

## The complaint

Mrs K and Mr K complain that The Co-operative Bank Plc (“The Co-op”) failed to refund monies they lost as the result of a scam.

## What happened

### *What Mr K says*

Mr K was the complainant involved with the scammers, so I’ll mainly refer to him throughout this decision or his representatives where appropriate.

Mr K was looking for investment opportunities and was interested in cryptocurrency “crypto”. He carried out some searches online and found a crypto broker who I’ll refer to as J. He said that J were one of the top two brokers he found through a popular search engine, and this gave him confidence that they were a legitimate financial company.

Mr K made enquiries and was later contacted by a representative of J. It was explained to Mr K that he could purchase crypto, and J would then invest it for him on his behalf. He wasn’t promised any particular return on his investment.

Mr K made an initial purchase of crypto for £500 using a credit card held with The Co-op on the same day he was contacted by J. He spoke to The Co-op about the payment because it was flagged on their system, and it was later released. This payment was made to a separate crypto merchant than all other crypto purchases referred to later. Mr K and J continued to discuss his investments and it was explained that the more he invested, the greater his returns. Mr K was asked to verify his identity and was then given access to a trading account which showed how his investments were performing.

Mr K was asked to download a software package that allowed J to take control of his computer. It was explained that the process for investing was complicated, and the software package allowed J to assist Mr K where necessary.

Mr K was told to open an account with a legitimate crypto merchant I’ll refer to as P. The investment process required Mr K to transfer funds from his Co-op joint account to P and then they would be exchanged to crypto funds and placed into Mr K’s “wallet”. From there the funds were transferred to J’s wallet and “invested” on Mr K’s behalf.

Mr K made the following payments from his and Mrs K’s joint account, including the initial credit card payment:

Date	Amount
4/12/2020	£500 (credit card)
16/12/2020	£1000
31/12/2020	£8,500

22/01/2021	£9,999
22/01/2021	£10,000
09/02/2021	£16,000
09/02/2021	£16,000
Total	£61,999

Mr K explained that he didn't receive any payments from J throughout the period he was investing, but his online trading account showed substantial increases in his funds. In early February 2021, after investing about £30,000, Mr K wanted to take some of his profit from the investment which he was advised was now in excess of £100,000.

Mr K was told he would have to pay tax on his investment of £16,000 and he made a transfer from his joint account held with Mrs K to P for onward payment via crypto funds to J. Mr K was then told there had been a change in legislation and he would have to pay a further £16,000 to release his funds. At the time, Mr K didn't have enough funds, so he was persuaded by J to obtain a loan which J organised via the software installed on Mr K's computer. A loan company agreed to lend Mr K £16,000 which was then paid to J via the usual route.

Mr K then experienced difficulties obtaining funds and was continually met with various excuses about the repayment of his investment. He realised he might have been scammed and sought advice. Contact was made with The Co-op about the loss and a complaint was eventually lodged after The Co-op declined to refund him.

#### *What The Co-op said*

Once The Co-op received notice that Mr K had lost money, they looked into the situation and declined to refund him. The Co-op didn't think they'd made an error and told Mr K they couldn't deal with his loss because it wasn't caused by the transfers to P. They explained the loss occurred after the money had been deposited with P and then moved to J's wallet. There were no funds remaining for The Co-op to retrieve.

#### *The investigation so far*

Mr K brought this complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators. Both parties submitted information about the situation. Mr K, via his representatives said:

- He'd contacted J himself after a web search.
- Contact was carried out via phone calls, email and texts.
- Research into J didn't show any negative information prior to committing funds to them.
- He was told the 2 x £16,000 payments were for his UK tax bill.

The Co-op provided information concerning their involvement. The Co-op said:

- The loss to Mr K wasn't caused until the payment was already made to P, so they believed there was no bank error on their part.

- Mr K was spoken to about crypto investing when he used his credit card at the start of the scam. The notes of the call are summarised as:
- Mr K confirmed he was trying to buy Bitcoin.
- He was certain it wasn't a scam.
- Mr K hadn't been approached or cold called for the investment.
- Mr K advised he'd checked the FCA "Scam Smart" website.
- The Co-op call handler read out their scam script to Mr K.
- Mr K was told if anything goes wrong then he'd be unlikely to get his funds back.

After considering the evidence, the investigator didn't think that The Co-op should make a refund to Mr K because:

- Earlier payments made from the account weren't suspicious based on the previous account behaviour, but the £10,000 payment on 22 January 2021 should have flagged and The Co-op should have intervened.
- Based on the earlier conversation with Mr K, the investigator didn't think another conversation would have made a difference (if there had been one).
- The investigator believed Mr K would have gone on to make further payments because he believed J were a legitimate investment company.

