

The complaint

Mr A complains that The Co-operative Bank Plc ('The Co-op') won't reimburse the money he's lost to a fraudster.

What's happened?

Mr A has fallen victim to a cryptocurrency investment scam. He says that he wanted to invest in cryptocurrency but had no prior investment experience. He spent several weeks conducting his own research before he came across a company I'll refer to as 'B' – which claimed to match investors and brokers together. Mr A saw that B was endorsed by a celebrity and had lots of positive reviews. He sent an online request for contact. The next day, Mr A received a telephone call from a representative of a company I'll refer to as 'N', who explained that B had matched N with Mr A. N opened a trading account for Mr A, and gave him access to an online trading portal which he could use to keep track of his investments.

Mr A's explained that he initially invested small amounts via N to 'test the water'. In November and December 2020, four debit card payments were made. His small investments generated some returns, and he was able to withdraw some of his profit. He was reassured by this and began to invest larger amounts, by transferring money into his genuine cryptocurrency exchange wallet first. In total, Mr A invested £15,220.90 as set out in the table below:

Date of transaction	Type of transaction	Amount of transaction
30 November 2020	Debit card payment	£252.19
1 December 2020	Debit card payment	£756.47
3 December 2020	Debit card payment	£1,425.34
4 December 2020	Debit card payment	£1,016.90
15 December 2020	Faster payment	£5,000.00
22 December 2020	Faster payment	£1,600.00
31 December 2020	Faster payment	£2,000.00
14 January 2021	Faster payment	£1,600.00
1 February 2021	Faster payment	£80.00
1 February 2021	Faster payment	£40.00
15 April 2021	Faster payment	£1,450.00

Mr A says he saw his investment grow to around £36,000 and he decided to withdraw all of his money. At that point, N stopped corresponding with him and he lost access to the online trading portal. He realised he'd been scammed and reported the matter to The Co-op.

The Co-op said it was unable to chargeback the debit card payments because the relevant time limit had elapsed when Mr A reported the scam, and chargebacks would have no reasonable prospects of success anyway. And the funds sent by faster payment went into Mr A's cryptocurrency exchange wallet before being lost to the scam, so the bank couldn't recover them.

The Co-op has declined to reimburse Mr A. It's said that two of the faster payments Mr A instructed triggered its fraud detection systems (the £5,000 payment made on 15 December 2020 and the £2,000 payment made on 31 December 2020) and it had a telephone conversation with him on both occasions. He confirmed that he'd made payments to the merchant previously, and that the transactions were very low risk. He said he had undertaken his own due diligence before investing and received guidance from a financial advisor.

What did our investigator say?

Our investigator didn't think that the debit card payments were unusual enough to expect The Co-op to have been suspicious about them. So, she didn't recommend that they were reimbursed. But she thought that The Co-op ought to have done more to protect Mr A from financial harm when the first faster payment triggered its fraud detection systems and, if it had, the scam would have unravelled. So, she recommended that the bank reimburse all of the faster payments, but that Mr A should bear the responsibility for 50% of his loss from 31 December 2020 when she would've expected him to do more to protect himself based on the bank's intervention.

Mr A accepted our investigator's recommendation, but The Co-op didn't. It said that, despite its intervention on 31 December 2020, Mr A continued to invest with N. So, it couldn't have prevented the scam if it had done more to protect Mr A when it spoke to him about the first faster payment, and it should not be held liable for his loss.

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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's common ground that Mr A properly authorised and consented to the debit card payments and authorised the faster payments. So, all the payments made to the scam were 'authorised' under the Payment Services Regulations – even though Mr A was the victim of fraud, and he didn't intend the payments to go to a fraudster. This means that The Co-op had an obligation to follow Mr A's payment instructions, and Mr A is presumed liable for his loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should make additional checks before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. I consider that The Co-op should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

Considering the relatively low value of the debit card payments made as part of this scam, and Mr A's prior account activity, I don't think it's reasonable to expect The Co-op's fraud detection systems to have been triggered by them. So, I don't think The Co-op could've done more to prevent these losses, and I don't think it would be fair or reasonable to ask the bank to reimburse Mr A.

