

The complaint

Mr and Mrs S complain that The Co-operative Bank Plc ('The Co-op') won't refund the money they believe they lost to an authorised push payment ('APP') scam.

The payments were made from Mr and Mrs S's joint account, but for ease, I'll refer only to Mr S throughout my decision.

What happened

The circumstances of the complaint are well known to Mr S and The Co-op, so I don't intend to repeat these in detail here. But I'll provide a brief summary of what's happened.

Around January 2022, Mr S instructed a limited company – which I'll refer to as 'N' – to carry out some building work at his home. Once the work was agreed, Mr S paid a £1,000 deposit to N on 4 February 2022.

N was supposed to start the building work in mid-June 2022 and so Mr S was asked to make a £6,200 payment to N on 1 June 2022, so that materials could be ordered in advance of the start date. After the payment was made, N began making excuses for why it wasn't able to start the building work and it repeatedly moved the start date.

Unfortunately, N didn't start the building work and no materials were received by Mr S. In September 2022, N went into liquidation. Mr S learned that N had a large number of unsecured creditors who, like Mr S, had paid N for goods and services that hadn't been delivered.

Mr S reported the situation to The Co-op to see if there was anything it could do. The Co-op said the situation was a civil dispute between Mr S and N, meaning it couldn't do anything to recover his funds and that it wasn't responsible for reimbursing the loss.

Unhappy with The Co-op's response, Mr S made a complaint, but The Co-op maintained its decision not to reimburse him. So, Mr S referred his complaint to this service.

Our Investigator upheld the complaint in part. They said Mr S had received a service from N in exchange for the first payment and so they didn't think The Co-op needed to refund that payment.

However, our Investigator thought N's behaviour had changed by the time Mr S made the second payment and that this demonstrated a change in N's intentions. They didn't think N still intended to provide the goods and services it was being paid for. So, our Investigator thought Mr S had been the victim of an APP scam, meaning The Co-op reasonably ought to have refunded the second payment, plus interest.

Mr S agreed with our Investigator's findings. However, The Co-op didn't accept what our Investigator said. As an agreement couldn't be reached, the complaint was passed to me to decide.

I didn't agree with our Investigator's opinion and so I issued a provisional decision. In summary, I said I didn't think there was conclusive evidence that Mr S had been the victim of an APP scam, which meant The Co-op couldn't fairly and reasonably be held responsible for refunding either of Mr S's payments.

The Co-op didn't respond, but Mr S said he was disappointed with the outcome of my provisional decision. He said N had been promising to complete the agreed building works, even after it had entered liquidation and that N's director had a history of this behaviour.

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 considered Mr S's comments in response to my provisional decision, I see no reason to depart from my provisional findings which I'll reiterate below.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

"In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. Having done so, I've reached a different outcome to our Investigator. I'll explain why below."

"At the time Mr S made the disputed payments, The Co-op was signed up to the Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'). The CRM Code provides additional protection from APP scams, but only in certain circumstances."

"The CRM Code can only apply where the victim's payment meets its definition of an APP scam. Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

"(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

DS2(2)(b) says it doesn't apply to:

"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier"

"When The Co-op received Mr S's claim, it said the CRM Code didn't apply in these circumstances, because it was a private civil dispute between Mr S and N, rather than an APP scam. For me to say that decision was wrong – and The Co-op should've refunded Mr S's loss in full – I'd first need to be satisfied that Mr S has been the victim of an APP scam."

"The purpose of a payment forms part of the CRM Code definition of an APP scam. As such, the reason Mr S made the payments is a relevant consideration when determining whether the CRM Code applies in these circumstances or not. For me to say the CRM Code applies in this case, I need convincing evidence to demonstrate Mr S was dishonestly deceived about the very purpose of the payments he made."

In other words, I'd need to be reasonably satisfied that it is more likely than not that N wasn't planning to provide the goods and services they were paid for. So, I've carefully considered whether the evidence suggests that N was most likely the legitimate supplier of a service (as The Co-op has argued) or whether the payments meet the CRM Code definition of an APP scam on the basis that the payments were made for a fraudulent purpose.

The first payment

Mr S's first payment was a deposit for future work to be done. Following that payment, Mr S received some plans for the building work he'd instructed N to complete. He also received some brick samples and had additional meetings with N to further discuss and agree the planned works.

So, given N provided goods and services in exchange for the first payment, I think N was more likely than not acting as a legitimate supplier at the time the payment was made. I'm not persuaded the payment was made for a fraudulent purpose and as a result, I'm not persuaded Mr S's first payment should be treated as an APP scam. Therefore, The Co-op can't be held responsible for refunding it under the principles of the CRM Code.

