

The complaint

Ms S complains that The Co-operative Bank Plc ('The Co-op') failed to refund a payment from her account as a result of a scam.

What happened

What Ms S says

Ms S was a live-in carer at the time of the incident. She looked after someone I'll refer to as K. Whilst at K's home, K received a call from someone impersonating a police officer. Ms S was asked to speak with this person and was told that an investigation into bank fraud was underway and that both her and K had accounts at branches of different banks where the cashiers and other members of staff were involved in fraud.

Ms S was asked to confirm that the caller was a genuine police officer by dialling the emergency number (999). Ms S called the number and was put through to another person who confirmed that the investigation was indeed genuine. In reality, the scammers had stayed on the line and answered the call using a different person to convince Ms S that they were real police officers.

Ms S and K were asked to help with the investigation which would involve withdrawing cash from their respective bank accounts so that the money could be collected and checked for evidence. K was given a cover story to tell the cashier, and along with Ms S went to his local branch. When they went inside and asked for cash, the cashier thought that something was suspicious about the story and wouldn't hand over any cash.

Ms S updated the scammer with what had happened, and he directed them to Ms S's bank which was nearby. Ms S was told to leave the phone call open so the conversation could be listened to whilst at the counter and "recorded for evidence". She was told a different cover story to tell the cashier. Ms S, who is from a different country, was told to explain that she had to withdraw £9,800 in cash for a recent bereavement in her family. She was told that the cashier would attempt to convince them about scams, but they were involved in the fraud and Ms S should insist on receiving her money. Ms S was given additional details about needing the payment in cash, rather than a bank transfer.

Ms S went into the branch late in the afternoon and the counter staff were asked for £9,800 and Ms S gave them the story about a bereavement. Staff discussed the withdrawal and could only give Ms S £5,000 due to the availability of funds in the till at that time of day. They discussed the possibility of scams with Ms S and told her about a bereavement scam that had taken place the week before. During the withdrawal, Ms S stepped away to talk on the phone before accepting the available funds and arranged to come back in the morning for the remaining money.

Ms S was told to return home with K and a police courier would collect the cash to have it checked for evidence. Ms S was told that her account was safe, and the funds were secured in police accounts whilst the investigation continued. The courier turned up later that evening and collected the cash. Once this had taken place, Ms S explained that she had time to think

about what had happened and began to feel uneasy. Ms S attempted to confirm the crime reference number she'd been given earlier and spoke with her colleague who advised calling the police. A genuine police officer arrived later that evening and was able to explain that Ms S had been scammed.

The scammers called Ms S the next morning to persuade her to collect the remaining money and Ms S recorded the conversation. Eventually she stopped responding to their calls. Ms S then approached The Co-op for a refund because she'd been scammed.

What The Co-op said

The Co-op looked into what had happened and wouldn't refund Ms S because they believed they'd acted appropriately when she came into the branch and discussed scams with her, highlighting that a similar scam had happened recently. Because Ms S wasn't acting unusually and was happy to withdraw the money – The Co-op didn't think they could have done anything more to protect her.

The investigation so far

Ms S then brought her complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who thought that The Co-op could have done more to protect Ms S by invoking the Banking Protocol and calling the (genuine) police to talk with Ms S. It was recommended that Ms S receive a refund of the £5,000 she lost, plus interest.

The Co-op disagreed and believed they'd done enough at the time. They explained there was no need to invoke the protocol because they were satisfied by the answers they received from Ms S. The Co-op believed they didn't have reason to further suspect Ms S was a victim of an ongoing scam. They asked for an Ombudsman to review the complaint, which has now been passed to me for a decision.

I issued a provisional decision where I said:

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

Having done so I'm currently minded to uphold this complaint and I'll explain why.

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.

In broad terms, the starting position at law is that a bank is expected to process cash withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

Both sides accept that the withdrawal was authorised, even though Ms S was the unwitting victim of a sophisticated scam. Given the terms and conditions of a typical bank account, she is presumed liable for the withdrawals in the first instance.