But the first faster payment for £5,000 which Mr A instructed did trigger The Co-op's fraud detection systems and the bank had a telephone conversation with Mr A in which it's reasonable to expect it to have asked some probing questions about the payment in order to satisfy itself that he wasn't at risk of financial harm, and to have imparted relevant advice about scams based on what Mr A said. But I've listened to a recording of the telephone conversation and I'm not satisfied that it did.

Mr A told the bank the payment was going to his investment trading account, so that he could invest in cryptocurrency. He said it wasn't the first time he'd invested via N and he'd done his own due diligence on the company, but that he'd be interested to hear about any flags the bank had identified. The Co-op confirmed that the only reason the payment had flagged was because it was being sent to a new payee. Mr A was reassured by this and said he thought that might have been the case. The Co-op told Mr A that it's unlikely his money would be recovered if it turned out he was the victim of a scam, and checked that no-one had asked him to move money to a 'safe account' or pressured him to make the payment in any way. Then the payment was processed.

Cryptocurrency scams often involve money passing through more than one account in the customer's name, and they were not uncommon at the time. I think The Co-op would've been aware of this. The Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. By late 2020, when Mr A instructed the first faster payment, I think The Co-op ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, I'm satisfied that Mr A's monetary loss ought to have been within the contemplation of, and foreseeable to, The Co-op. And I'm satisfied that The Co-op can be held responsible for his loss if it could have prevented the scam from the point the first faster payment was instructed by asking Mr A some probing questions.

By late 2020, I think The Co-op had or ought to have had a good enough understanding of how these scams work – for example, that customers often move money to an account in their own name before it is moved on to a fraudster, that scam companies often claim to have celebrity endorsers and that customers are usually given access to an online portal which convinces them that their investment is performing well – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think The Co-op ought to have asked Mr A some probing questions and given him information regarding the prevalence and typical features of cryptocurrency scams before processing the £5,000 payment. Mr A was quite convinced by the scam by the time the telephone call took place but, from what he said to the bank during the conversation, he was open to considering any flags the bank had identified. I consider that The Co-op ought to have asked more questions to determine whether the typical features of cryptocurrency scams were present here. And it ought to have provided meaningful advice about cryptocurrency scams, and how Mr A could protect

himself.

If The Co-op had done enough, I think it would most likely have become obvious to the bank and Mr A that there was a risk of financial harm, and the scam would've unfolded without the £5,000 payment, or any subsequent payments, being made. Of course, The Co-op could also have declined to make the payment and subsequent payments altogether if Mr A still wanted to go ahead with them, and given the circumstances here, I think it would've been reasonable for it to do so.

I've considered whether Mr A should bear some responsibility for his loss by way of contributory negligence and, overall, I don't think he should in terms of the first two faster payments. Of course, there's more Mr A could've done with the benefit of hindsight to protect himself from financial harm. But:

- Mr A believed that B had matched him with N, and he'd seen lots of positive reviews about B, as well as a celebrity endorsement.
- Mr A invested small amounts via N to begin with, as a precautionary measure.
- Mr A had access to an online trading portal which showed his investment was doing well.
- Mr A was reassured when he was able to withdraw some of his 'profit'.
- I've looked at the correspondence that passed between N and Mr A up to and including the time that the second faster payment was made, and I don't consider that there were any 'red flags' in the conversation. There was lots of communication between the parties and a good rapport was built. I think it's obvious that Mr A wasn't suspicious, and he thought his investments were performing well – being the unwitting victim of a cruel and callous scam.
- The scammer convinced Mr A that all was above board, and the bank made no real efforts to dissuade him of this during the call that took place on 15 December 2020.

