

The complaint

A charity, which I will refer to as 'S', complains that The Co-Operative Bank Plc is refusing to reimburse some unauthorised transactions on their bank account. S 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 over two days nearly £60,000 was transferred out of the charity'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.

S 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. S 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 on the first day 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.

However, things were somewhat different when it came to the payments made on the second day. By that time J had some time to reflect on what all had happened the

previous day, without the presence or pressure of the fraudster. Further, the fraudster repeated the same story on the second day too, which J could have realised as somewhat unusual. In the circumstances, I consider that the bank could reasonably rely on the exception of gross negligence when it came to J continuing to follow the instructions of the fraudster on the second day.

- That said, having reviewed the account activity over the previous twelve months, the account activity during those two days were highly unusual.

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.

It is difficult to be precise as to when the bank ought to have intervened. However, looking through the account activities at that time, I consider it reasonable to conclude that the bank ought to have intervened at least by the fourth payment. Had it done so, further losses to S could more likely have been prevented.

- For the various reasons explained, S's complaint should be upheld. In full and final settlement of the complaint, the bank should reimburse all the first day's payments less any recoveries it subsequently made. It should also pay interest on the amount reimbursed. As I have concluded that the bank should refund all the payments that day, I do not have to separately consider the impact of the bank failing to intervene.

The bank isn't obliged to refund the second day's payments under the provisions of the PSRs, as in my view J acted grossly negligently by continuing to follow the instructions of the fraudster on the second day. However, the bank too missed an opportunity to help prevent these losses to S, and so it is fair that it compensates at least in part the loss incurred by S. In the circumstances, I consider it fair that the bank reimburses 50% of the loss incurred by S in relation to the payments made on the second day. It should also pay interest on the amount reimbursed.

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 do as below:

Payments made on the first day

The bank should reimburse all the payments made on the first day less any subsequent recoveries it returned to S 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.

Payments made on the second day

The bank should reimburse 50% of the loss incurred by S in relation to the payments made on the second day (Loss = Payments made on the second day less any subsequent recoveries it returned to S 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 S as explained above.

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

Raj Varadarajan
Ombudsman