

complaint

Mr S complains The Co-operative Bank Plc ("The Co-op") hasn't dealt with his chargeback request appropriately. He's also unhappy about the way they've investigated and handled his subsequent complaint. Mr S is assisted in bringing this complaint by his son.

background

On 27 April 2017 Mr S made payments from his account with The Co-op to a third party who, for ease of reference, I'll call "the merchant". The payments of £5,000 and £195 were a deposit for construction work, and a payment of £1,953 was a deposit for the provision of patio doors. On 14 June 2017 Mr S contacted The Co-op stating the work hadn't begun as agreed and he wasn't able to contact the merchant. He says The Co-op told him to attempt to resolve the dispute with the merchant directly. But this was unsuccessful, so on 4 August 2017, following a conversation with The Co-op, Mr S completed paperwork to initiate the chargeback request.

The Co-op says they sent the chargeback request on 22 August 2017, and the merchant replied defending it on 11 September 2017. Mr S responded to the defence on 4 October 2017, confirming the dispute should continue. The merchant then responded with further information on 3 November 2017. This stated that Mr S had agreed for work to continue, and provided a copy of a new agreement signed by both parties on 20 October 2017.

On the basis of all of this, The Co-op wrote to Mr S on 23 November 2017, informing him the request for a chargeback was declined.

Mr S asked The Co-op to raise a new dispute on 22 December 2017. The Co-op said that under the card scheme regulations they were unable to attempt a second chargeback on the same payments after one had already been attempted. It advised Mr S to seek external or legal advice.

Mr S then complained to The Co-op.

The Co-op upheld Mr S's complaint overall, but didn't agree with all aspects of it. They said they were unable to uphold the complaint in respect of the chargeback itself, as the dispute process and decisions made on chargebacks are made by the cardholder scheme, within which it had no discretion. And the dispute was actioned as Mr S requested, whilst he also attempted to resolve it with the merchant.

But they did accept they'd caused a two week delay in the complaint being registered and investigated. They apologised for this, and sent Mr S a cheque for £30 compensation.

Mr S didn't accept this and brought the complaint to this service. He asked for The Co-op to restore his account to the position it would have been in had they dealt appropriately with the original chargeback. And he also asked for it to recognise and apologise for its refusal to respond to him by email or secure file transfer about the complaint and tell him how it was going to make it easier for others to complain by email.

Our investigator didn't think he could look at the way The Co-op handled their customer service and the administration of the complaint because this was an unregulated activity, and therefore not within our jurisdiction. He was satisfied The Co-op had taken reasonable

steps to try and recover Mr S's payments via the chargeback process, and that its' actions were fair and reasonable given the circumstances.

Mr S didn't agree. He asked for an ombudsman to review the case, and to deal with all the points raised in his initial complaint and his response to the investigator's view.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I appreciate Mr S feels our investigator hasn't fully understood the complaint. I'd like to reassure him I've looked at everything afresh before reaching an independent view.

In deciding complaints I concentrate on the crux of the complaint and the issues I think are relevant in order to reach a conclusion. That means that I might not investigate or comment on every individual issue or argument each party raises. But it doesn't mean I've ignored them. It's simply that I've decided they're not critical to me reaching a decision.

Mr S has raised several points in his submissions to this service. And it seems to me there are two main aspects to his complaint. Firstly, there's the chargeback itself, and how that was handled and investigated. Secondly, there's the handling by The Co-op of the complaint Mr S's son lodged on his behalf following the unsuccessful outcome of the chargeback.

Where Mr S has expressed concerns about the quality of evidence relied on by The Co-op, I've taken that to also relate to the chargeback request itself – not simply his complaint-handling concerns, which I've dealt with separately below. Mr S thinks this hasn't been adequately addressed, that The Co-op have shown bias in their characterisation of events, and that they've failed to state their scope for action within the chargeback scheme.

the chargeback request

Banks don't *have* to process chargeback requests. They are voluntary. But it's good practice to do so. And, unless there are good reasons, we would normally expect banks to process them. And that's what The Co-op has done here. Most banks, as card issuers, won't take the chargeback further if it's successfully defended. And we wouldn't generally expect a bank to get into challenging a merchant's representations or defence unless it's plainly untrue or where there's no supporting evidence.

