

## **The complaint**

Mr and Mrs K are unhappy because Coutts & Company (Coutts) did not reimburse the money they transferred to a fraudster.

## **What happened**

Mr and Mrs K are represented in this case by a family member, Mr K.

In March 2021 Mr and Mrs K received a call from someone who said he was calling from a police station. They were told that they suspected an employee of Coutts was stealing money from Mr and Mrs K's joint account. The case was so serious it was being dealt with by Scotland Yard and they were put through to an investigator there. Mr and Mrs K were told that to help catch those involved they needed to buy gold which would be collected from them. The gold would then be used in a sting operation to bring the criminal to justice. Mr and Mrs K were told they'd receive full reimbursement plus a reward for helping the police.

Mrs and Mrs K received numerous calls reassuring them that the investigation was being treated as a priority. The caller also told them that as the matter was sensitive, they shouldn't discuss it with anyone.

Mr K called Coutts to make the payments for the gold from his joint account with Mrs K. He paid £41,200 on 31 March 2021 and £83,300 on 1 April 2021. The day after each order of gold was delivered to Mr and Mrs K's home a courier came and collected it. Mr and Mrs K realised they'd been the victims of a scam on 12 April when they didn't receive a promised call from the police. At this stage they reported the matter to the police and the following day called Coutts.

Coutts hasn't reimbursed the amount Mr and Mrs K lost. It says that the payments weren't scam payments as Mr K paid a genuine company for gold that he received. His point of loss was later, when Mr and Mrs K handed the gold over to fraudsters. For this reason, Coutts hadn't tried to recover the lost funds. Coutts also said that at the time of the first payment it provided a scam warning and that it's not its responsibility to question the legitimacy of a payment a customer has authorised.

### *Our investigation so far*

The investigator who considered this complaint recommended that Coutts pay Mr and Mrs K 50% of their loss plus interest. She said that Coutts had a responsibility to look out for unusual and out of character payments and flagged both payments. The payments were unusual as they were for higher than normal amounts and Coutts should have taken more care given Mr K's age. The investigator went on to say that the questions asked in the calls when the payments were made didn't go far enough. If Coutts had asked the kind of questions it should have the scam would have unravelled or Coutts would have had sufficient concerns not to make the payments during the calls.

But Mr K should also bear some responsibility for his loss as there were various red flags including the fact there was no explanation for how buying gold would help catch the fraudster(s). Mr K also received a scam call months before and at this stage he called Coutts and the loss was prevented.

Coutts agreed with the investigator's findings, but Mr and Mrs K didn't. Through their representatives they said:

- Coutts didn't adhere to the Banking Protocol which they say applied to payments made by phone at the time. Coutts should have refused to make the payments or told Mr K to go into branch and invoked the Protocol and called the police.
- Having listened to Mr K's calls with Coutts it was clear he was nervous and hesitant, and Coutts should have picked up on this and prevented the scam from taking place.
- Everything about the payments was out of character for Mr K, who was in his mid-eighties at the time.
- Mr K was a kindly elderly gentleman who was trusting and risk adverse. He simply believed he was doing the right thing in helping the police. And his inability to articulate how the police operation would work was based on his trust in authority and the fact he was told it was a covert operation. Mr K wouldn't call Coutts, as he was told it was culpable.
- Mr K had banked with Coutts for many years and his profile should have been well known to it.
- Mr K referred me to a case study on our website. He says the facts are similar, but the customer was awarded a full refund.

### **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.

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 be good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, 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 Coutts 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, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to consider whether Coutts acted fairly and reasonably in its dealings with Mr K when he authorised the payments from his joint account or whether it could and should have done more before processing them.

*Did Coutts act fairly and reasonably in Mr and Mrs K's case?*

I note Coutts' point about the point of loss in this case. But the gold was bought as part of a sophisticated scam. Coutts also has a responsibility to be on the lookout for unusual and out of character transactions. So I've reviewed Mr and Mrs K's statements for the 12 month period before the scam transactions. Having done so, I'm satisfied the payments were unusual and out of character and so Coutts should have asked Mr and Mrs K proportionate questions about them to satisfy itself they weren't at risk of financial harm. The first payment was to a new payee and was for a significantly greater sum than any previous transactions. Coutts should also have been aware that fraudsters often target elderly people and so at 85 years old, Mr K was at greater risk of being scammed.

I've gone on to consider what was discussed when Mr K asked Coutts to make the first payment on 31 March 2021. Having done so, I'm not satisfied Coutts asked the proportionate questions I'd expect.

