

## **The complaint**

Mr W complains that The Co-operative ("The Co-op") Bank Plc caused his personal information to be given to a third party after his account was compromised.

## **What happened**

Mr W was the victim of an account takeover by an unauthorised third party who was able to utilise funds in it before it was blocked. A separate complaint about the situation was made by Mr W and a final decision was issued.

When Mr W brought his complaint to the Financial Ombudsman Service, he also raised an issue concerning his belief that The Co-op had breached data protection regulations by disclosing his personal information to the fraudster. This was an additional element to his complaint and at the time, The Co-op hadn't had the opportunity to address this particular issue. Mr W was invited to raise this separately with The Co-op and then bring the complaint to our service if he wished to do so.

Mr W raised the breach with The Co-op who acknowledged the complaint but didn't issue him with a final response. Mr W then brought his complaint to our service for an independent review.

Mr W argues that during various conversations held with the fraudster, The Co-op disclosed personal information about him. The Co-op have since argued that the information contained in the conversations was "security information", rather than personal information and no breach occurred.

There's a disagreement about what exactly some of those details held by The Co-op were. Mr W believes that some of the "security information" held by The Co-op was incorrect and The Co-op believe that Mr W is mistaken about some of those details.

The investigator who looked into the complaint didn't uphold it but acknowledged there had been a data breach when The Co-op disclosed information about the funds held in the account. But, she couldn't comment on whether The Co-op had failed to follow their own processes (which Mr W believed was the cause of the breach) because this had been part of the original decision from the earlier complaint.

Mr W disagreed and asked for a further review of his complaint. Many of Mr W's comments relate to the previous complaint issues and are essentially a continuation of that complaint. As I've already issued a decision about that, I'm unable to further comment. I have however, read all of Mr W's additional points and accept that he has been left unsatisfied by The Co-op's responses.

But, I will say that Mr W wanted to understand the extent of the knowledge obtained by the fraudster (quite reasonably) and my understanding is that he's now in possession of those details from the phone calls between The Co-op and the fraudster.

Mr W's comments concluded with his belief that there was a data breach and:

- The Co-op failed to complete adequate security checks, and this is a breach of the terms and conditions.
- Mr W is entitled to know the full extent of that breach.
- The bank's response to the original decision is incomplete.
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As no agreement could be reached, the matter has been passed to me. I issued my provisional findings on the merits of Mr W's complaint on 30 June 2023. In my provisional findings, I explained why I intended to uphold Mr W's 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:

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

*Mr W was the victim of an account takeover when an unidentified third party was able to gain access to his account held with The Co-op. I recognise that this would no doubt have been a worrying time for him.*

*As previously mentioned, I've already dealt with the substantive issues concerning this matter and don't intend to go over the original complaint again. As a decision has already been issued on those matters, I'm unable to further comment. Some of Mr W's comments relate to how The Co-op have responded to the directions contained within the decision. That decision was our service's final word on the issues I considered and enforcement of that decision is now a matter for the courts. However, I understand from Mr W that he wanted information about a call that wasn't included in the original response from the Co-op and that has since been provided to him. So, I hope that Mr W has a better understanding of the extent of the original compromise of his account.*

*Mr W's current complaint relates to whether The Co-op disclosed personal information about him, and he believes that The Co-op failed to follow their own procedures which led to it. The Co-op didn't provide Mr W with a final response to his complaint. I didn't think was particularly helpful to Mr W.*

*The Co-op have argued that "security information" isn't "personal information" because it can be fictionalised or just made-up information. "Security information" in this context is the data used to confirm the caller is the account holder when they speak with The Co-op.*

*The Co-op are under an obligation to protect Mr W's personal data, whether they class it as "security information" or not.*

*The Information Commissioner's Office (ICO) defines personal data as:*

*Personal data only includes information relating to natural persons who:*

- *can be identified or who are identifiable, directly from the information in question; or*
- *who can be indirectly identified from that information in combination with other information.*

*Here, Mr W provided information about himself to The Co-op to satisfy their "security information" needs when accessing his account. Some of those details related to specific aspects from Mr W's life, including details of schools attended and place of birth.*

*So here, I don't agree with the position taken by The Co-op that they believe "security information" can't be a cause to breach data security regulations. If The Co-op hold personal*

*data relating to Mr W and they disclose it to a third party – it's difficult to see how that's not an unauthorised disclosure. Whether there was a breach of The Co-op's procedures or not doesn't particularly impact whether the disclosure happened. Firms are required to guard against the disclosure to those falsely posing as the genuine account holder.*

