

The complaint

Ms S and Mr W complains The Co-operative Bank Plc (Co-op) declined to refund several payments they say they didn't make or allow anyone else to make.

What happened

After reviewing the joint account statements, Mr W contacted Co-op at the end of December 2023 to report several transactions that were made to Morrisons in August 2022 that he says he didn't recognise. He contacted Co-op again at the start of January 2024 to report another disputed payment, this time to TK Maxx, that also took place in August 2022. Overall he and Ms S are disputing 10 payments totalling £640.28.

Co-op declined to refund Ms S and Mr W. It said that as the payments were reported more than 13 months after they debited the account, it wouldn't look to refund the disputed payments.

Unhappy with Co-op's response, Ms S and Mr W referred their complaint to our service.

One of our investigators looked into Ms S and Mr W's complaint but didn't uphold it. In summary, having considered the relevant law and terms and conditions, they thought Co-op was fair in its decision to not refund Ms S and Mr W as they didn't raise their dispute until more than 13 months after the payments were debited from their account. They also didn't consider Co-op had done anything wrong by not preventing the payments in the circumstances. Finally, whilst they recognised some misinformation had been shared with Mr W, they didn't consider Co-op ought to pay them compensation.

Ms S and Mr W didn't agree. In summary they said:

- Co-op had accepted the payments were likely fraudulent and so despite the "13-month rule", it would be an act of goodwill to waive the rule on this occasion and especially where it gave misinformation about refunding them and how the payments were made.
- They felt the payments were unusual for their account as there hadn't been similar activity before, adding that multiple payments were made to the same merchant and in the same day.

So the matter has been passed to me for consideration by an ombudsman.

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'm not upholding this complaint. I'll explain why.

Ms S and Mr W say they didn't make or allow anyone else to make the disputed payments

and so are asking Co-op to refund them on the basis these were unauthorised payments. Taking this into account, Co-op has declined to refund the payments because they were reported more than 13 months after they debited the account. So I've considered whether Co-op has treated them fairly in the circumstances considering the relevant law as well as the terms and conditions agreed between Co-op, and Ms S and Mr W.

The relevant law in this complaint is the Payment Services Regulations 2017 (PSRs). Specifically, Regulation 74(1) sets out that a customer will be entitled to a refund for unauthorised payments *"only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction."*

Further to the above, the relevant terms and conditions Co-op has relied on also explain it won't refund unauthorised payments where it's told about them more than 13 months after they were made.

There is no dispute Ms S and Mr W reported the disputed payments more than 13 months after they debited the account. The disputed payments took place in August 2022 and were first reported at the end of December 2023. Having considered what both the terms and conditions and the PSRs set out, I'm persuaded Co-op has applied these fairly in the circumstances.

Mr W has explained that both he and Ms S check their statements at various points of the year, but these disputed payments were unfortunately missed until it was then noticed in December 2023. Whilst I appreciate that's the case, it doesn't persuade me that Co-op ought to have acted differently here in the decision it reached.

Ms S and Mr W say the disputed activity was unusual for their account. They think that Co-op ought to have intervened when the disputed payments were made. In line with good industry practices, I consider Co-op should fairly and reasonably have been on the lookout for indicators that their customer was at an increased risk of fraud or scams. So I've thought about whether Co-op has fallen short of good industry practice here, and as a result caused a loss to Ms S and Mr W.

Having reviewed Ms S and Mr W's account history around eight months prior to the disputed payments – a time I consider sufficiently relevant activity in the circumstances – I can see the account was used frequently, and the statements shows that it was common for several payments to be posted on the same day. I've also seen that payments to the same merchant were posted on the same day. The payments Ms S and Mr W disputed took place over several days, were relatively low value payments and made to legitimate merchants. Therefore, I don't think the overall activity was so out of character or suspicious compared to their normal activity to the extent that Co-op has failed to act in line with good industry practice in not identifying the payments as potentially fraudulent.

Finally, having listened to call recordings where Mr W spoke with Co-op and reported the disputed payments, I accept Co-op provided incorrect information such as how the payments were made and saying they would receive a refund. I appreciate it would have been frustrating to have been given conflicting information. Whilst that's the case, I don't consider that means Co-op should refund the loss for the reasons I've already set out above. And I've seen nothing to say it would be fair or reasonable for Co-op to depart from the terms and conditions, and the PSRs.

But where it gave incorrect information, I've thought about whether Co-op should pay compensation to reflect any distress or inconvenience caused to Ms S and Mr W however, I'm not persuaded it would be fair warranting an award of compensation here. There is

natural inconvenience that comes with reporting disputed payments, and I appreciate that given the time that had passed from when the payments were reported to when they were made, that the information around how they were carried out wasn't easily accessible which added to the confusion. Our awards aren't punitive and based on what I've seen, I'm not persuaded that the incorrect information given was more than a minor upset and that Co-op rectified any incorrect information in relatively good time – within a couple of weeks – confirming it wouldn't be providing a refund.

I appreciate my decision will come as a disappointment to Ms S and Mr W, however for the reasons I've explained I don't consider Co-op liable to refund them their loss or liable to provide any other form of compensation to them.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S and Mr W to accept or reject my decision before 1 July 2024.

Timothy Doe
Ombudsman