

The complaint

Mr S complains that The Co-operative Bank Plc won't refund the money he lost when he was the victim of a scam.

What happened

Mr S was looking to buy a campervan and found one he was interested in advertised for sale on an online marketplace. He contacted the seller and was sent a number of documents and photos of the campervan before ultimately agreeing to buy it. He sent a payment of £4,170 to the payment details the seller gave him and was told the campervan would be delivered to him the following week. But, when it didn't arrive, Mr S realised this was a scam.

Co-op is a signatory of the Lending Standards Board Contingent Reimbursement Model (the CRM code) which requires firms to reimburse customers who have been the victims of authorised push payment scams like this, except in limited circumstances. Co-op investigated Mr S's case but said one or more of the exceptions applies. It said Mr S had ignored an effective warning and had made the payment without a reasonable basis for believing it was legitimate, so he wasn't entitled to a refund under the CRM code. Mr S wasn't satisfied with Co-op's response, so brought a complaint to our service.

I sent Mr S and Co-op a provisional decision on 13 May 2022 to explain why I felt the complaint should be upheld in part. An extract from my provisional decision is set out below:

"In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Co-op should have reimbursed Mr S under the provisions of the CRM code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.

The CRM code

As I mentioned above, Co-op is a signatory to the CRM code. The CRM code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. And it is for the firm to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM code.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- *The customer ignored an effective warning in relation to the payment being made*
- *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
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Did Mr S have a reasonable basis for belief?

Mr S found a campervan he was interested in online and contacted the seller. During his communication with the seller he was sent a number of documents, including a copy of the seller's driving license, an invoice and sales contract, a vehicle inspection report and a number of photos of the campervan. And I think these all looked relatively legitimate.

But I think the price the campervan was being sold for should have caused Mr S significant concern. He agreed to purchase the campervan for just over £4,000. But information we've received from professional vehicle valuers shows that make and model of campervan should be valued at over £15,000 if it was in reasonable condition, and over £10,000 if it was in below average condition. And even this lower valuation is more than twice the price Mr S agreed.

Mr S told us he looked at a few different listings and that it was difficult to judge the market as he didn't know a great deal about campervans and there were many different makes and models available. But he's not been able to show us any specific examples of other similar listings at similar prices, apart from one he accepts had a significantly higher mileage. And, from what I've seen of the market, the only other listings I can find at similar prices are for significantly older or significantly less-valuable models.

So I think the price of this campervan was significantly below market value and was too good to be true. I think this should have caused Mr S significant concern. And, without some clear and convincing explanation for why this campervan was being sold so far below market value, I think this means he did not have a reasonable basis for believing that the payment he was making was for genuine goods.

Did Co-op meet its obligations under the CRM code?

Even though I don't think Mr S had a reasonable basis for belief when making the payment, he may still be entitled to a refund of 50% of the money he lost if Co-op didn't meet its obligations under the CRM code – one of which is to provide effective warnings.

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Due to the size of this payment, I think Co-op was required to provide an effective warning here. And Co-op has sent us a copy of the warning it showed Mr S, which said:

"Are the bank details you're making a payment to new, or recently changed?"

Scammers pose as genuine organisations and trick you to transfer money. Call the payee to double-check it is them. Always use the number you find on their official website.

If you have been contacted unexpectedly and asked to transfer money, this is likely to be a scam and you shouldn't continue."

While the warning does say scammers can pose as genuine organisations, the actions it suggests to address the risk weren't helpful in Mr S's circumstances as he had spoken to the scammers on the phone and checked their website. And the rest of the warning is mostly about scams where someone is asked to make an unexpected payment or where the payment details have recently changed, which isn't relevant here. So I don't think this warning was effective in Mr S's circumstances.

Overall then, I don't think Mr S had a reasonable basis for belief when making the payment, but I also don't think Co-op met its obligations under the CRM code. I therefore think the correct outcome under the CRM code is that Co-op refund Mr S 50% of the loss he suffered, plus 8% interest from the date his claim was declined until the date of settlement.

Should Co-op have done more to protect Mr S?

In addition to its responsibilities under the CRM code, when Mr S made this payment, Co-op should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). But given the size and nature of the payment, I don't think Co-op should reasonably have been expected to do any more to protect Mr S here.

Recovery of funds

I've also considered whether Co-op could have done more to recover Mr S's funds once it was made aware of the scam. But Co-op's notes show it contacted the bank the payment went to on the same day Mr S told it about the scam, as has been told no funds remain. So I don't think Co-op could have done more to recover Mr S's funds."

I said I'd consider anything further Mr S and Co-op sent in following the provisional 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.

Co-op didn't send in anything further following the provisional decision.

Mr S responded, saying he looked online for campervans and that there were many vehicles available for a lower price than he agreed to pay. He also said the lockdown at the time meant there were a lot of people desperate for money and so a lot of things were selling for less than they had before. But it appears that, generally, the demand for and cost of campervans increased during the lockdown – which would make it less likely that Mr S could find one for significantly below market value. And, in any event, I don't doubt that there were other vehicles listed at a similar or lower price than he agreed to pay. But, as I said in my provisional decision, from what I've seen of the market, these were significantly older or less-valuable models than Mr S was buying.

Mr S has still not been able to show us any specific examples of other similar listings, of similar makes and models to the campervan he was buying, in similar condition and at similar prices to what he agreed. So I still think the price of this campervan was significantly below market value and was too good to be true. And I still think this means Mr S didn't have a reasonable basis for believing that the payment he was making was for genuine goods.

Mr S also said Co-op has since told him it won't release payments of large amounts without first confirming with the customer whether the payment is genuine, and that it's stopped payments he's tried to make that were smaller than this one. He thinks Co-op should have

stopped this payment until it had spoken to him. But I said in my provisional decision that, given the size and nature of this payment, I didn't think Co-op should reasonably have been expected to do any more to protect Mr S here. So, even though it may have stopped other, smaller payments, I don't think Co-op needed to stop this payment or ask Mr S any further questions before allowing it to go through.

I appreciate how Mr S feels about this case. He was the victim of a cruel scam and I understand that my decision will come as a disappointment to him. But I still think the conclusions I set out in my provisional decision are correct. I think the correct outcome under the CRM code is that Co-op refund Mr S 50% of the loss he suffered, plus 8% interest from the date his claim was declined until the date of settlement.

My final decision

For the reasons set out above, I uphold this complaint in part and require The Co-operative Bank Plc to:

- Refund Mr S 50% of the loss he suffered as a result of the scam
- Pay 8% simple interest on this refund from the date his claim was initially declined until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 July 2022.

Alan Millward

Ombudsman