The complaint

The Estate of Mr D complains that The Co-Operative Bank Plc ('Co-op') declined to refund over £12,000 which they say was lost as the result of a fraud or theft.

What happened

This complaint has been brought by Mr J, an executor of the Estate of Mr D. Mr J said that in his capacity as executor of the estate, he obtained the late Mr D's Co-op account statements for the two accounts he held with them. Mr J said the member of branch staff who had printed out the statements for him told him that they had noticed some suspicious transactions on the account that they thought looked like theft.

Mr J is disputing fifteen transactions, which took place between September 2023, and January 2024. The transactions totalled over £12,000. At the time these transactions started, Mr D resided at home but had two carers who would attend to him there. All bar one of the transactions went to accounts held by two individuals who worked as his carers. Mr J said the carers no longer had caring responsibilities for Mr D after October 2023. He explained that Mr J had to go into hospital and did not have a mobile phone with him which he would need to make transfers, or if he did, he would not have had the capacity to make or otherwise authorise the payments himself.

Mr J said that the transactions were totally out of character especially when considering the normal account activity and represented a failure in Co-op's fiduciary care of Mr D and his accounts that caused the loss of over £12,000. Mr J explained that the police were currently investigating what happened, and after one of the carers said that the money was a gift from Mr D, may be looking to charge them with an offence of fraud. He expressed that at a time where the bereaved family are trying to deal with a great many things, uncovering all of this had made things much harder.

When Mr J complained to Co-op on behalf of the Estate or Mr D, they declined to refund the disputed transactions. Co-op has said, in summary, that there is not enough evidence to explain how Mr D's account details could have been compromised, and without the ability to gain testimony from Mr D himself, it was difficult to prove the payments were unauthorised. They said only one of the payees was new, and it was added using Mr D's registered app. They said as only one payment went to a new payee, and the amounts were not so large as to be unusual or out of character transactions, there was nothing that would have identified that Mr D was at risk of fraud or financial harm.

The Estate of Mr D escalated their concerns to our service. One of our investigators looked into what had happened, and didn't recommend that the complaint be upheld. In short, whilst they agreed that the account activity looked unusual and out of character for Mr D's account, they said they could not reasonably conclude that an intervention by Co-op could have prevented the loss without testimony from Mr D. They said that it was clear from a recording of a phone call between Mr D and Co-op before his passing, that he did need help with managing his financial affairs, and this may have been what the carers were doing. And so without Mr D's testimony it would be difficult to say that the payments were made without his knowledge or consent.

The Estate of Mr D did not agree with our investigator's thoughts on this complaint. He said regardless of whether the transactions were willingly undertaken by Mr D without coercion or whether the carers stole the funds, he thinks that the payments were so out of character, in terms of the volumes of cash and number of transactions, that Co-op ought to have put a stop to them. Mr J said the transactions should have been flagged by Co-op, and in missing them or ignoring them, they had failed Mr D. And their lack of action ought to lead to a refund.

As no agreement has been reached, the case has been passed to me to decide.

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.

I'd like to start by saying that I do believe that Mr D was the victim of a callous and cruel fraud. He was a vulnerable man who had to put his trust into others to provide care for him, and I was so sad to read of what he was put through. I can tell from the evidence we have, and the conversations Mr J has had with our service that this had a profound impact on not just Mr J, but the wider family too. The loss of Mr D and the continuing police investigation no doubt continues to add to this distress for Ms J. So, I'd like to offer my condolences as well as my sympathy for this incredibly difficult ordeal.

Did Mr D authorise the transactions?

Generally, Co-op can hold Mr D's estate liable for any disputed transactions if the evidence suggests that it's more likely than not that he made or authorised them himself. It is clear that the transactions took place using Mr D's registered device and Co-op app. But this alone is not enough to say that Mr D's estate is liable for these transactions. I need to think about whether the evidence suggests that it is more likely than not that Mr D consented to these payments. And therein lies the difficulty.

I've carefully considered all of the available evidence to try and understand what, if any, consent Mr D had given the carers to transact on his behalf. To do this I have looked at the evidence and testimony of Mr J on behalf of Mr D's estate to try and understand Mr D's personal and financial situation as well as possible at the time of the disputed transactions. I've done this in order to try and gain an understanding about how the carers may have accessed his online banking in order to complete the transactions. Having done so, I have identified a number of possible scenarios for how the carers may have been able to access Mr B's online banking and make transactions on his account. I'll explore the most likely scenarios in turn.