Mr K explained in the call that he was buying gold bullion bars. The agent went on to say,

*"I do have to check that you haven't been instructed to make this payment by anyone claiming to be the bank, the police..."*

Mr K said it was a personal investment. No further questions were asked.

I'm aware that Mr K wasn't truthful in his response to the above comment and that he was told by the scammer not to disclose the investigation to anyone. It's well known that scammers will convince consumers to have a cover story with various degrees of detail and good industry practice encourages banks to be on the look-out for this and to ask questions. Mr K wasn't even asked a question but was provided with a statement.

I don't think the conversation with Mr K went far enough. He wasn't asked any questions about the investment in gold such as why he had decided to do it, what made him invest such large sums in gold, what research he had done and what he planned to do with the gold once bought. Mr K also wasn't provided with any scam warnings or advised of the common types of scam that could be involved or of how to protect himself.

I've also thought about what I think would most likely have happened had Coutts asked the kind of questions I think it should have. On balance, I'm persuaded that had Coutts asked more detailed questions about the payments the scam would have been uncovered or Coutts should have declined to make the payment during the call and asked Mr K to attend a branch. I don't consider Mr K would have been able to provide plausible answers that would have satisfied Coutts that Mr and Mrs K weren't at risk of financial harm. Overall, I'm satisfied that Coutts are at least partly responsible for Mr and Mrs K's loss.

It follows that if the first payment was prevented the second payment wouldn't have been made. For the sake of completeness though, I consider that Coutts should have had concerns about a second payment of such a large sum in a matter of days. But in the call when the payment was made Coutts didn't ask any questions about the reason for it or provide any scam warnings.

Mr and Mrs K have referred to the Banking Protocol and said it should have been invoked. The Banking Protocol currently only applies to payments made in branch. Whilst there are plans to extend it to other types of payment, this wasn't the case when Mr and Mrs K fell victim to this scam. Mr and Mrs K have also referred to the fact Mr K sounded nervous and hesitant in phone calls with Coutts and it should have picked up on this. I understand that Mr and Mrs K's family know them well so will pick up on changes in demeanour, but I don't think it's reasonable to expect Coutts staff who answer customer calls to be able to do so. I've also listened to the calls and don't consider Mr K sounded nervous.

*Should Mr and Mrs K bear some responsibility for their loss?*

Finally, I've considered whether Mr and Mrs K should also bear some responsibility for their loss. I appreciate that Mr K respects authority and wouldn't want to question the police. I'm also persuaded he thought he was doing the right thing. But I don't believe Mr K was given or sought an explanation as to how buying gold would help a police investigation into staff at Coutts. I consider a reasonable person would question this and take additional steps to check the veracity of what the scammer said before spending most of their savings on gold that was handed to an unknown third party. I'm also concerned by the fact there was no clear plan for how Mr and Mrs K would get their money back and note that Mr and Mrs K weren't provided with any documentation in respect of this or any other aspect of the scam.

A few months before Mr K fell victim to this scam, he received some scam calls. He contacted Coutts to check whether what he was told by the scammer was correct and was told he did the right thing to hang up. So I think Mr K was aware that fraudsters lie to victims to persuade them to give them money and should have taken more care.

Overall, I'm persuaded Mr and Mrs K should bear some responsibility for their loss too and so Mr and Mrs K should receive 50% of what they lost in this scam.

In response to the investigator's view Mr and Mrs K referred me to a case study on our website and said that the circumstances were very similar to theirs, but the customer was awarded a full refund. My role is to decide Mr and Mrs K's complaint based on the individual circumstances of it. I'm satisfied that the circumstances of Mr and Mrs K's complaint differ from those set out in the case study and that a 50% refund is fair and reasonable.

#### *Recovery*

I don't consider there was anything Coutts could have done to recover Mr and Mrs K's funds. The payments were made to a genuine provider of gold and in return Mr and Mrs K received the gold they paid for.

#### *Interest*

I can see that the funds Mr and Mrs K lost when they bought the gold were transferred into the account to fund the transactions. So interest should be paid at the rate applicable to the account the funds were in before the transfer and should be paid from the dates of each payment to the date of settlement.

#### **My final decision**

My final decision is that Coutts & Company should:

- Refund 50% of Mr and Mrs K's losses (£62,250);
- Pay interest on the above sum at account interest rate as set out above from the dates of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K, Mr K and Mrs K to accept or reject my decision before 7 July 2022.

Jay Hadfield  
**Ombudsman**