But that is not the end of the story. Taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry

practice at the time, I consider The Co-op should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.*

In this case, I need to decide whether The Co-op acted fairly and reasonably in its dealings with Ms S when she attempted to make a cash withdrawal of £9,800, or whether it should have done more than it did.

Of particular relevance in this case is the Banking Protocol — a multi-agency initiative between the police, financial sector organisations (including banks, building societies and the post office) and Trading Standards ‘aimed at identifying customers who are in the process of being defrauded and implementing safeguarding procedures to prevent their repeat victimisation and further loss of funds’. It has been fully in force nationwide since March 2018, and I consider it to have been good industry practice at the time of this scam.

In broad terms, the Banking Protocol requires branch staff to:

- *Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.*
- *Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.*
- *Consider the responses against what they expect as normal activity on the individual’s account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.*
- *If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the police immediately who will attend the branch to speak to the customer.*

The Banking Protocol procedures are not limited to elderly or vulnerable customers, or certain fraud types, and bank staff are encouraged to contact the police even if they are not sure.

I also consider it fair to say that the multi-step nature of the Banking Protocol recognises that there may be situations where the customer provides — as a result of social engineering — a ‘false’ cover story, and that the onus is on the bank staff/manager to make a judgement about whether the customer could be a victim of fraud (and not to rely on the customer’s

story or assurances).

But the starting point under the Banking Protocol is that a bank should be identifying any transactions that appear out of character or unusual for a customer. I've firstly considered, in relation to the request for a £9,800 cash withdrawal, whether The Co-op did enough to identify and respond appropriately.

Although Ms S eventually withdrew only £5,000, her intent when she went into the branch was to take out £9,800 – she was only prevented from doing so because of shortages of available cash at the tills.

It was on that basis that The Co-op based their assessment of Ms S's request. Ms S hadn't asked for a similar withdrawal before from her account. The largest previous withdrawal I've seen was £2,300. The account was rarely used and the request for £9,800 was unusual, I'd expect The Co-op to view it as such and can see that it did.

Whilst there isn't complete agreement about what was discussed in the branch, it's apparent that the following was covered:

- *Ms S explained she needed the money urgently for a family bereavement.*
- *The money was for family to take back to their home country in cash.*
- *The money couldn't be sent via a bank transfer because her family don't have UK bank accounts.*
- *Ms S confirmed she wasn't pressured into making the withdrawal.*
- *The Co-op described a similar scam that had happened in branch the week before.*
- *A warning was given about fraud and scams.*

The Co-op believe that they couldn't have done anything more based on the answers and demeanour of Ms S, but I disagree. I don't think that the bank did enough here to probe the answers they were given and understand the detail about why Ms S needed this payment urgently. From the discussion held, I don't think that The Co-op could have reasonably been satisfied that Ms S wasn't at risk of financial harm.

The Co-op argue that they didn't have any reason to invoke the protocol because they were satisfied by the answers and demeanour presented by Ms S. But here I think the cover story presented to them was so similar to a recent scam that happened in the same branch that The Co-op should have been alerted to the very real possibility that Ms S was also at risk of financial harm. There were additional circumstances about her visit that I think should have raised warning flags with The Co-op, including:

- *Ms S hadn't pre-booked the withdrawal.*
- *She turned up late in the day for an urgent withdrawal.*
- *She was visiting a branch that wasn't local to her.*
- *There was a lack of detail about what she needed the money for.*
- *She took a phone call midway through the withdrawal.*
- *Why couldn't the payment be sent to her relative's international bank account?*

The Co-op could have asked far more probing questions given they'd experienced a similar fraud at the same branch a week or so earlier. I appreciate they mentioned it to Ms S, but I don't think this was enough. The Co-op should be aware that victims of these scams are given cover stories that include the branch staff being involved in the "crime".

As far as Ms S was concerned, staff in the branch were involved in a serious crime and she was helping the authorities. She'd already tested the scammer's claim by calling the police

back but was fooled into believing she was speaking to the genuine police. Whilst I don't think the branch staff could reasonably have convinced Ms S that she was the potential victim of a scam, I do think there was enough information for The Co-op to have informed the local police to attend under the protocol.

