present on the FCA website but concluded that Company C were well-known and given the sophistication of the scam and that Mr G was sure he was dealing with a legitimate firm wouldn't have thought to conduct further checks. And even if Mr G had searched Company C it wasn't conclusive that he would have been alerted to the fact he may have been at risk of financial harm. The Investigator also considered that the warning to check the FCA website came towards the end of the warning with the warning talking about scammers placing pressure on consumers to make a payment. So they didn't think the way the warning was presented would have had an impact on Mr G continuing with the payment.

They remained of the opinion that none of the exceptions under the CRM Code applied for Co-Op to choose not to reimburse Mr G in full.

As the matter wasn't resolved, it was passed to me to decide.

I reviewed the complaint and wrote to both parties. I agreed that the complaint should be upheld, and I set out my initial thoughts as to why Mr G should be reimbursed fully under the CRM Code but that I was minded to depart slightly from our investigators view, in terms of what I consider to be fair and reasonable compensation in this case. In short, I considered that it was likely Mr G would have invested had it not been for the scam he fell victim to. I considered that it would be fair and reasonable to take this into account.

I considered fair compensation in this case would be for Co-Op to refund the monies Mr G lost – in full, and pay interest on that amount at the monthly average rate for two-year fixed rate bonds as published by the Bank of England for the month of August 2020 from the date Mr G made the payments on 7 August 2020 to the date of settlement. Those rates should be applied to the investment on an annually compounded basis.

I set a deadline for both parties to respond with any comments by 26 May 2022. Mr G responded agreeing with my overall initial thoughts on his complaint and also with the redress I had recommended. Co-Op didn't respond by the deadline set.

As Mr G responded agreeing – and I received no further comments from Co-Op, I will now confirm my formal findings on this complaint.

### **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.

Having done so, I am satisfied that:

- Under the terms of the CRM Code, Co-Op should have refunded the money Mr G lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- In the circumstances Co-Op should fairly and reasonably refund the monies lost.
- Co-Op should pay interest on that amount at the monthly average rate for two-year fixed rate bonds as published by the Bank of England for the month of August 2020 from the date Mr G made the payments on 7 August 2020 to the date of settlement. Those rates should be applied to the investment on an annually compounded basis.

I don't intend to comment in detail on whether the bank provided effective warnings or not. It's already said it didn't do enough here. But for completeness I'm satisfied the warning Mr G was presented with wasn't an effective warning as set out by the CRM Code. The warning Mr G was presented with initially focuses on scammers putting pressure on consumers to make payments. Given Mr G had been corresponding with the scammers and hadn't been pressurised to make the payment I can see why the warning wouldn't have resonated with him. While the warning does go on to mention that before consumer s commit to an investment that they should do an online search and check the FCA warning list it doesn't bring to life what cloned investment firm scams would look and typically feel like – that scammers can imitate genuine firms. So the warning isn't effective as it doesn't help a consumer to understand the reason why they may need to carry out further checks.

I'm also satisfied Mr G had a reasonable basis for belief. This was sophisticated fraud which involved a cloned financial services firm. Mr G found the details online and genuinely believed he was interacting with the genuine firm. Cloning a genuine firm and mirroring its processes gives the interaction legitimacy. I think it is reasonable that this went undetected by Mr G.

From what I have seen, the correspondence Mr G received is in line with what he would have expected to receive in connection with a genuine investment of this type. In addition, the investment appears to be based on a genuine product that was available at the time. Co-Op is particularly concerned that Mr G did not search the FCA register to find and verify information about the firm. But I don't agree it was unreasonable for Mr G not to have done so in the circumstances of this complaint. Mr G was in a position where he had no reason to suspect he wasn't engaged in something completely above board – particularly in the absence of an effective warning from Co-Op about cloned investment scams and how to avoid them. He wasn't an experienced investor and I can't see there were any red flags to suggest that all might not be as it seemed. At the time, Mr G was fully in the belief he was in contact with a genuine firm. I've not seen anything that makes me think Mr G had any knowledge or awareness that firms could be cloned.

I'm also mindful that the average consumer will probably not know exactly what information they are looking to verify on the FCA register unless they are given guidance of the significance of that additional search.

In the particular circumstances of this case, I'm not persuaded Co-Op has shown that Mr G lacked a reasonable basis for belief when making the payments.

So for the above reasons, I uphold this complaint. I am satisfied that, under the CRM Code, no exceptions to reimbursement apply.

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr G as close to the position he would probably now be in if he had not been the unfortunate victim of a scam. So I consider Co-Op should re-imburse Mr G the funds he lost, being £30,000.

Where a consumer has been out of pocket / deprived of funds, our service can award additional compensation to acknowledge that loss.

Here, I think that an award of 8% simple interest would represent significant betterment to Mr G – given that I understand his intention was to invest the money in such a way that his capital was not put at risk and such a rate of return would be unachievable without doing so.

On the other hand, I don't think that paying interest at the account rate of his savings account is fair either. The evidence does not suggest that Mr G would have left his money in that account but invested it in products similar in nature to the fraudulent investment.

I think Mr G would have likely purchased a legitimate three-year fixed rate bond elsewhere and continued to invest his money without risking the capital. However, it hasn't yet been two years since the scam happened and Mr G will receive his money back before two years have passed. So, I don't think it's fair to award Mr G the rate he might have achieved for a three-year bond as he hasn't had his money locked away for that period of time. Instead I think an interest rate calculated using the monthly average rate for two-year fixed rate bonds as published by the Bank of England for the month of August 2020 should be used.

Mr G, now his funds will be returned, can also now invest those funds should he wish to, and I note that interest rates have increased since August 2020 – so I don't think this will be to his detriment.

As I say, it is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable and puts Mr G in a position he would have been in, as far as is possible, had he not been the victim of a scam and deprived of his funds.

### **Putting things right**

To compensate Mr G fairly, Co-Op should:

- Refund the £30,000 Mr G lost.
- Pay interest\* on that amount at the monthly average rate for two-year fixed rate bonds as published by the Bank of England for the month of August 2020 from the date Mr G made the payments on 7 August 2020 to the date of settlement. Those rates should be applied to the investment on an annually compounded basis.

*(\*Income tax may be payable on any interest awarded. If HM Revenue & Customs requires The Co-operative Bank Plc to take off tax from this interest, The Co-operative Bank Plc must give Mr G a certificate showing how much tax it's taken off if he asks for one.)*

### **My final decision**

For the above reasons, I have decided it is fair and reasonable to uphold this complaint about The Co-operative Bank Plc – and I require it pay compensation as set out above within 28 days of receiving notification of Mr G's acceptance of my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 June 2022.

Matthew Horner  
**Ombudsman**