The first possible scenario is that Mr D allowed the carers to complete the transactions. He handed over his phone and relevant security credentials, perhaps to help the carer that he liked with a small amount of money, but she abused her position of trust and completed excessive transfers. Alternatively, he could have knowingly handed over the phone and security credentials to them in order to assist him with his finances, and they took money for themselves. Co-op were able to produce a phone call between Mr D, one of his carers and them prior to his death. The content of the phone call turned out to be for a different business, but it was clear in this call that Mr D needed help engaging with financial businesses due to his impairments. So it is plausible that the carers were needed to genuinely help with his finances, or he said he wanted to give them a gift, and they then helped themselves to more money from his account.

Either of these scenarios would meet the requirements for a charge of fraud. But the relevant regulations say that where this is the case, payments can be considered authorised by Mr D even if he didn't know the extent of the transactions. This is because by informally asking someone to transact on your behalf, you are then bound by the acts of that third party. If Mr D had enabled his carers to appear as if they had his authority to make payment transactions, those transactions are considered authorised even where Mr D didn't ask his carer to make those payments, or didn't know that they had. So, if I were to find it was most likely that Mr D gave his carers his phone and security credentials for at least an earlier transaction and didn't end that authority by getting his phone back or similar, it follows that the disputed transactions can be considered authorised even if it seemed clear Mr D didn't mean for his carers to take so much money from his account. So, if this scenario happened, it would be likely that the estate of Mr D, not Co-op, would be liable for the transactions made by the carer.

Secondly Mr D could have at some point allowed the carers to use his online banking, perhaps for themselves or in order to assist him with his finances, and they took the phone again repeatedly without his knowledge whilst caring for him. This again could very plausibly be the case. If this scenario is what happened, it is likely that any transactions the carers made whilst Mr D had handed over the phone and security credentials would be considered authorised under the relevant regulations, even if the carer exceeded what Mr D had asked them to do, similar to what I have outlined in the previous scenario. This would also be enough to amount to a fraud charge. But if the carer handed the phone and any security credentials back to Mr D, the authority could be considered terminated and so any transactions completed where the carer secretly took the phone again would be considered unauthorised and therefore Co-op would be considered liable in the first instance. However, due to the lack of testimony from Mr D about specific transactions – if this scenario was the one that happened it would be very difficult to know if Mr D had asked his carers to transact on his behalf, and if so, how many times, and when they returned the phone. Without this information it is impossible to determine which of the transactions ought to be considered authorised or unauthorised. It would be impossible to say whether specific transactions were the carer moving money on Mr D's behalf, or doing so but then sending more than instructed, or whether they had stolen the phone without Mr D's knowledge.

The final likely scenario I have considered is that the carer had been able to obtain Mr D's phone and security credentials without his knowledge and completed the transactions without any consent to do so. This also would clearly amount to a fraud. The details and device could have been found in his home if it were recorded somewhere. Afterall, they had full access to his home when they were supposed to be caring for him. Or they could have observed him logging into his device and app. The phone call I heard with Co-op, Mr D and one of the carers does not make me think this is the most likely scenario here. Mr D clearly did need some assistance with financial matters, and I've not seen evidence to suggest there was someone other than his carers who was doing this. And so it follows that he may have required his carers assistance, meaning they could have obtained his phone and security credentials for legitimate purposes. But I do not think this means it is impossible that they obtained them illegitimately. If this scenario was what happened, then the relevant regulations would say that all of the transactions would be considered unauthorised, and Co-op would be liable for them.

Having considered all of these scenarios and all the evidence we have on file, I don't think there is a fair and reasonable way to calculate any possible redress owed by Co-op. I know this will come as a huge disappointment to Mr J – and I want to reiterate that I do believe Mr D was the victim of a cruel fraud by people he had to trust due to his vulnerability. But the problem I have, as outlined in the three scenarios, is that all of these scenarios could meet the specific requirements for a charge of fraud. Further to this, all of these scenarios have evidence to suggest they could have likely been what happened. But it would be difficult to say which was most likely, and without testimony from Mr D regarding what consent he gave to the carers, when any consent was given, and when that consent ended, the difference in the possible redress is anywhere between all transactions and Co-op being liable for no refund at all. So I am very sorry to say, on the evidence that I have now I don't think it would be fair and reasonable to refund these transactions, as it is simply not possible to understand what refund, if any, is owed.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mr D to accept or reject my decision before 15 August 2025.

Katherine Jones
Ombudsman