

The complaint

Mr C complains that The Co-operative Bank Plc ('Co-op') hasn't reimbursed the money he says he transferred to a fraudster.

What happened

What Mr C says

Mr C says that he and his wife wanted to have a garden room built to use as a gym. They found a company I'll refer to as H on an online marketplace and the owner, who I'll refer to as D, came to their property. He gave a quote that was similar to others Mr C had obtained but Mr C felt that D had greater knowledge. Following the visit there were a number of calls and emails before D asked Mr C to pay a deposit of £6,495. He said the price was discounted and he could only stand by it if Mr C made the payment by the end of January. Mr D made the payment on 29 January 2021.

After he'd paid the deposit Mr C said D stopped communicating with him and he had to chase him to get a receipt. D said the works would start in a couple of weeks. After this period had expired Mr C says he contacted D and was told it would be a further week. Mr C contacted D by phone, text and email but didn't hear back so became concerned and he and his wife did some research into D. At this point he found negative reviews, that D had been on a television programme about crime, had operated a previous scam and set up multiple companies to scam people.

Mr C says he continued to try to contact D and that family members called pretending to be potential customers, but D didn't answer or respond to any voicemail messages. Mr C has also confirmed that no date was agreed for the work to start, no materials were delivered, and no work completed.

Mr C reported what had happened to the police and was advised to contact Co-op. He says the service he received was very poor, he got mixed messages and wasn't given an answer for a long time. In the end, Co-op told him the bank that received his funds said it had been provided with evidence to confirm Mr C had a civil dispute with D and wasn't the victim of a scam. Mr C is unhappy with Co-op's decision not to reimburse him and with the service he has received.

Mr C has provided evidence to support his belief he is the victim of a scam which I'll refer to later. This includes:

- A county council order in respect of D from 2018. There were 25 points covered in the order including not making false statements to induce customers to enter into contracts and not falsely claiming his business was family run.
- An advert for H (after 2018) saying it is a family run business since 1972.
- A newspaper article discussing D's involvement in a scam in 2012 and forum comments in relation to this.
- A review written after Mr C made payment saying the writer was scammed by D's previous company.

What Co-op say

Co-op say this is a civil dispute not a scam and so isn't covered by the Lending Standard Board's CRM Code (the CRM Code). But if it was a scam Co-op say Mr C isn't entitled to a refund because it provided an effective warning and Mr C didn't meet the standard expected of him.

Co-op say the bank that received Mr C's funds say this is a civil dispute between the parties. It has asked the receiving bank for the evidence it has relied on to reach this conclusion but hasn't been provided with anything.

Our investigation so far

The investigator who considered Mr C's complaint recommended that it be upheld in full. He noted that Co-op hasn't provided any evidence that this is a civil dispute and said the available evidence led him to believe Mr C was the victim of a scam. This was because:

- After Mr C paid a deposit no work was done, and no materials were delivered.
- The trader stopped communicating with Mr C after he had paid the deposit.
- Mr C has provided newspaper reports that demonstrate H was involved in past scams.
- Mr C has provided reviews from others who have been scammed by D.

Like Co-op, the investigator asked the bank that received Mr C's funds for the supporting evidence it relied on to say this is a civil dispute - but didn't receive a response.

The investigator went on to note that Co-op hasn't demonstrated that an exception to reimbursement applied so should provide Mr C with a full refund.

Co-op didn't agree with the investigator's findings. In summary, it said:

- The bank that received Mr C's funds confirmed that it had no fraud concerns but hasn't provided Co-op with the evidence it relied on in reaching this conclusion. Co-op asked this service to obtain this information to fairly consider the complaint.
- The investigator's conclusions rely on forums and reviews from customers who may not have legitimate reasons to complain and some reviews are historic.
- Mr C did receive a service from H as he received plans that will have taken time to draw up.

Mr C added that H has been removed from search engines, the link to H's website no longer works and H is no longer on social media.

Once the complaint was passed to me to consider I was able to get a response from the bank that received Mr C's funds to explain why it determined this is a civil dispute between the parties and not a scam. The information provided was largely confidential, so I was unable to share it. As I had new information, I issued a provisional decision on 5 September 2022. I have reproduced what I said the "*What I've provisionally decided – and why*" section but have omitted a paragraph:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

It's really important in this case to first decide if this is a civil dispute or a scam. I say this because the CRM Code doesn't apply to civil disputes. The CRM Code says it doesn't apply to,

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some

way, or the Customer is otherwise dissatisfied with the supplier”.

To decide that Mr C is the victim of a scam I need to be persuaded, on the balance of probabilities, that D deceived Mr C into making payment for financial gain – and that it was always D’s intention to do so.

The fact that the receiving bank determined this is a civil dispute doesn’t mean that I must reach the same conclusion. I can understand though why Co-op felt it was unfair to reach a decision without taking this evidence into account and appreciate that Co-op tried to get this information.

