

## **The complaint**

Mr J complains that Starling Bank Limited (Starling) won't refund payments he made after falling victim to a scam.

## **What happened**

In April 2020, Mr J was contacted via a community website by an individual I'll refer to as A. A was looking to exchange Korean Won for Great British Pounds. Mr J says that he'd used the same website for that purpose previously with no problems. A told him that she lived far away so they couldn't do the exchange face to face but if they did it online, she would send him her photo, passport and ID cards to prove she was real.

They agreed to the swap and Mr J was to send her £6,000 in exchange for the Korean Won.

Mr J sent the first payment of £3,000 on 3 April 2020. He says A sent him a screen shot showing the Korean Won payment she'd made to him was pending with her bank. She told Mr J she desperately needed the rest of the money but told him "her bank had a limit so the funds hadn't gone through". So, Mr J sent the second payment of £3,000 on 7 April 2020.

Between 8 April and 5 June Mr J pursued A and tried to get his money back. Initially he wanted the foreign currency they agreed to in the swap, but eventually just asked A to send back the £6,000 he'd transferred to her. Mr J says he did receive around £190 worth of foreign currency from A during that time.

After numerous promises of payment and excuses as to why the payments weren't going through, Mr J contact Starling and asked them to recover his funds. Starling told Mr J they were unable to assist him and that he should pursue the funds through the courts and Action Fraud.

As a result, Mr J raised a county court case against A. In the defendant's statement, A admitted she owed Mr J the money and agreed to pay him £6,499.42 no later than 19 June 2020. This included the £6,000 payment as well as court costs and interest.

When A didn't pay on the due date Mr J engaged bailiffs to enforce the court order. The bailiffs attended the registered address A had given the court but found she didn't live there. They called A but she refused to provide any forwarding information. A third party told the bailiffs that A was living in a shelter. In May 2021 Mr J received a letter telling him that there was no further action that could be taken on the case as they couldn't locate A.

Mr J got back in touch with Starling and raised a complaint. Starling investigated but declined to refund Mr J saying they'd contacted the beneficiary bank who declined to return the funds, saying it was a civil matter.

Mr J wasn't happy with the response from Starling, so he brought a complaint to our service.

An investigator looked into Mr J's complaint and ultimately upheld it. They were persuaded A had set out with the intention to scam Mr J, therefore his claim was covered by the Contingent Reimbursement Model (the CRM Code). The investigator felt Starling hadn't met their obligations under the code, as they didn't provide an effective warning when Mr J made the payments. However, they felt Mr J should share responsibility under the CRM Code for the second payment as he didn't have a reasonable basis for believing the transaction was genuine, as he hadn't received any of the funds for the first payment. On that basis, the investigator recommended that Starling refund 100% of the first payment and 50% of the second payment. They also awarded interest on the refund at the rate of 8% simple.

Starling responded and disagreed in part with the investigator's opinion. They agreed to refund 100% of the first payment and pay interest on that refund. But they felt the warning they'd given Mr J was effective. Also, they raised an argument that if we didn't think Mr J had a reasonable basis of belief for making the second payment, they didn't understand why we were recommending they refund 50% of that payment. As well, they raised concerns about Mr J potentially receiving double benefit, saying he could get paid under the county court judgement as well.

As Starling disagreed the case was passed to me to review.

### **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.

Starling are a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM Code) which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Starling says one of those exceptions apply in this case.

Starling have already agreed with the investigator's opinion that Mr J was the victim of a scam, rather than his interaction with A being considered a civil dispute. For completeness, I'm also satisfied that Mr J was the victim of a scam. From what I've seen I'm persuaded that A set out with the intention of scamming Mr J, taking into account that she sent him a faked screen shot showing her making a payment to him in order to convince him to send her the second payment. She's also avoided all attempts to try and repay the money and provided false information to the court. And, I think it's most likely that the small amount of money she did send to Mr J was just to prevent him taking action to recover the funds.

As it's been agreed by all parties that Mr J was the victim of a scam, I've moved on to consider whether he's entitled a refund under the CRM Code.

#### *Did Starling provide an effective warning?*

The CRM Code sets out when a bank should reimburse a scam victim and it provides increased protection for customers who are the victim of scams. But the CRM Code doesn't mean a bank must reimburse every scam victim. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- 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 outlined in the CRM Code, but they don't apply to this case.*

Starling say Mr J ignored an effective warning. They say the warning Mr J was presented with says: *"Could this be part of a scam? If in doubt, just stop here and visit our website to learn more about fraud"*.