Mr K's representatives disagreed and thought that The Co-op had multiple opportunities to intervene, and they confirmed that Mr K had checked the websites The Co-op had told him about and couldn't find anything about J.

The investigator didn't change their opinion, believing that Mr K would have gone on to make the transactions, even if The Co-op had intervened again.

Mr K asked for a further review of his complaint, so it's been passed to me for a decision.

Additional points were made for me to consider by Mr K's representative:

- The payments were unusual and intervention by The Co-op would have made a difference.
- The Banking Protocol should have been implemented.

I asked for clarification regarding some of the facts and Mr K's representative responded as follows:

- Mr K was unaware of negative reviews about J prior to making payment to them.
- Mr K believed the company was governed abroad and that cryptocurrency was a global venture. He didn't notice any details about the UK addresses mentioned in the correspondence with him.
- The request to load software onto his computer (allowing J to take control of it) wasn't unusual and legitimate companies do this in workplaces and for technical support.
- Mr K was never given any unrealistic promises about his investment.
- Mr K provided personal details for the loan application, and J used the software on his computer to make the application.
- Mr K thought the request to pay tax on his investment wasn't unusual.
- He wasn't pressured to make investments by J. Mr K described how he was encouraged to invest more to obtain greater returns.

I issued my provisional findings on the merits of Mrs K and Mr K's complaint on 13 February 2023. In my provisional findings, I explained why I intended to uphold (in part) their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*What I've provisionally 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.*

*In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice (including those referred to by Mr K's representatives in submissions to this Service); and, where appropriate, what I consider to have been good industry practice at the time.*

*I was sorry to hear that Mrs and Mr K were scammed out of their funds. It's accepted that Mr K authorised the scam payments from their joint account at The Co-op. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of their account, they are presumed liable for their loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received; The Co-op's obligation is to follow the payment instruction.*

*However, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect its customer from the possibility of financial harm from fraud. An example of this would be if a payment instruction is sufficiently unusual or uncharacteristic considering the usual use of the account. In such circumstances I'd expect The Co-op to intervene and ask more questions about the intended transaction before processing it. I'd also expect The Co-op to provide suitable warnings about common scams to help its customers make an informed decision about whether they want to continue with the payment.*

*That's the case even though Mr K was sending funds to an account in his own name. By January 2019, banks like The Co-op had, or ought to have had, a good enough understanding of how crypto scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.*

*Should The Co-op have intervened with the payments to P from the joint account?*

*I've examined Mrs and Mr K's account to understand how it normally operated. Large payments from it aren't the norm, although there's a payment for a vehicle for about £9,000 a few months before the first scam payment. Other than that, the account operates without moving large sums of money out of it.*

*I wouldn't expect The Co-op to recognise the first payment from the account which was for £1,000, but I do think that the £8,500 payment on 31 December 2020 to P was unusual. Up until that point, Mr K had made a small credit card payment of £500 which he'd been spoken to about and appears to have been made to a different company. He then made the £1,000 payment less than two weeks later, but this was to a new payee (P), after he'd set up an account with them.*

*A few weeks later the £8,500 transaction was made which was a substantial increase from the previous payment. At that point, Mr K had made two payments to a new payee, one of which was one of the highest payments made from the account recently (apart from the car*

payment). I do think The Co-op should have intervened at this point and I'd expect them to conduct an appropriate conversation with Mr K considering the increasing amounts he was appearing to send.

It's reasonable to expect The Co-op to tailor their responses, so I wouldn't expect the same conversation for the £500 payment when compared to the risks associated with the £8,500 payment. It's also relevant that at the point Mr K made this £8,500 payment, the arrangements with J were fully formed, providing additional detail for The Co-op to assess (if they'd contacted Mr K).

There's been an argument made that The Co-op's intervention wouldn't have made a difference, but the circumstances were quite different from his initial credit card payment, so I don't accept they couldn't have done more.

Mr K hasn't said he was told to lie or given a cover story, so it's reasonable to assume he would have told the truth if he'd been asked about what he was doing. I think, if appropriate questions had been asked, it would have been apparent that Mrs and Mr K were at risk because Mr K would likely have revealed that:

- The account with P was opened by Mr K on the instruction of J.
- Multiple payments were being made to P of increasing value.
- Software had been downloaded to Mr K's computer to allow J to take control of it.
- Funds were being sent from Mr K's wallet to J's.
- Mr K had access to a trading platform which showed that his investment was generating huge profits.
- No returns had been received from these ever-increasing profits.
- ☐ There was a lack of agreements setting out the arrangements, which would be expected with a legitimate broker.