[paragraph removed]

The receiving bank also discussed D’s interactions with Mr C with him. I have been provided with details and with the evidence D provided to his bank, all of which Mr C has already provided to this service. The account D gave his bank is very similar to that provided by Mr C in terms of how D was contacted, the request for a quote and the fact a deposit was paid but differs when it comes to contact with Mr C and the start date.

I will set out a chronology based on information provided from Mr C and the receiving bank. Mr C has provided screenshots of his call history with D for January and February, which is where this information has come from.

- 26/01/21 – revised quotation provided to Mr C including photos of what the garden room would look like.
- 29/01/21 – email from Mr C to D acknowledging above and saying he’ll make payment.
- 30/01/21 – outgoing call from Mr C to D (two seconds)
- 01/02/21 – email from D to Mr C – please find attached payment confirmation
- 02/02/21 – email D to Mr C referring to email the previous day
- 02/02/21 – call from Mr C to D (30 seconds)
- 08/02/21 – call from Mr C to D (5 seconds)
- 08/02/21 - email from Mr C to D saying he had called and not got an answer. Mr C asked for an update.
- 09/02/21 – call from Mr C to D (2 minutes 11 seconds). Mr C says in this call D told him work would start in a further week.
- 15/02/21- call from Mr C to D (34 seconds)
- 15/02/21 – Mr C sent an email to D suggesting additional work. He said he’d forgot to ask about a shed and said he may as well kill two birds with one stone. Mr C says he sent this to try to get a response from D as he was ignoring all communication from Mr C.
- 17/02/21 – call from Mr C to D (5 seconds) and text message from Mr C to D saying he has tried to call but hasn’t been able to get through.
- 19/02/21 – call from Mr C to D (7 seconds)
- Text message from Mr C to D saying he’s called multiple times and sent an email but not received a response. Mr C asked for a text or call back.
- 23/02/21 – missed call from D to Mr C (this was after Mr C had reported the matter to Co-op and says he was told not to answer or tip D off).

The chronology of events supports the fact that after he'd paid the deposit Mr C regularly tried to contact D but didn't receive a response. His call history for the period before the deposit was paid shows regular contact though.

D told his bank that a start date of 8 March 2021 was agreed but there is no reference to this date in any of the communications between the parties. Both have referred to the fact that Mr C wanted the work to be done quickly though (and Mr C says this is partly why he chose D/H). D also referred to calls to Mr C but there is no record of any except the one on 23 February 2021. This call was made after D was aware there were problems with his account.

D told his bank that he had lost £11,000 from his deal with Mr C. His bank didn't ask him to provide any evidence that he'd, for example, ordered materials though. If D had lost such a significant amount, I question why D hasn't pursued Mr C for the debt or taken court action against Mr C to recover the funds.

H wasn't registered at Companies House and I note that H's website no longer exists. I consider that if he was operating a legitimate business it would be properly registered.

This service has contacted Trading Standards to see if it has any evidence that might assist our investigation of this case but has not yet received a response. I think I have enough evidence though to say that Mr C was the victim of a scam at this point and so am issuing this provisional decision. If more information becomes available, I will update both parties before I issue a final decision but, as I've said, I'm satisfied I have enough evidence to conclude Mr C was the victim of a scam in any event.

I'm mindful that it is for Co-op to show this is a civil dispute and not a scam. The only evidence Co-op has provided is that the bank that received Mr C's funds reached this conclusion. In response to the investigator's view Co-op said Mr C did receive a service as plans were drawn up which will have taken time. I've seen the emails exchanged between Mr C and H and haven't seen any plans or reference to them.

I'm persuaded the available evidence supports a finding that after Mr C paid a deposit for the garden room D stopped communicating with him and never confirmed a date for the work to start. Overall, I'm satisfied D didn't intend to complete the work Mr C paid a deposit for.

I've also considered the evidence Mr C has provided in support of his belief he's been the victim of a scam.

I agree with Co-op that some of the information provided by Mr C doesn't directly impact this case. For example, evidence that D was involved in a different type of scam in 2012 doesn't affect this complaint. And reviews from unhappy customers aren't always helpful. But the general picture presented is that D hasn't traded honestly in the past. A court order issued in 2018 shows D was ordered not to do things like make false statements to customers to induce them to enter into a contract and not to claim he was running a family run business. But I've seen online and social media references to H being a family run business founded around fifty years ago.

Having provisionally decided Mr C was the victim of a scam I've gone on to consider his complaint under the Lending Standards Board Contingent Reimbursement Model CRM Code (the CRM Code). Co-op says that even if the CRM Code applies Mr C isn't entitled to a refund.

Co-op is a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Co-op says one or more of those exceptions applies in this case. It says that Mr C ignored an effective warning it gave during the payment journey and he made the payment without a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods or services and/or the person or business he was transacting with was legitimate.

I have carefully considered Co-op's representations, but they do not persuade me that Mr C shouldn't receive a full refund under the CRM Code. In particular, I am not persuaded that Mr C failed to take the requisite level of care required for the firm to choose not to reimburse under the terms of the CRM Code.

Co-op say Mr C ignored an "Effective Warning". I have set out below the warning Mr C was given,

"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."

