

Complaint

Mr G is unhappy that The Co-operative Bank P.L.C (The Co-op Bank) didn't reimburse him after he reported falling victim to a scam. Mr G is represented in bringing this complaint, but for simplicity's sake I've generally referred to him in the text that follows.

Background

In around 2021, Mr G was persuaded to invest with a company I'll refer to as S. S was marketing something which appeared to be an opportunity to invest in artwork, specifically prints. I understand that S was telling its investors that a broker would work with them to source pieces with investment potential. Between January 2021 and August 2022, he made 11 payments to S. Some time later, Mr G became concerned that he'd fallen victim to a scam. He complained to the Co-op Bank via his professional representatives.

It didn't agree to refund him. Mr G wasn't happy with that and so he referred his complaint to this service. The Co-op Bank explained its decision when it submitted its file. It said it thought that the company Mr G had paid was a legitimate company that had since been liquidated. It was possible Mr G might recover his losses as part of the liquidation process. Although allegations of fraud had been made, it couldn't reach a firm conclusion on whether this was fraudulent until updates were provided by the company's liquidator.

The case was looked at by an Investigator who didn't uphold it. Mr G disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

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

In broad terms, the legal starting point is that a bank is expected to process payments and withdrawals that a customer authorises, in line with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. Mr G authorised the payments in question and is therefore presumed liable at first instance. However, this is not necessarily the end of the matter.

The Co-operative Bank was a signatory to the Contingent Reimbursement Model Code (CRM Code), overseen by the Lending Standards Board. However, these payments aren't covered by the CRM Code because they were card payments. Nonetheless, good industry practice required that The Co-operative Bank be on the lookout for account activity or payments that were unusual or out of character to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect the bank to take some steps to protect their customer.

That obligation, however, isn't engaged unless I'm persuaded that Mr G did indeed fall victim to a scam, rather than having a mere private civil dispute with S. To say that he did, it must be shown that the purpose for which Mr G made the payments and the purpose for which the recipient procured them were different—and that this difference arose due to dishonesty or deception on the part of the recipient.

The key issue, therefore, is the intentions of the recipient at the time the payments were made. While I can't know what their intentions were, I have to look at the other available evidence and attempt to infer what their intentions likely were.

Mr G says that this was an authorised push payment (APP) scam. To support his claim, he provided a copy of a freezing order linked to the recipient's accounts, along with several affidavits, including one from the liquidator. These documents were used in court to support allegations of fraud. I appreciate this will be disappointing for Mr G, but I am not persuaded that the evidence demonstrates this was a scam.

Mr G made several payments to a company for prints, believing he was making a legitimate investment in art. Based on what we do know about how the company operated (including its documented arrangements with artists, printers, and storage providers) I'm satisfied that it's more likely than not that the prints were purchased.

Concerns have been raised about the value and resale potential of the prints. However, I must weigh the fact that, based on what we've seen on other cases concerning S, it's likely that Mr G made the payments on the understanding that specific pieces of art would be purchased and held on his behalf. The evidence supports that the business had contracts in place with artists, printers, and storage facilities, and was operating in a manner consistent with its stated purpose at the time.

It's also important to note that art valuation is subjective, and high mark-ups are not uncommon in this industry. While the mark-up in this case may be higher than usual, the overall evidence suggests that it's likely Mr G's and the company's intentions were broadly aligned at the time the payments were made. Therefore, I don't consider there to be sufficient evidence to conclude that Mr G's payments were the result of an APP scam.

I acknowledge that a freezing order application was heard in relation to S. In that hearing, the judge commented that there was no real secondary market for the art purchased, which contradicts the assurances given to investors. It also appears that, when sales did occur, the company was buying back the art itself to enable investors to make a profit, rather than selling it to new customers. This may have been a tactic to encourage further purchases by creating the illusion of a successful investment. These practices raise questions about how the company was operating.

However, arguably underhand business practices are not sufficient to persuade me that the company intended to defraud Mr G when taking the payments. The judge who granted the freezing order made it clear that the substantive merits of the fraud allegations were not within the scope of that hearing and would need to be considered at trial.

Mr G's representatives pointed to the judge's comment that there was a "*good arguable case*" for fraud. But that legal threshold is relatively low—it does not require a greater than 50% chance that the investment was fraudulent. Therefore, I can't rely on it to make a finding that it was more likely than not that Mr G was scammed.

Mr G also submitted affidavits signed before the freezing order, highlighting sections from the liquidator's first affidavit that mentioned fraud, fraudulent trading, and breach of trust. I've reviewed those sections and the rest of the document. The affidavit also included a "full and frank disclosure" listing potential defences the company might raise. This shows there may be valid explanations for some of the concerns. These are the liquidator's views, and the company might have responded differently had the case gone to trial.

Unfortunately, no trial took place, as the matter was settled out of court. The settlement was made without any admission of guilt or liability, and the company did not accept that it had acted fraudulently. The terms of the settlement are confidential. There are many reasons why parties settle out of court, and it would not be fair to assume the directors of the company did so because they were guilty.

For the sake of completeness, I also considered whether The Co-operative Bank did everything it could to recover Mr G's money. I understand it contacted the bank that operated S's account, but since S was in the process of being liquidated, it couldn't recover any funds that way. I also considered whether it could have raised a chargeback on Mr G's behalf. Unfortunately, I think too much time had passed since the payments were made. The relevant scheme rules generally require that a chargeback claim be raised within 120 days of the transaction.

I don't say any of the above to downplay the significance of what has happened to Mr G. It appears he made an investment in good faith and didn't get what he expected. I have a great deal of sympathy for him and the position he's found himself in. I'm not currently persuaded that there is sufficiently strong evidence that the company defrauded Mr G. If new, material evidence emerges in the future, he would be entitled to raise a new complaint with The Co-op Bank. However, I must decide this complaint based on the evidence currently available. At this time, I am not persuaded that The Co-operative Bank acted incorrectly in treating this as a civil dispute.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 January 2026.

James Kimmitt
Ombudsman