*Whilst it's for the ICO, as the regulator, to make any determination about whether The Co-op has breached the relevant legislation here, I'm able to assess the issue in relation to Mr W's complaint and the impact this had on him.*

*There's no doubt here that the unidentified third party already had some information about Mr W, including his name and address, so his identity was already known. But, the information disclosed by The Co-op could only add to the knowledge of the fraudster.*

*Mr W hasn't sought additional compensation here, but to receive an acknowledgement from The Co-op that they caused him unnecessary additional stress by their handling of his situation by failing to tell him about the breach of his information. Also, he sought clarification by The Co-op concerning the specific personal information they disclosed to the fraudster. Mr W also wanted additional information which primarily relates to the previous decision.*

*Regarding the issue of what exactly the information held by The Co-op was, I'm aware there's some disagreement. But here, I don't think it's of particular relevance to this complaint. Those details previously held by The Co-op can be amended by agreement with both parties, so the issue of what was recorded can be updated as necessary (if it already hasn't been). What is of relevance is the data breach and how that impacted Mr W.*

*My initial thoughts here are that The Co-op disclosed personal information to an unauthorised third party and failed to notify Mr W of those details. I'm currently intending to uphold this complaint. I'm aware that information concerning the missing call has already been given to Mr W, so I'll recommend that The Co-op tell Mr W the specific personal information related to this complaint that they disclosed to the unauthorised third party – where this information hasn't already been provided to him. Also, to make an apology to him for their handling of the issue. Whilst I acknowledge the unnecessary stress and inconvenience caused to Mr W, I'm not aware that he suffered any further impact from the way that his personal information was handled by The Co-op.*

I invited Mr W 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 clarified that information contained in the first call was omitted by error and they believed that all personal information contained in the calls with the fraudster had been disclosed to Mr W.

Mr W made further comments:

- He wanted to know if the data breach extended to any other type of access – in particular Mr W believed that the fraudster had accessed his online banking account.
- Mr W made further comments regarding the previous decision and how it's bound to this one.

Further correspondence was entered into between all the parties and The Co-op provided summaries of their contact with the fraudster to Mr W. He remained unsatisfied with how they dealt with his complaint and continued to believe that the fraudster had managed to compromise his online accounts.

I asked The Co-op for evidence concerning this and they've since been able to provide details that the fraudster didn't access Mr W's online banking. The only contact was via telephone banking.

The Co-op asked if I could be specific when I gave direction concerning what should be disclosed to Mr W regarding any personal information that may have been passed to the fraudster.

### **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 that would change my original opinion, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I understand here that Mr W remains unsatisfied regarding The Co-op's conduct throughout this situation. I'll repeat here that I won't be commenting on how the previous decision has been dealt with, although I think it's relevant to add that the omission of the first call (which contained personal information) has now been provided on several occasions to Mr W.

The Co-op have said this was a genuine error on their part and I'm happy to accept their explanation for this. Ultimately, Mr W has the information concerning The Co-op's contact with the fraudster that should identify any personal information that may have been disclosed.

The Co-op's systems prevent them from revealing certain information (by design) to ensure that information isn't readily available to unauthorised persons. So, some of the data can't be extracted – but as this information related to what Mr W registered with The Co-op – I don't think there's any particular impact on Mr W.

I understand Mr W believes that some of this information was wrong. Whilst that may be the case, the same information is capable of being changed by Mr W if he hasn't already done so.

The Co-op provided evidence concerning the payment Mr W thought was done through online banking. Having examined it, I'm satisfied there was no online banking access.

Regarding The Co-op's request for me to be specific relating to disclosure to Mr W. Whilst I'd like to be able to give specific direction, as I'm not the owner of the data, I can't specify what they should or shouldn't reveal to Mr W. The Co-op have my explanation regarding their approach to "security information" and from that they can see if there's anything outstanding that they need to pass to Mr W.

If The Co-op believe (as they've stated) that all personal information has now been given to Mr W, then they've nothing further to disclose. But, the responsibility to carry out the direction rests with The Co-op.

### **Putting things right**

It's now for The Co-op to tell Mr W the specific personal information related to this complaint that they disclosed to the unauthorised third party – *where this information hasn't already been provided to him.*

Also, to make an apology to him for their handling of the issue, if they haven't already done so. Whilst I acknowledge the unnecessary stress and inconvenience caused to Mr W, I'm not aware that he suffered any further impact from the way that his personal information was handled by The Co-op.

### **My final decision**

My final decision is that I uphold this complaint against The Co-operative Bank Plc and they're instructed to settle the complaint as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 August 2023.

David Perry  
**Ombudsman**