

The complaint

Mrs G complains that the Co-operative Bank Plc (Co-op) won't refund the money she lost when she was the victim of a scam.

What happened

Mrs G was looking to buy a vehicle. She found one that met her needs on the online marketplace of a social media site. The vehicle was for sale at £4,300 and Mrs G agreed to buy the vehicle, paying £4,000 in advance with the remainder due on delivery.

The seller initially asked Mrs G to pay a Spanish bank account, but when Mrs G questioned this, she was given details of a UK bank account to pay. Mrs G says she did various checks on the vehicle, including checking with the DVLA whether the vehicle was taxed and carrying out a check for any outstanding finance on the vehicle. On discovering that the vehicle had been off the road for quite some time, Mrs G questioned this with the seller and was told it had been bought at auction after being seized and was kept in a warehouse, so she would not be able to view it in person. But Mrs G was told there was a buy-back guarantee if she was unhappy with the vehicle after it had been delivered.

Mrs G made the payment for £4,000 on 28 July 2023, via bank transfer, and was expecting the vehicle to be delivered on 3 August 2023. When it did not arrive, and she was unable to make any further contact with the seller, she realised that she had been scammed, and contacted Co-op to tell it what had happened.

Co-op considered Mrs G's scam claim under the Contingent Reimbursement Model Code (the CRM Code) but felt it had met its obligations to her under the Code and that Mrs G had not had a reasonable basis for believing the sale was legitimate. It therefore declined to refund her loss. Mrs G was unhappy with Co-op's response, so she referred her complaint to our service.

The investigator who considered this complaint agreed that Co-op had acted fairly, they did not consider that Mrs G was entitled to reimbursement of her loss under the CRM Code. Mrs G didn't agree with the investigator's findings, she maintained that the price of the vehicle had been reasonable and that she had carried out appropriate checks to satisfy herself that the sale was legitimate.

As no agreement could be reached, the complaint has been passed to me to decide.

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 is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mrs G authorised the payment. So, the relevant regulations (and the terms of her account) make her responsible for payments she's made herself in the first instance.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

I've considered whether Co-op should have reimbursed Mrs G in full under the provisions of the CRM Code and whether it ought to have done more to protect her from the possibility of financial harm from fraud.

There's no dispute here that Mrs G was tricked into making the payment and is an innocent victim. But this isn't enough for her to receive a refund under the CRM Code. Under the CRM Code, a bank may choose not to reimburse a customer in full if it has met its obligations, and if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but they do not apply in this case.

I am also mindful that when Mrs G made this payment, Co-op should fairly and reasonably also 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). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

Regarding Co-op's obligations to Mrs G, the CRM Code says that a bank is required to provide an effective warning only where it identifies an APP scam risk, which it should do by considering the normal transactional data of the account and customer behaviour. Looking at the payment Mrs G made here, I don't think it would have appeared so unusual or out of character when compared with her previous account activity that the payment would have appeared particularly suspicious to the bank. Co-op wouldn't have been required to provide an effective warning unless other risk factors were present, which I don't find they were in this case.

Co-op did provide some warnings to Mrs G during the payment process, and those do not, in my view, meet the definition of an effective warning under the CRM Code. But given that I don't consider Co-op was required to provide an effective warning in the circumstances of this case, I remain satisfied that Co-op met its obligations to Mrs G under the CRM Code.

I then need to consider whether Mrs G acted reasonably here. I've thought about the steps Mrs G says she took to reassure herself about the legitimacy of the sale and whether it was reasonable for her to proceed with the payment.

Having done so, while I know it will come as a disappointment to Mrs G, I am not persuaded

that she had a reasonable basis for believing that the payee was the person she was expecting to pay, the payment was for genuine goods or services or the person she transacted with was legitimate. I say this because:

- The vehicle Mrs G was buying was significantly cheaper than the official market valuation for similar vehicles. I appreciate that Mrs G has found various online adverts for the same type of vehicle at a lower value, but many of those appear to be for vehicles with much higher mileage. Overall, I think the car was, at best, at the very bottom end of reasonable prices for this kind of vehicle.
- Mrs G has said she did some checks on the vehicle – with the DVLA to confirm that it existed and was taxed (it was registered as SORN at the time) and to ensure there was no outstanding finance. But none of these checks identified who the true owner of the vehicle was. And the seller appears to have stated that a V5C (the vehicle logbook, which would identify the current owner) was available but I can't see that Mrs G asked to see a copy of this.
- Mrs G asked to see the vehicle but was told that was not possible, yet I can't see that she then asked for any other evidence such as photos or a video that would have shown that the seller had possession of the vehicle.
- Mrs G says she asked to pay via card or by Paypal but was refused. She was also initially told she should pay a Spanish bank account, this was later changed to a UK account but I've seen no explanation for why a Spanish account was initially given.
- Mrs G says she did checks on the company that was selling the vehicle, but these checks would have identified that it was a freight company, not registered as a business engaged in vehicle sales. And in any case, Mrs G then paid a different company altogether when making the transfer.

While each of these points alone may not have been enough to cause concern, I think that as a whole the situation should have given Mrs G pause for thought, and that it would have been reasonable for her to insist on further checks or evidence of the legitimacy of the sale before agreeing to pay such a large amount for a vehicle she had not seen in person. So, it's the combination of these factors that leads me to consider Mrs G didn't have a reasonable basis for belief. It follows that I think Co-op has correctly identified that this exception to reimbursement under the CRM Code applies.

I am also satisfied that Co-op did what it could to recover any of Mrs G's funds remaining in the recipient account. Co-op has shown that it took steps to recover those funds within a reasonable time of being informed of the scam, but by that stage no funds remained.

Overall, whilst I'm sorry to hear about this scam and Mrs G's loss, I can't reasonably ask Co-op to reimburse her, given that I am satisfied it has applied the CRM Code correctly.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 19 June 2024.

Sophie Mitchell
Ombudsman