They say their website then provided a further warning, saying: *"A fraudster may request that you send money in order to release a larger sum. For example, this could be for a distant relative's inheritance, a loan or a lottery win. Always be wary if someone contacts you out of the blue as this could be a scam. Alternatively, another form of advance fee fraud could be someone who requests you make a payment for goods or services in advance, for example paying a property rental deposit or a deposit on a car. Where possible, try to view the item in person and/or meet the person providing the service prior to sending any funds by Faster Payment or do some research online about the person you are paying."*

However, I'm not persuaded that these meet the requirements of an effective warning as set out by the Code.

The initial warning that Mr J would've seen requires him to leave the payment process and go to Starling's website in order to see the second warning and it's unclear if this happened. But regardless, having reviewed the second warning from their website, I'm not satisfied that it is specific or impactful in Mr J's circumstances. I say this because it refers to situations where you're being asked to pay money to help release a larger sum or being asked to pay an advance fee – neither of which apply to the scam Mr J was the victim of. Also, I'm not persuaded it provided Mr J with any relevant information about how he could protect himself from the scam he was involved in. Foreign currency exchange isn't necessarily a situation where you can meet the other party in person, and in this case, she told Mr J she lived too far away. And Mr J did take steps that he thought were reasonable to confirm her identity by asking her to send pictures of her ID and at the time didn't consider that he may've been the victim of a scam. So, I'm not satisfied that these warnings individually or considered in totality were specific or impactful in Mr J's situation and therefore don't constitute effective warnings in this case.

On that basis, Starling hasn't met their obligations under the CRM Code. However, I also need to consider whether Mr J met his.

*Did Mr J have a reasonable basis for believing the transaction was legitimate?*

From what Mr J has told us I'm satisfied that he did have a reasonable basis for believing the first transaction with B was genuine, for the following reasons:

- He'd used the same community website for foreign exchange previously with no problems.
- He asked for and received proof of identity from A, to ensure she was who she said she was.
- A told Mr J she couldn't meet with him because of the distance between their locations and the Covid situation at that time, which explains why they couldn't exchange the currency face to face.
- The amount of foreign currency he was being offered for the GBP wasn't unrealistic or too good to be true taking into account the exchange rate.

I'm not satisfied there were any warning signs that presented themselves to Mr J, whereby he should've had doubts that the transaction he was entering into wasn't legitimate.

Therefore, I think it's fair for Starling to refund 100% of the first payment.

However, I think that Mr J's basis for belief isn't present when he makes the second payment. I say this because Mr J made the second payment without having received the foreign currency exchange for the first payment. Also, there is a three day gap between the two payments, so plenty of time for Mr J to wait for the funds to be received. I appreciate that A may've sent him a screen shot of a pending payment, but I'm not satisfied that justifies Mr J sending the second payment. I think it's reasonable to expect Mr J to have waited for payment in return before proceeding.

On that basis, I think it's fair for him to share the responsibility with Starling for the second payment and recommend that Starling only refund 50% of that payment, in addition to 100% of the first payment. Starling should also pay interest on both refunds at 8% simple interest, from the date of the payments, until the date of settlement.

#### *The court case and its impact on what's fair and reasonable in the circumstances*

Starling feel that we can't fairly make an award with regard to these payments, due to Mr J having a County Court Judgement (CCJ) against A. They say Mr J could potentially get double benefit if they refund him and then he receives payment from A as well.

Mr J's court case was against A and as such only considered A's liability and not Starling's. As I think there is no likelihood of Mr J receiving any funds from A, I'm satisfied that I can consider Starling's liability under the CRM Code as to whether it can fairly be held liable to refund any of the money Mr J lost as a victim of a scam. And, as set out above, I'm not satisfied Starling has met it's obligations under the CRM Code and therefore should refund Mr J in part.

However, I don't think it would be unreasonable if Starling asked Mr J to sign an indemnity, agreeing that any funds received from A in future are returned to Starling to offset the amount they're refunding.

#### **Putting things right**

To put things right Starling Bank Limited should:

- Refund in full the first payment Mr J made of £3,000.
- Refund 50% of the second payment Mr J made of £3,000.
- Pay interest on the refund at 8% simple, from the date they declined his claim under the CRM Code until the date of settlement.

#### **My final decision**

My final decision is that I uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 June 2022.

Lisa Lowe  
**Ombudsman**