The second payment

Mr S's second payment was to pay for building materials. It's not in dispute that Mr S hasn't received the materials – and I've seen no evidence to suggest N ordered them. So, I've carefully considered the available evidence to decide if N was, more likely than not, still acting as a legitimate supplier at the time the second payment was made.

At the time of the second payment, N was a limited company – and had been for around 18 months. The Liquidator said N had completed some work it had been instructed to carry out. However, the Liquidator alleges that N was using new customers' funds to pay for materials and labour for existing work, rather than using the funds for the specific job the payment had been made towards.

Whilst I don't condone N using new customers' funds for a different project, I'm not persuaded this demonstrates N wasn't still a legitimate supplier at the time of Mr S's second payment, or that it's enough to say N intended to receive payment for a fraudulent purpose.

It's not necessarily unlawful for a company to act in such a way. There's no automatic requirement in a contract like this one that funds paid over have to be used in connection with that specific contract. To my mind, this is more an indication of a company with a severe cashflow problem, rather than one with an intent to defraud.

If N had set out to scam Mr S when the second payment was made, I'd have expected the funds to have been used for personal expenses, rather than being used for business purposes. But the Liquidator of N hasn't alleged that funds were misappropriated in this way.

The Liquidator has said many other creditors had accused N of pressuring them into making payments and then not supplying the materials that were promised. However, Mr S hasn't alleged that he was pressured by N into making the second payment and, prior to him sending those funds, Mr S appeared to be satisfied with how things were progressing with N and that he was happy for N to carry out the building work.

It's most unfortunate that, after Mr S made the second payment, N went into liquidation, and it wasn't able to provide the materials or return Mr S's money. In their statement to the Liquidator, the director of N explained that the business had gone into financial difficulty as a result of the rising costs of staff and materials and that N had taken on more jobs than it could handle. Despite injecting their own personal funds into the business, the director of N had been unable to keep the business running.

So, from the evidence I've seen, I'm not persuaded Mr S's second payment meets the CRM Code definition of an APP scam. It would appear that Mr S paid a legitimate supplier, who unfortunately wasn't able to do the work as a result of entering liquidation and that these circumstances are, more likely than not, a private civil dispute, which is the same conclusion Trading Standards reached when another dissatisfied customer reported N to it.

I appreciate that Mr S's second payment wasn't used for the purpose he intended. However, I'm not persuaded N had no intention of doing the work at the time the payment was made and I note that N didn't enter liquidation for around four months after the payment was made. As a result, there's no conclusive evidence to say N wasn't intending to do the work or that it was no longer acting as a legitimate supplier."

Mr S has explained that even after it went into liquidation, N continued to communicate with him and repeatedly promised to deliver the goods and services Mr S had paid for. Given the financial circumstances N was facing at the time, it doesn't seem like good practice for N to have said this to Mr S. However, I'm not as convinced as I'd need to be that this demonstrates N set out to scam Mr S at the time the payments were made.

If N had set out to scam Mr S from the start, it seems more likely than not that communication would've stopped once Mr S had made the second payment. It's possible, that a scammer in similar circumstances might continue communicating with a victim, with the aim of extracting further funds. However, there's been no suggestion that, during the calls *after* the second payment was made, Mr S was asked for any additional funds for the work to begin. So, by continuing to communicate with Mr S after the payments had been made, N's behaviour isn't indicative of an APP scam taking place.

To my mind, the fact that N was promising to rectify the situation, suggests N didn't want to let down its customers (including Mr S), but hadn't fully appreciated the financial circumstances it was in and how unlikely it was going to be for N to provide Mr S's goods and services.

I'm also mindful that these conversations took place at least four months after the second payment was made, at which time N's financial circumstances had resulted in it entering liquidation. So, as the conversations didn't happen when the payments were made and, as the circumstances of those calls aren't typical of fraudulent behaviour (for the reasons explained above), I can't say that this information suggests Mr S has, more likely than not, been the victim of an APP scam.

I'm sure Mr S was left feeling disappointed and frustrated when N didn't make good on its promises to do the work. However, I'm not persuaded this is conclusive evidence to demonstrate N was operating an APP scam at the time the payments were made.

Mr S has argued that N's director has a history of taking money from customers and not providing the goods and services in exchange. However, I haven't seen any evidence to corroborate Mr S's allegations and I've not been able to find any negative information about N's director's other businesses. As a result, Mr S's comments don't persuade me that he's been the victim of an APP scam.

Whilst I sympathise with Mr S's circumstances, I can't agree the occurrence of an APP scam has been evidenced here. As a result, I'm not persuaded Mr S's payments to N are covered by the CRM Code, and it follows that I don't think The Co-op is required to reimburse any of Mr S's loss.

My final decision

For the reasons given above, and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 28 April 2025.

Liam Davies
Ombudsman