

The complaint

Mr C complained about The Co-operative Bank plc's actions when he reported a fraudulent transaction on his account.

What happened

Late at night on 30 June 2021, Mr C received a call from a convincing scammer who said he was from the Co-op's security team. Mr C said the caller started trying to use his address and card details during the call to buy things, the first being a £95 pair of shoes, from a company which I'll call A. Mr C was suspicious, and rang the 24-hour Co-op fraud line. The Co-op confirmed that it was a scam, blocked Mr C's debit card, and said it had stopped the £95 payment.

On 2 July, Mr C received a pair of shoes. He rang the seller, company A, and explained. The company told him that a completely different email address from Mr C's had been used to make the order. It confirmed that payment hadn't yet been received. It changed the email address to Mr C's email address, and used this to send him a return label for the shoes. Mr C returned the shoes the same day, and had a tracking receipt showing they were delivered to the seller two days later. Mr C also rang the Co-op's fraud team on 2 July to update them.

Mr C told the Co-op's fraud team that he had given the scam caller his address, because that had seemed a normal thing to be asked for. He thought the fraudster had used his address to send the goods to as the next step in the scam, and that the scammer would then have gone on to order other goods to be delivered to the scammer's own address.

The Co-op adviser said that it was too late to stop the £95 payment having gone through, but Mr C would be refunded within 48 hours. She also advised Mr C to contact Action Fraud, to check his credit file in case any new credit applications had been taken out in his name, and to be wary about social media. Mr C told her he'd also had an approach for £2 which had been said to be going to the NHS, which had also seemed genuine. No debit appeared on Mr C's account.

About two and a half months later, on 15 September, the Co-op emailed Mr C saying that the merchant had told the Co-op that the order included Mr C's name, address, and email. The Co-op said it now believed the transaction had been authorised. It said it would debit £95 from Mr C's account.

Mr C replied straightaway. He said the supposed evidence was wrong, and the seller had confirmed to him that the fraudster had used a different email. He also said that he'd returned the shoes the same day he'd received them. He also emailed proof that company A had confirmed his real email hadn't been used, and also sent the Co-op proof that he'd returned the shoes.

Mr C didn't get a reply, and chased the Co-op on 6 October.

The Co-op replied on 12 October. The email said it was odd that a different email had been used, but said that the goods had been delivered to Mr C's address, which wouldn't benefit a fraudster, so it was still going to debit Mr C's account.

Mr C couldn't get through to anyone by phone, so he emailed. He said that was completely unacceptable, and he'd provided convincing evidence from the seller that his genuine email hadn't been used for the original order. He said it was entirely plausible that company A now had his email address, because he'd contacted them about the fraud. He'd also returned the shoes immediately, and said that the Co-op didn't have any authority to go ahead and debit his account. Mr C said that if the Co-op did debit his account, he'd take it further, and would also close his very long-standing Co-op account.

The Co-op went ahead with debiting Mr C's account with £95.

Mr C managed to get through to the Co-op by phone on 13 October. The adviser said it would have been a genuine transaction in June. Mr C asked to speak to the fraud team. The adviser said he couldn't, but didn't give a reason. The adviser registered a complaint for Mr C, but at the end of the call, told Mr C that the complaint wouldn't be upheld.

The Co-op issued its final response to Mr C's complaint the same day. This said that following the phone conversation it had believed his complaint had been resolved.

Mr C didn't agree. He transferred his banking to another provider in early November 2021, and contacted this service.

Meanwhile Mr C had also contacted the merchant after the Co-op had debited his account on 12 October. The merchant refunded him on 15 October.

Mr C told this service that the Co-op had treated him badly, incompetently and unprofessionally by taking the £95 from his account contrary to the banking code; had put him to unnecessary stress, wasted time and inconvenience; and had impugned his integrity and reputation.

Our investigator didn't uphold Mr C's complaint. She said that when Mr C had first complained, the Co-op had put the £95 payment into a suspense account and had raised a chargeback with the seller. And the seller had refused the chargeback as it had delivered the goods, and his name, address and email had been used. The investigator said that a chargeback would only have a slim prospect of success because goods had been sent out, so she thought the Co-op's decision not to pursue the chargeback was fair and reasonable. Also, by this point Mr C had received a refund from the seller.

Mr C didn't agree, and asked for an ombudsman's decision. He sent a very long and detailed disagreement with each point of the investigator's view, and each point of her subsequent reply to his response.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

In my provisional decision, I explained that Mr C had raised multiple points in his submissions to the service. I said that I'd understood all of those and considered all he's said and sent us, but in reaching my decision I'd focused on what I thought was vital to my conclusions.

