

The complaint

Mr C complains that The Co-operative Bank Plc (“Co-op”) did not refund the £51,415 he lost as part of a scam.

What happened

Mr C was looking to invest his funds in a better paying account than the savings account he held with Co-op at the time. He found a company I’ll call ‘DC’ which provided a three-year bond with a rate of 4%, which he was happy with. He spoke with representatives of DC at length, checked the company on the Financial Conduct Authority (“FCA”) website and signed an agreement for the bond. He transferred the £51,415 in a lump sum on 15 August 2019. He was provided with log-in details to an account so he could keep an eye on his investment.

Mr C checked on his investment in December 2022 and found the link to his account and the website no longer worked. He checked the FCA website and found a warning that was posted on 14 August 2019 which said the genuine DC website had been cloned. It was at that point Mr C realised he had been the victim of a scam. He raised this as a complaint with Co-op.

Co-op attempted to recover the funds from the beneficiary bank, however none remained. They also investigated Mr C’s complaint but explained that as appropriate scam warnings had been given when Mr C made the payment, they would not be refunding the £51,415. However, they did pay him £75 for the time taken to investigate his claim. Mr C did not accept the outcome, so he referred the complaint to our service.

Our Investigator looked into it and felt that the conversation between Mr C and Co-op when the payment was made was not detailed enough and had Co-op asked more targeted questions based on the warning signs, the scam could reasonably have been revealed. So, they recommended a full refund of the transaction, as well as 8% simple interest. They agreed the compensation already paid was fair. Co-op disagreed with this as they directed Mr C to check the FCA website in the phone call, which had the relevant warning about the cloned company at that time. So they thought they had acted appropriately in the circumstances.

As an informal agreement could not be reached, the complaint has been passed to me for a final 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, I agree with the Investigator for largely the same reasons. I think that, while this is a very finely balanced case, Co-op should reasonably have given a more tailored scam warning and explored the unusual characteristics of the payment in more detail and if they had have done, the scam would most likely have been revealed. I’ll go into more detail

below.

Firstly, it should be clarified that at the date of the transaction, Co-op had not yet signed up to the voluntary Contingent Reimbursement Model ("CRM") code. Because of this, Mr C's case does not fall under the same level of protection as one under the CRM would.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr C authorised the payment of £51,415 as he believed it was part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Co-op was obliged to follow Mr C's instruction and process the payment. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Co-op did enough to try to keep Mr C's account safe.

The payment itself was of a particularly high value, and this was significantly higher than the previous genuine transactions made on Mr C's account. With this in mind, I think Co-op acted reasonably when it paused the payment for processing and contacted Mr C with some questions prior to releasing it.

Unfortunately, the phone recording of the conversation is no longer available, though this is understandable considering the length of time that has passed. However, there are still call notes made by the representative from Co-op that give an overview of what was discussed at the time. The notes don't go into significant detail, but the main points of the conversation have been acknowledged and I'm satisfied this is a fair reflection of what was discussed.

This shows that Mr C told Co-op he had checked the company were FCA regulated, he had found the investment himself, the returns were at 4% and that Co-op had ruled all scams out. Mr C has said that his recollection is that there was no mention of cloning scams and how they worked during this conversation.

What's left to determine is if Co-op should reasonably have done more in this conversation. Mr C was investing in DC, however the payee for the transactions was a different company name entirely. This discrepancy is not acknowledged in the notes of the call, but I would reasonably have expected this to be picked up with basic questions about the investment and what Mr C's understanding of it was. And if it had been, I would have expected Co-op to have some concerns around this and to have asked more detailed questions as a result. A payee mis-match with the genuine company name can be an indication of a scam in some circumstances.

While I acknowledge that Mr C stated he had checked the company were FCA regulated, considering he had been speaking to the scammers for a few weeks by that point, the checks he carried out would have been a few weeks old. It is unfortunate that the warning about the cloned company was only posted the day before Mr C carried out the transaction in question. However, in this case, as the payee name did not match the genuine, legitimate company, and with Co-op's knowledge of investment scams including cloned company scams, I think it would have been good practice for them to direct Mr C to check the FCA

warnings again for the most up to date information or carry out that check themselves while on the phone with Mr C. Only at that point could they have reasonably been satisfied Mr C was not the victim of a scam. And if they had done this, I think the FCA warning would have been spotted and the scam could reasonably have been revealed.

I've also considered whether Mr C should reasonably bear some responsibility for the scam and if there should be a reduction in the reimbursement as a result. Having carefully considered everything, I don't think this should apply in this case. I think the scam was particularly sophisticated with a clone of a genuine website and believable paperwork, and that prior to the payment, Mr C tried to protect himself by carrying out due diligence. Unfortunately, the FCA warning did not appear until the day before the payment.

I can see Mr C has already received £75 compensation for the fact the investigation took longer than expected. I appreciate Mr C was frustrated by Co-op's process and on balance, I agree the £75 is fair compensation for the distress and inconvenience caused.

Putting things right

I agree that Co-op missed an opportunity to reveal the scam, so I think they should reimburse Mr C with the £51,415, with no deductions for contributory negligence by Mr C. And they should apply 8% simple interest on the payment from the date of the transaction to the date of settlement.

If Co-op considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr C's complaint against The Co-operative Bank Plc and I direct it to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 March 2024.

Rebecca Norris
Ombudsman