

The complaint

Mr S is unhappy that The Co-operative Bank Plc trading as Smile ("Smile") will not refund the money he lost as the result of a scam.

Mr S has used a representative to bring his complaint to this service. For ease, I will refer solely to Mr S throughout this decision.

What happened

All parties are familiar with the details of the scam, so I will provide only a summary here. Mr S met someone that I will call B via a social media messaging service. He struck up a friendship with this person. After a while B convinced Mr S to invest in crypto currency. Mr S did this by sending funds to a crypto exchange via debit card payments.

After a while the balance on Mr S's crypto wallet suddenly became zero. At this point Mr S realised that he had been scammed.

Some months later Mr S looked for a company to help him recover his lost funds and came across a company that I will call C. Mr S made three payments via transfer to a crypto exchange. When his funds were not recovered Mr S realised, he had been scammed again.

Mr S was persuaded to make the following payments to B and C;

Transaction Number	Date	Amount	Which scam
1	14 March 2022	£7,772.27	B
2	14 March 2022	£4,999.34	B
3	21 March 2022	£12,445.05	B
4	21 March 2022	£5,055.33	B
5	28 March 2022	£12,444.19	B
6	28 March 2022	£5,056.00	B
7	04 April 2022	£9,954.79	B
8	14 April 2022	£1,300	C
9	14 April 2022	£50	C
10	19 April 2022	£3,000	C

Mr S complained via a representative in 2023, as he believes that Smile should have done more to prevent the scam. Smile did not agree to this.

Our investigator initially rejected this complaint due to the answers provided by Mr S during a phone call with Smile on 15 April 2022. He thought that the answers provided by Mr S were misleading and therefore that an earlier intervention from Smile would not have stopped the scam. Mr S provided more context about the answers that he gave during this call and the investigator then upheld this complaint.

The reason for this was that he said that payment 1 should have been considered out of character for Mr S's account and therefore, the investigator concluded that Smile should have intervened at this point. the investigator felt that had an intervention occurred at that

point and open and probing questions asked, then the scam would likely have been stopped and therefore Smile should refund Mr S the money he lost from transaction 1 onwards. However, the investigator did think that Mr S was partially responsible for his own loss, so he recommended a 50% reduction in the refund he was due.

Mr S agreed to this, but Smile did not. So the complaint has been passed to me to issue a 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.

It isn't in dispute that Mr S authorised the disputed payments he made from his Smile account. The payments were requested by him using his legitimate security credentials, and the starting position is that Smile ought to follow the instructions given by its customers, in order for legitimate payments to be made as instructed.

However, I've considered whether Smile should have done more to prevent Mr S from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

I think Smile ought to have carried out further checks and intervened before processing the first transaction. I say this due to the size of the payment and where the payment was going to. This is supported by the fact that this payment was flagged by Smile for checks.

Smile is aware of the typical patterns of scams like this – that customers often move money onto a crypto account in their own name, before moving it on again to scammers. I think Smile is also aware that scams like this commonly take place with multiple payments, starting off with smaller sums and then increasing in amounts.

I also appreciate that Mr S's loss didn't materialise directly from his Smile account in these circumstances. But even though he was transferring funds to a crypto account in his own name, I still think that Smile ought to have taken a closer look at payment 1 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mr S started making his investments in March 2022, it is reasonable to say Smile ought to have had a good enough understanding of how crypto scams work – including the fact that their customer often moves money to an account in their own name, before moving it on again to the fraudster.

Therefore, I'm satisfied that Smile should've had mechanisms in place to detect and prevent this type of fraud at the time Mr S was making these payments. Had it had such mechanisms in place, I think this likely would've led to it intervening to ask further questions about payment 1.

I would expect Smile to have intervened and asked Mr S who the payment was for, what it was for, and for the context surrounding the payment. It could, for example, have asked how he had been contacted, whether he'd parted with personal details in order to open a trading account, whether he was being helped by any third parties e.g. a broker, and how he had come across the investment, which in this case was via a social media advert.

I have no reason to believe Mr S wouldn't have been open with Smile, and I think he would have taken any intervention seriously. So, I think Smile would have quickly learned from its conversation with Mr S the basic background to the payment instruction – that he was buying cryptocurrency on advice from someone he had never met.

Even though the conversation would likely have identified the payment was going to Mr S's own cryptocurrency account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mr S's control. This is because by 2022 Smile was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name first, before moving it on again to scammers.

So, I think Smile would have been concerned by what the conversation would most likely have revealed and so warned Mr S, explaining the typical characteristics of scams like this. Had it done so, I think Mr S would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if Smile had intervened effectively given that a warning would be coming from his trusted bank.

It follows I think Mr S would not have gone ahead with payment 1, nor any subsequent payments had Smile intervened at that point.

I note that Smile does not think that Mr S would have been forthcoming about what he was doing. Based on the phone call on 15 April 2022. I have listened to this call and the questions asked were not sufficiently open ended. Mr S answered the questions asked in a way that I don't think was intentionally misleading. Smile have highlighted the answers to three questions, specifically:

- How had Mr S heard about the opportunity? Mr S answered that he found out about this opportunity on his own. Smile contends that this was untrue but I don't think this was the case because he found out about C by searching for someone who could recover his funds himself. So he did find out about the opportunity on his own.
- Is someone investing on his behalf? Mr S said no which Smile believes was untrue. But again, I don't think that this was the case, because Mr S was not investing and was sending funds to recover funds he had already lost.
- Is he acting alone? Mr S confirmed that it was him alone that was deciding to make the transactions and nobody is involved in his decision making process. Mr S said it was him making the decision. Again I don't think this is untrue as Mr S answered this way because it was his choice to proceed and nobody was forcing him to make the payments.

Smile have also explained that it did intervene before payment 1 was made but Mr S did not call them back to discuss the payment but he did confirm that it was a genuine payment. It says that this led to payments being sent to the same merchant not being blocked. But overall given the size of the payment and where it was being sent to I don't think that this was a proportionate intervention. I would have expected some further form of intervention from Smile at this point. So overall I think that Smile should have intervened more than it did and had it done so I think that this would have prevented the scam.

I've considered carefully whether Mr S should hold some responsibility for his loss by way of contributory negligence. In this instance it is not clear what if any research he did into the legitimacy of B. I also am mindful that Mr S had never met B but was investing on her advice a considerable amount of money without receiving any significant credits.

So overall and having considered everything I feel that it would be appropriate to reduce the amount of compensation due to Mr S by 50%.

I have thought about whether Smile could have recovered the funds via a chargeback for the debit card payments, but in this instance as the funds were sent to a crypto account in his own name and were used to buy crypto, I don't think a chargeback would have been successful. This is because Mr S essentially got what he paid for. It was only when the crypto currencies were transferred out of his wallet , did the loss occur.

In relation to the transfers, the Contingent Reimbursement Model ("CRM") does not apply as the funds were sent to a crypto account in Mr S's own name before being sent to C. Also the CRM does not apply to funds sent between accounts held in a customer own name. I also don't think that there was any other way to recover the funds. So I don't think that Smile could have recovered the funds via other means.

Putting things right

To put things right, Smile will need to:

- Refund 50% of Mr S's loss to the scam from transaction 1 onwards, minus any refunds already received; and
- Pay 8% simple interest, per year, on these transactions from the date of each transaction to the date of settlement, less any appropriate tax.

My final decision

I uphold this complaint in part and require The Co-operative Bank Plc trading as Smile ("Smile") to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 July 2024.

Charlie Newton
Ombudsman