The starting point here was that when Mr C raised his concerns about the transaction with Co-op – it should have looked into the dispute and helped him with his concerns. Because of the nature of the transaction and Mr C's reasons for disputing it, there were a few different ways that Co-op could have done this. Co-op elected to deal with the dispute by raising a chargeback. So I first considered whether it was fair it did that.

A chargeback is a process by which settlement disputes are resolved between card issuers (here, the Co-op) and merchants (here, company A) under the relevant card scheme (the business that runs the payment network and chargeback scheme). Mr C had queried the organisation which replied to the Co-op's chargeback, and believed the use of that organisation undermines the outcome. However, the organisation is a large international financial services company which the merchant chose to use to send its reply. Its use didn't jeopardise the validity of the response it provided, or mean that the correct process wasn't followed here.

But while I appreciated that a payment service provider could use a chargeback as one way of dealing with a dispute of this nature, that won't always give enough information or consider the overall circumstances. Here, all that the evidence which came back as a result of the chargeback was Mr C's name, address and the disputed email address, which Mr C had already provided.

In certain circumstances, a chargeback can be a helpful and valid way of helping a customer raise a dispute. I said that I could see why Co-op raised the dispute as one here - where goods were delivered to the paying person's address and many details matched up with Mr C's genuine details. It initially looked very much like a legitimate transaction, so a chargeback as a way of understanding the merchant's version of events might have helped. But the fairness or otherwise of using a chargeback as a way of fulfilling its obligations still comes down to individual circumstances.

As Co-op raised a chargeback, Mr C was given the money he was disputing as a temporary credit while it investigated the dispute in more detail. On 12 October Co-op debited his account and considered the dispute resolved. So I went on to consider whether Co-op should have done any more here.

Regulations

Mr C said he didn't actually make the payment. In these circumstances there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

The Payment Services Regulations also set out rules relating to "*Distance contracts*." A distance contract is one which uses distance communication, and is carried out without the physical presence of the trader or consumer, eg buying clothes online or tickets by phone. Except where the payer (Mr C) has acted fraudulently – which isn't alleged here – the payer isn't liable for distance transactions if they didn't authorise the transaction.

Given what these regulations say, I thought that Co-op should always have considered how these applied to the dispute Mr C raised.

If Co-op had done this then there are several things I think it would have seen, for example:

- I saw several months of Mr C's Co-op bank statements. There were no similar transactions, either debit card distance contracts, or to buy shoes in this price range.
- I also noted that the merchant's website appears to show that it was a company based abroad and conducted its UK business solely online. That too was out of character for Mr C's transaction history.
- The IP address (unique computer identifier) for the disputed transaction was located in a large city more than 200 miles from where Mr C lived.
- From the type of transactions on Mr C's statement, I also thought that the late-night timing of the transaction would have been out of character too.
- I also bore in mind that Mr C reported the scam call to the Co-op overnight on 30 June, as soon as it had happened, and asked for the payment to be stopped as a fraud. I didn't think it was likely that Mr C would have done this, or immediately returned the shoes to the seller, if he'd authorised the transaction. If he'd ordered the shoes then changed his mind, he could just have got a refund by returning them to company A.

I accepted that it was unusual the goods in dispute here were ordered to Mr C's name and address and received by him. But he also acted genuinely when he became aware of the transaction and received the goods. So I thought Co-op should always have considered his dispute in the context of the regulations here.

It's not clear what outcome it would have reached here and, fortunately, Mr C received a refund just three days after Co-op debited his account. But it wasn't helpful when Co-op said that it couldn't do any more to help him. So I thought about the service it provided around this dispute.

Having done so, I thought Mr C did suffer some frustration, shock, and inconvenience. In his call on 2 July, the Co-op reassured him, gave him useful advice about scams, and told him the money would be refunded within 48 hours. In fact no debit was made to his account at that point, but it would have been reasonable for Mr C to assume this was because a corresponding credit had been sorted out. So it would have been a nasty shock to receive an email on 15 September saying that the Co-op had decided that the transaction had been authorised, and it would debit the money.

It was also very difficult for Mr C to get his complaint looked at seriously by the Co-op after it had relied solely on the chargeback. The fact that it didn't do so is evidenced by the fact that in his complaint call of 13 October, his dispute was rejected immediately by the call handler, and a final response letter was sent the same day.

