

## The complaint

Mr M is unhappy Starling Bank Limited hasn't refunded money he sent to a fraudster.

## What happened

The facts of this case are well-known to both parties, so I don't need to repeat them at length here. In summary:

- Mr M was looking online for a vehicle to purchase.
- He visited a website which claimed to be selling vehicles at reduced prices due to them having been repossessed.
- After carrying out some research on the vehicle and the company, he was satisfied the sale was genuine.
- He agreed to the purchase on the basis that the vehicle would be delivered, and his money would be held by a third party until he'd had a chance to inspect the vehicle.
- Unfortunately, the seller wasn't legitimate and Mr M sent £4,653 to a fraudster.
- After the vehicle failed to arrive, he contacted Starling to report the scam.

The case was considered under the Contingent Reimbursement Model Code (CRM). This is a voluntary scheme Starling has signed up to, designed to reimburse customers that have fallen victim to a scam. The starting position under the Code is for a customer to be refunded. A firm might choose not to refund if it establishes that a customer has not met their requisite level of care. In making such an assessment, a firm may consider whether the customer:

- ignored an effective warning;
- made the payment without having a reasonable basis for belief that it was for legitimate purposes; or
- has been grossly negligent.

Starling was of the view that Mr M had ignored an effective warning and didn't have a reasonable basis for belief in making the payment – so it declined to provide a refund. In summary, it has said:

- The price of the vehicle was too good to be true, even taking into account the claim it had been repossessed.
- Mr M had not seen the vehicle in person and paid upfront rather than paying a deposit.
- The email address Mr M used to contact the business didn't match the name of the website and there is negative information relating to the email address and business online.
- Mr M did not receive any paperwork for the vehicle and there was very limited communication between him and the seller before the purchase went ahead.

- A tailored and specific warning had been provided to Mr M during the payment journey.

It also contacted the receiving bank to try to recover the money, but no funds remained in the recipient account.

Mr M brought his complaint to our service as he wasn't happy with Starling's decision. One of our investigators looked into it and recommended the complaint be upheld.

Our investigator thought the warning Starling provided wasn't effective. They noted that Mr M had followed steps similar to those suggested in the warning, so didn't think it was unreasonable for him to have proceeded after reading it. Other elements of the warning, they argued, were not relevant to his circumstances – he hadn't been put under any pressure to make the payment or been discouraged from using a different method of payment.

They didn't think that Mr M had lacked a reasonable basis for belief either – pointing to the sophisticated nature of the car seller's website and plausible reason given for the price of the vehicle. They were also satisfied with the checks Mr M had done on both the company and the vehicle. While acknowledging that Mr M could have taken further steps, they didn't think this was a reasonable expectation on a layperson. Finally, they thought Mr M would have been reassured by having previously purchased a vehicle in a similar way.

The investigator said Starling ought to have reimbursed Mr M at the time he made his claim together with interest on the refund at the originating account rate from the date it declined his claim to the date of settlement.

The investigator's findings were sent to both parties on 28 July 2021 with a deadline for responding of 26 August 2021. That deadline has passed and Starling has failed to respond. As such, the case has been escalated to me for a final 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.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the *Financial Conduct Authority Handbook* – that we may give case-management directions and fix or extend deadlines; and that we may:

*...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;*

And that...

*If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

I've therefore concluded that, in the absence of a response from Starling to the investigator's initial assessment, it is fair and reasonable to proceed on the basis of the evidence we already have.

I've considered whether, under the CRM, Mr M ought to have been reimbursed when he notified Starling of the scam. In doing so, I've considered whether or not he met his requisite

level of care. I believe he did, for substantively the same reasons the investigator has already explained, so it would have been fair and reasonable for Mr M to have received a full refund at the time.

As the funds came from Mr M's current account and it is clear that he was going to use the money for a specific purpose, I'm satisfied he's been deprived of the use of those funds. So, I've decided that Starling should, in addition to providing a refund of the money lost, pay interest at 8% simple per annum on the refund from the date it declined his claim under the CRM to the date of settlement.

### **My final decision**

For the reasons set out by the investigator and above, I've decided that Mr M ought reasonably to have been refunded under the CRM. I therefore direct Starling Bank Limited to pay Mr M:

- the money he lost – £4,653 – within 28 days of receiving notification of his acceptance of my final decision; plus
- 8% simple interest per year on that amount (less any tax properly deductible) from the date the bank declined Mr M's claim under the CRM to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 September 2021.

Rich Drury  
**Ombudsman**