

The complaint

A charity, which I will refer to as 'N', complains that The Co-Operative Bank Plc is refusing to reimburse some unauthorised transactions on their bank account. N also say that these transactions were unusual to their normal account activity and as such the bank ought to have intervened when the payments took place, and had it done so their loss could have been prevented.

What happened

The background to the complaint is known to both parties and so I won't repeat it at length here.

Briefly, in June 2020, the person who was authorised to make payments on behalf of the charity (who I will refer to as 'J') fell victim to a fraud, and nearly £15,000 was transferred out of N's account.

Alongside this, payments were also made out of another charity's account (which is part of the same group), and that is being considered by us under a separate complaint.

N claimed reimbursement of the payments, but the bank did not agree. One of our investigators considered the complaint and concluded that it could not be upheld. They said, in summary, that the relevant payments were unauthorised. However, taking into account the actions of J, the bank could reasonably rely on the exception of gross negligence, to not reimburse the unauthorised transactions. The investigator also did not think that the payments were unusual or out of character to the normal account activity. N did not agree.

My provisional decision

I issued a provisional decision upholding the complaint, which forms part of this decision and should be read together with this final decision. In summary, I said:

- It is not disputed that the payments were unauthorised or that J didn't fail with intent. So, the question for me to decide is essentially whether J acted grossly negligently.
- Taking into account what had happened, I don't think that J's actions demonstrated such a significant degree of carelessness to conclude that she acted grossly negligently. In summary, the fraudster first panicked J into believing that something had gone wrong. They then established trust with her and assured her that they would help. She was also comforted by the fact that she was not asked to reveal the code, just to type it on the screen but not log-in. So, she thought the account wasn't at risk. In addition, during the time the payments were made, she wasn't presented with anything that would have alerted her to the fraud.
- As noted earlier, the unauthorised payments went from two bank accounts. J was authorised to make payments on behalf of both. The fraudster first targeted the other charity account and after four payments out of it, switched to this account. Thus, what happened here is essentially a continuation of what happened to the other account. In

the other case, I said that the bank ought to have intervened at least at a particular point in time. That was prior to any unauthorised transaction happening on this account. So, any effective intervention by the bank at that time would more likely have prevented further transactions taking place, including out of this account.

That said, I am conscious that some of the measures the bank may have taken on that account may not have automatically extended to this account. Thus, a block on the other account need not necessarily mean that an automatic block on this account would have happened.

So, I have reviewed the activity of this account over the previous twelve months and find that the set of unauthorised transactions was unusual to the normal account activity. I see from the relevant terms and conditions of the account, that the bank may refuse to make a payment if it suspects a fraudulent activity or financial crime on the account and such a refusal may include blocking access to the account. In this instance, it is my view that, given the unusual nature of the transactions, it would be fair to conclude that the bank ought to have suspected fraudulent activity and taken steps to contact their customer, failing which block the access to the account until the matter was resolved. So, I think that the bank also missed an opportunity here to prevent the losses to N.

- Given all of the above, the bank should reimburse the unauthorised payments (less any recoveries), together with interest.

What happened after my provisional decision?

Both parties accepted my provisional decision and had nothing further to add.

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, I see no reason to depart from my provisional decision. I remain of the view that the settlement set out in my provisional decision represents a fair and reasonable outcome to this complaint.

Putting things right

In full and final settlement of the complaint the bank should reimburse the unauthorised transactions on N's account less any subsequent recoveries it returned to N in relation to these payments. It should also pay 8% p.a. simple interest on the amount reimbursed. Interest should be paid from the date of the transactions to the date of settlement

My final decision

My final decision is that the complaint should be upheld, and in full and final settlement of the complaint The Co-Operative Bank Plc should pay N as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 19 October 2023.

Raj Varadarajan

Ombudsman