The Co-Op were the ones in a position to objectively look at the information they'd received from Ms S, they were also the ones that knew about these types of scams and had the means to prevent them. The Co-op staff also had recent experience of a similar scam. If they'd called the police, I think it's likely that the scam would have been uncovered as it would have been a fairly simple matter for a genuine policeman to disprove the "investigation" Ms S believed she was helping in.

I've also thought about whether Ms S contributed to her own losses and whether this should be reflected in the amount that The Co-op refunds. The scam presented to Ms S involved several people and was comprehensive in its preparation to convince Ms S she was helping the authorities. Ms S attempted to corroborate the circumstances when she was first called by the "policeman", which satisfied Ms S she was dealing with a genuine investigation. The scammers provided a cover story that was tailored to her individual circumstances and kept her on the phone, thereby giving her no time to take a breath and think about what she was being asked about. It was only later that day after the money had been collected that she started to question what had happened and eventually found that she'd been scammed. She cancelled the further cash request and informed the police and made a recording of the scammer who was trying to convince her to go back and obtain the rest of the cash.

I don't think that Ms S was irresponsible with how she acted because she'd been pulled into a detailed scam that anticipated how she'd react and provided detailed briefings about how The Co-op would approach her request for a withdrawal. So, I don't think it's reasonable to require her to be responsible for any of her losses and The Co-op should refund her without any reduction. The cash was withdrawn from a savings account and there hasn't been any evidence that the money would have been moved for another purpose, so I think it's reasonable that the refund includes interest matching the account it was taken from.

Overall, I accept that Ms S was subject to a sophisticated scam and to an extent, the scammers gave her answers to how The Co-op would approach her withdrawal. They'd designed a scam that put her in a position where she'd mistrust the staff members – but what they couldn't control is The Co-ops use of the Banking Protocol, which is designed to overcome these types of scams. Whilst it may have been sophisticated, it also would have been a relatively simple matter for a genuine police officer to demonstrate to Ms S that she was the victim of a scam if The Co-op had invoked the protocol, which I think they should have done.

I've considered whether the Co-Op should also pay Ms S for the way they handled this issue. Here, I recognise it was a scammer who stole her money, but I think The Co-op added to the stress and worry felt by Ms S by not calling the police. This led not only to the loss of her funds, but the unnecessary continuation of the scam, leading to a visit by one of the scammers to the home that both Ms S and K lived in.

Ms S was worried about the visit and that the criminals had been able to identify her address and had seen what she looked like. I do think the visit could have been prevented and the additional stress Ms S experienced reduced if the Banking Protocol had been fully utilised. I'm currently minded to award Ms S £250 for the stress she experienced as a result of The Co-op's approach to her situation as well as the substantive refund of £5,000 including interest at the account rate for the period it was taken from the account until it's repaid.

I invited Ms S and The Co-op to give me any more evidence and information they wanted me to consider before issuing my final decision. The Co-op provided a copy of their standard script when customers ask for a withdrawal in Branch. Ms S didn't have anything further to add about her complaint and accepted my provisional 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.

Having done so and having considered the additional information supplied by The Co-op, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Regarding the additional information sent in by The Co-op, I've thought about what the document contains, and the questions asked of a customer when seeking a withdrawal. It doesn't change my thoughts on the complaint, and that's because as I've previously explained, the circumstances of the withdrawal were sufficiently suspicious for further action to be taken by The Co-op.

Putting things right

The Co-op should now refund Ms S the £5,000 she lost as a result of the scam, including interest at the account rate for the period it was taken from the account until the date it's repaid. The Co-op should pay Ms S £250 for the unnecessary stress she experienced.

My final decision

My final decision is that I uphold this complaint against The Co-operative Bank Plc and they're instructed to settle it as set out above.

If The Co-op considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Ms S how much it's taken off. It should also give Ms S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 1 February 2023.

David Perry
Ombudsman