I'm satisfied that all of the above was enough to satisfy a reasonable person – especially one that had no prior investment experience and had not been educated about cryptocurrency scams by their bank.

But I've listened to a recording of the telephone conversation The Co-op had with Mr A on 31 December 2020, and I've heard that the bank gave Mr A more information about cryptocurrency scams and how to protect himself from them at that time. Mr A confirmed his understanding that cryptocurrency scams aren't uncommon and noted one of the useful tips the bank gave him on keeping safe. But he continued to make payments to N for several more months, presumably without carrying out any further checks on N. I appreciate that Mr A was already deeply under the scammer's spell at this point, but armed with the information he'd received from the bank, his knowledge that cryptocurrency scams weren't uncommon and the checks he knew he had and hadn't carried out on N, I think it's reasonable to expect him to have done to protect himself from and including 31 December 2020. So, I don't think it would be fair to require the bank to reimburse his full loss from this point. I think he should bear responsibility for 50% of his loss.

The Co-op has argued that, as it did a better job of advising Mr A about the relevant scam type on 31 December 2020, but he still continued to 'invest' with N, it couldn't have prevented the scam if it had done a better job on the call that took place on 15 December 2020, so it shouldn't reasonably be liable for any of Mr A's financial loss. I'm

not persuaded by what the bank's said here. I've listened to a recording of the second telephone call and I don't consider that it was handled particularly well – Mr A was seemingly frustrated, and the bank's representative was abrupt, cutting him off and talking over him several times. I'm not convinced that the tone of the call was conducive to successfully imparting important information.

In addition, I think Mr A's frame of mind was different on 15 and 31 December 2020. On 15 December 2020, he told the bank he'd done his own due diligence, but he was open to hearing whether the bank had any concerns. The bank reassured him that the first faster payment had only flagged because it was of high value and going to a new payee. By the time the second telephone conversation took place on 31 December 2020, Mr A had already been reassured by his bank that there was nothing suspicious about N – he said The Co-op had already done checks on a transaction going to N and confirmed it hadn't picked up on anything suspicious. And of course, he hadn't experienced any issues after that payment was made, no doubt reinforcing that N was genuine in his mind.

So, I think it was more difficult for the bank to successfully intervene by 31 December 2020. And I'm not persuaded that a good intervention on 15 December 2020 would not have been successful simply because a later intervention, that was better than the first, didn't succeed in preventing the scam.

Finally, I will add that I don't consider The Co-op could've done more to recover the funds that Mr A lost to this scam. As the bank has said, it was out of time to raise a chargeback on the debit card payments when Mr A reported the scam to it. And banks don't have to raise chargebacks if it looks clear that a cardholder would lose in any event, as it does here. The faster payments went to Mr A's cryptocurrency exchange wallet, and they were moved on from there. So, I don't think the bank could reasonably have done anything to recover them.

To conclude, I'm persuaded that The Co-op ought reasonably to have done more to protect Mr A on 15 December 2020 and, if it had, I think it's likely the scam would have unravelled without any of the faster payments being made. And I think Mr A ought reasonably to have done more to protect himself from financial harm after the conversation he had with the bank on 31 December 2020. So, I think it's fair for him to bear 50% of the responsibility for his loss from that point. I've decided that The Co-op should:

- Reimburse 100% of the first two faster payments Mr A instructed as part of this scam.
- Reimburse 50% of the remaining faster payments Mr A instructed as part of this scam.
- Pay interest at a rate of 8% per annum (because Mr A has confirmed that he was looking for investment opportunities at the relevant time and I think it's likely he would have invested his money elsewhere if he had not been defrauded, but I can't know where) from the date of each payment to the date of settlement.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part and instruct The Co-operative Bank Plc to:

- Reimburse 100% of the first two faster payments Mr A instructed as part of this scam.
- Reimburse 50% of the remaining faster payments Mr A instructed as part of this

scam.

- Pay interest at a rate of 8% per annum from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 October 2022.

Kyley Hanson
Ombudsman