Co-op's responsibility under the Payment Services Regulations was to decide whether or not it believed Mr C had authorised the payment. In view of the wider circumstances here, I consider that obligation wasn't satisfied by the chargeback alone here. In relying solely on the chargeback, the Co-op didn't take into account the other evidence it had, which I've set out in the section above about whether or not Mr C authorised the payment.

Compensation

When considering compensation, we generally do so in two ways: financial loss, and compensation for distress and inconvenience.

Looking first at financial loss, Mr C's account was debited with the £95 on 12 October 2021 and he received a refund from the merchant on 15 October 2021. This was shortly before he

switched his account away from the Co-op, so the money was in a low-interest account. So I find there was no significant financial loss.

I then looked at compensation for distress and inconvenience. I'd set out in my provisional decision that I thought the Co-op's decision to rely solely on a chargeback mechanism did disadvantage Mr C, because it led to distress and inconvenience. That was through the shock of the 15 September notice that the payment was considered authorised and would be debited, and in the way the complaint was turned down immediately when it was raised on 13 October with no real consideration.

I also considered the Co-op's customer service towards Mr C. In the call on 2 July, I considered the Co-op's adviser handled the call well. She was empathetic about the cleverness of the scammer, helpful with fraud advice and pointed Mr C in the direction of needing to check his credit file too. She was also reassuring about the outcome, saying it would be credited within 48 hours. Where the Co-op's customer service went wrong was after this.

As far as Mr C knew after that call, the Co-op had accepted what he'd said about having been scammed, and there wasn't going to be any more trouble. The Co-op didn't tell Mr C that it was going to decide the outcome by sending a chargeback to company A. So the first Mr C knew about the Co-op possibly rejecting his report of fraud was in the 15 September email which said the Co-op now believed the transaction had been authorised and would be debited. After Mr C responded by emailing evidence from company A about the email address, and proof that he'd returned the shoes, it was nearly another month before the Co-op replied, and when it did, it was just to say that it was going ahead with debiting Mr C's account anyway.

I've listened to the call recording from that call, and although the adviser took details from Mr C, the complaint was turned down at the end of the call and the final response letter was sent the next day. So I'm not persuaded that the Co-op looked in any significant detail at what Mr C was saying. That might have been reasonable if it had been very clear that Mr C had fraudulently carried out the transaction himself with a clear purpose of fraudulently claiming back the money. But that wasn't the situation here.

Finally, Mr C had argued strongly that he believed the Co-op was impugning his reputation by not believing his version of events. He said he was a very long-term customer. But banks do have to exercise caution, and look at the individual transaction rather than just the long-term nature of the banking relationship.

This service doesn't fine or punish financial businesses, as that's the role of the regulator, the Financial Conduct Authority (FCA). But we do award compensation for distress and inconvenience which is caused by a bank's actions. Being the victim of a scam does result in distress and inconvenience, and I couldn't attribute that to the Co-op. But as set out above, I found that the Co-op added to Mr C's distress, inconvenience and frustration by the way it dealt with this. Taking all the issues into account, I considered that a fair and reasonable amount of compensation for the Co-op to pay Mr C would be £150.

Responses to my provisional decision

The Co-op said that it had reviewed the provisional decision, and it had no additional points it would like to make.

Mr C said he was pleased to see that I was inclined to support his complaint. But he said he was uncomfortable with the factual accuracy of some things in my decision, and puzzled by others. He sent a detailed, word-by-word, commentary on every line of the provisional

decision. Mr C also said that he although he'd asked us for copies of all the evidence from the Co-op, he hadn't received any call recordings.

We sent Mr C a copy of the call recordings and gave him extra time to consider these.

Mr C then responded with further word-by-word commentary on the provisional decision, adding to his previous comments. Mr C also said that in addition to the £150 compensation, he'd like a written apology from the Co-op.

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.

I haven't quoted, or responded here in writing, to every one of Mr C's many comments in his response to the provisional decision. This is for the sake of conciseness. Where I feel it's appropriate, however, I've made minor changes to my wording above about what happened in relation to Mr C's complaint. As before, I've understood his points and have considered all he's said and sent us, but in reaching my decision I have focused on what I think is vital to my conclusions.

The comments which Mr C raised haven't changed my view of the merits of his case, nor my view of how it should be resolved. I've considered Mr C's request for a written apology from the Co-op in addition to the £150 compensation. But apologies which result from an order are rarely sincere, so I don't think that would add anything here.

I find that my original conclusion was fair and reasonable in all the circumstances of the case.

My final decision

My final decision is that I uphold this complaint, and I order The Co-operative Bank plc to pay Mr C £150 compensation for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 27 April 2023.

Belinda Knight
Ombudsman