I'm not persuaded this warning is effective. The warning is geared towards scams involving altered payment details or scammers posing as other organisations and unexpected payment requests, none of which are relevant here. And the actions suggested to avoid falling victim to a scam wouldn't have made a difference in this case. Even if Mr C had called D and checked the payment details, he would still have lost his money. The warning also doesn't set out the consequences of continuing with the payment which is another requirement for a warning to be effective under the CRM Code.

Given that I'm not satisfied the warning Co-op gave Mr C was effective it follows that he didn't ignore an effective warning and so Co-op cannot rely on this exception to reimbursement.

Co-op has said Mr C only researched D and H after he'd paid the deposit and so lacked a reasonable basis for belief. I disagree for the following reasons:

- *Mr C checked H's website and didn't find anything concerning.*
- *Mr C used a marketplace to find local traders.*
- *Mr C asked D to come to his property and provide a quote. He found D to be knowledgeable and professional. Mr C has provided a record of his calls to and from D in January which show there were a number of calls on 28 and 29 January 2021. These calls took place before Mr C paid the deposit for the garden room and gave him confidence that D was a legitimate trader.*
- *Mr C was provided with a quotation that looked genuine. He noted that the quotation included D's home address which reassured him.*
- *The price for the work was in line with other quotes Mr C obtained but D's knowledge was superior.*
- *I don't consider the warning Co-op provided at the time of payment would have influenced his belief he was making a payment to a legitimate trader. The warning gave no advice at all about how to check a trader is legitimate.*

I appreciate that Mr C has now found a lot of information about D and the companies he was involved in before H. In the call when he reported the fraud, Mr C explained that his wife was "a social media detective" and was really good at finding information online. I think Mr C's wife has found information that wouldn't normally be found when searching for a local trader. And much of the negative information Mr C and his wife found were as result of searching D's name rather than the company name (H).

I've thought about whether there were any other reasons why Co-op should have done more to prevent Mr C's loss, but I don't think there are. Whilst I recognise the amount Mr C lost was significant to him, I don't think it was so unusual or suspicious that Co-op should have asked Mr C any questions about it before releasing the payment. I note that Mr C made a payment in September 2020 for £11,750. And even if Co-op had, I don't consider it would have had any concerns that Mr C might be the victim of a scam. Mr C contacted D himself, was provided with a quote that was in line with others he'd received, he'd met the owner of H and thought his knowledge was good and was paying a deposit rather than the full price upfront. So I don't consider Co-op should have intervened when the payment request was made.

I'm aware Mr C is unhappy with the service he received from Co-op. I can see that Co-op tried to obtain information from the bank that received Mr C's funds and understand why it wanted this evidence before it determined how to progress Mr C's case. I understand how frustrating this must have been for Mr C and that the delay has increased the stress he has experienced. But in the circumstances, I don't consider it would be fair to ask Co-op to compensate Mr C.

Overall, I'm not persuaded Co-op can rely on any of the exceptions to reimbursement in the CRM Code and so it should refund Mr C's loss in full together with interest as set out below."

Co-op responded to my provisional decision. It accepted that Mr C was the victim of a scam but said that it has concerns that the receiving bank is also at fault and so liability should be shared between Co-op and the receiving bank in accordance with the CRM Code.

Mr C also responded to my provisional decision. Overall, he was happy with the outcome but asked me to consider some additional points in respect of compensation. Mr C noted that part of his original complaint related to lack of contact and poor communication from Co-op and that he wasn't advised that Co-op was waiting for information. Mr C felt Co-op's comment that he didn't complete any research before paying the deposit was indicative of the level of service it provided.

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 carefully considered all the points raised by both parties I've reached the same outcome I set out in my provisional decision (and set out above) and for the same reasons. I'll comment below on the responses I received.

Co-op has referred to potential liability of the receiving bank. The CRM Code makes it clear though that once a decision to reimburse has been made the sending firm should reimburse its customer without delay and that reimbursement shouldn't be delayed by any question of the allocation of the cost of reimbursement. So Co-op should provide Mr C with a full refund and may discuss allocation with the receiving bank if it chooses to do so.

I turn now to Mr C's points about compensation. I appreciate that Mr C wanted his complaint to be resolved as quickly as possible and this is why he called Co-op so regularly initially, but I'm afraid things don't progress that quickly. I also understand Mr C's frustration that Co-op didn't advise him what information it was waiting for from the receiving bank (although it did say it was waiting for a response from it). In this case the information Co-op was seeking was confidential and there were limits to what Co-op could disclose to Mr C so I don't consider it could have done much more. I also have no power to punish or fine Co-op so I can't consider Mr C's point about ensuring Co-op improves the service it provides to other customers.

Overall, I consider Mr C was the victim of a scam and should be reimbursed in full together with interest as set out below, but I am not awarding any compensation to Mr C.

My final decision

I require The Cooperative Bank Plc to refund the £6,495 Mr C lost in the scam together with interest at account interest rate from the date Co-op should have made its decision under the CRM Code to the date of settlement.

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

Jay Hadfield
Ombudsman