It's important to say that when this service considers a chargeback complaint about a bank, we're not deciding whether or not the customer should have won against the merchant. I realise that Mr S remains unhappy with the merchant as, from everything I've seen, it appears the work hasn't progressed beyond initial stages. But what I'm looking at is the dispute between Mr S and The Co-op, not what the merchant did, or didn't do. And The Co-op's job here was to follow the rules of the chargeback scheme – a scheme which is run by the card scheme company – and which runs very strictly to its rules. The Co-op's job wasn't to make a decision on whether or not Mr S had received the building services he'd asked for. That was for the card scheme.

There's no guarantee that claims made under the chargeback process will be successful. It all depends on what the merchant says in response to the request the bank submits. In this case, a chargeback request was made for the three sums that had been debited from Mr S's account on 27 April 2017. The merchant initially defended it on 11 September 2017,

producing a copy of a document signed on 27 April 2017, stating that work was proceeding in line with customer's requirements, and also advising that a further instalment payment of £5,000 had been made by cheque on 1 September 2017 by Mr S.

I've seen Mr S's handwritten note to The Co-op, dated 4 October 2017, responding to the merchant's defence. So I'm satisfied he'd received The Co-op's letter of 29 September 2017 about the rejection of the chargeback, along with the defence evidence from the merchant. And I can see Mr S told The Co-op he'd had a meeting with the merchant on 29 August 2017 where certain elements of the construction were agreed and that he'd paid, by cheque, a further instalment of £1,000 on 1 September 2017, subject to completion of certain works. However, as at 4 October 2017 these remained unfinished.

I'm also satisfied Mr S received The Co-op's letter of 23 November 2017, advising him the chargeback request was declined. The case notes sent by The Co-op record a conversation with Mr S on 30 November 2017, in which he acknowledges this and said there was no problem with it except the people who were doing the work hadn't got confirmation the payment had been refunded to them, so they'd asked him to pay the total remaining balance again before going ahead with any further work.

I know Mr S has no written record, or recollection, of this conversation and thinks it's been incorrectly characterised. But, as I've explained, I'm not required to determine whether or not what he says is true. In this case I think The Co-op did enough when it attempted the chargeback, but unfortunately for Mr S, the merchant successfully defended it. And from everything I've seen, The Co-op have sent Mr S the key documentation and given him an opportunity to respond to it. So I don't think they've done anything wrong here.

how Mr S's complaint has been handled and investigated

This service's role is to look at specific complaints and look to put things right where we feel something's gone wrong. But we don't have the power to look at every complaint we receive.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP) written by the Financial Conduct Authority ("FCA") in accordance with the powers it derives from the FSMA. These form part of the FCA handbook.

DISP 2.3.1 sets out what complaints this service can and can't look at, which are as follows:

- Regulated activities
- Payment services
- Lending money secured by charge on land
- Lending money
- Paying money on a plastic card
- Providing ancillary banking services

Or any ancillary activities carried on by The Co-op in connection with the activities listed above.

The handling of complaints is not itself a regulated activity. It's something the FCA requires banks and others to do. But that isn't enough to make it a "regulated activity" within the meaning of the rule – that is, one of the list of activities in DISP 2.3.1, set out above.

So whilst I know it will come as a disappointment to Mr S, like our investigator I don't think I can look at the part of Mr S's complaint about the investigation and handling of his complaint. And I hope I've clearly explained my reasons for thinking that.

The Co-op has said it will pay £30 in compensation for the delay of the registration and outcome of the complaint. So Mr S should contact The Co-op directly if he wants to accept this offer.

I appreciate this leaves Mr S in a difficult position. I can understand he feels strongly about what's happened, and he may want to pursue the matter further through other routes. But my decision brings to an end what we – in trying to resolve his dispute with The Co-op informally in the context of the complaint he's brought to us – can do for him. I'm sorry if this disappoints Mr S.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 January 2019.

Annabel O'Sullivan
ombudsman