I think it likely that The Co-op would have concluded Mrs and Mr K's funds were at risk because the picture here was one of a common crypto investment scam operating at the time. Armed with this information, I think Mr K would have looked into his relationship with J in far more detail than he previously had. Once the very real possibility of being scammed had been introduced by The Co-op, I don't think he would have continued with the arrangement.

I think that The Co-op had an opportunity to prevent these payments from 31 December 2020 onwards and protect Mrs and Mr K's funds. My current thinking is that The Co-op should make a refund, but I also need to consider if the bank should bear the whole loss or just part of it.

Should Mrs and Mr K bear some responsibility for their losses?

I've thought carefully about this, and I accept that Mr K was an inexperienced investor, particularly in relation to crypto investing. It's apparent that the scammers were convincing and provided an investment account for Mr K to view, through which he could see that his investment was performing well. Mr K had checked the "Scam Smart" website and hadn't found anything about J.

Mr K continued to invest and then made the "tax" payment. He's explained that he didn't think it unusual because tax is paid on investments. I wouldn't expect Mr K to understand in detail how tax is collected on such investments, especially given that Mr K believed he was investing with an overseas company and international tax rules can be complicated. But, I would question why he made the same payment again, even going to the degree of allowing

*J to apply for a loan in his name using the software on his computer. I think that this ought to have rung alarm bells with Mr K. It's not clear what reasons were given to the loan company for the money, but I have some doubt it was to pay "tax" on a crypto investment.*

*I think here that Mr K was completely taken in by J, and it's clear he and his wife were the victims, but I think at the point he was asked to pay the "tax" again, he should have questioned the arrangement. I don't think it's reasonable to accept that a second identical payment was required and to then allow others to make an application to a loan company on his behalf.*

*I currently think that Mrs and Mr K should bear equal responsibility with The Co-op for the loss of the final £16,000 payment.*

#### *Retrieval of the funds*

*Banks are required to try and retrieve funds that have been lost as the result of scams, but here, they were no longer accessible because they'd been exchanged into crypto and transferred to the scammer's wallet. I don't think that The Co-op had any real chance of retrieving the funds for Mrs and Mr K.*

#### *Summary*

*Overall, I think that The Co-op should have intervened here, but I do acknowledge that it was the scammers who engineered the theft of Mrs K and Mr K's funds in a sophisticated scam. There were opportunities to prevent the losses, although Mr K should bear some of the final payment because it wasn't reasonable to accept the reasons given to him at the time.*

#### *My provisional decision*

*I'm currently minded to uphold this complaint, in part, and recommend that The Co-op refund all of the funds sent to P from the £8,500 payment onwards, apart from the final £16,000 which both parties should share equally (50%) between them. In total, I'm intending to recommend that The Co-op refund Mr K £52,499.00 plus relevant interest.*

*I've thought about the rate of interest that should be applied here and it's apparent that there are different sources for the investment that probably attracted different rates of interest. Mr K's actions show that he was intending to invest his and Mrs K's funds and they've lost an opportunity to use that money on other, legitimate investments. So, I'm currently thinking about recommending the interest be paid at 8% simple interest a year on the loss from the date of the payments until the date it's repaid. I'll consider any submissions by either party regarding this or any other aspect of the complaint before I make my final decision.*

*I invited Mrs K and Mr K and The Co-op to give me any more evidence and information they wanted me to consider before issuing my final decision. The Co-op asked for an extension which was provided but haven't submitted anything in response to the later deadline. Mrs K and Mr K, via their representatives accepted my 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.*

*Having done so, and as neither party had anything further to add, I see no reason to reach a*

different conclusion. So, this final decision confirms the findings set out in my provisional decision.

### **Putting things right**

The Co-op should now refund all of the funds sent to P from the £8,500 payment onwards, apart from the final £16,000 which both parties should share equally (50%) between them. In total, that's a refund by The Co-op of £52,499.00 to Mrs K and Mr K, plus interest at 8% simple per annum from the date of the payments until the date it's repaid.

### **My final decision**

My final decision is that I uphold this complaint (in part) and instruct The Co-operative Bank Plc to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 18 April 2023.

David Perry  
**Ombudsman**