

The complaint

A company, which I'll refer to as G, complains that Starling Bank Limited (Starling) won't refund the money they lost when they fell victim to a scam. Mr K, who is the director of G, brings this complaint on G's behalf.

What happened

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

In February 2022, Mr K received a call from someone purporting to work for Starling – but who was actually a scammer. Mr K has explained the caller knew details about the account G held with Starling – such as the last transaction and the balance – as well as his name and address. This persuaded him the call was legitimate. The scammer told him a payment had been made from G's account which he hadn't authorised. So, to keep G's funds safe, he'd need to transfer them to 'B' – who they alleged was a 'partner company' of Starling. Mr K then made a series of card payments to B (listed in chronological order – they were all just a few minutes apart):

- Payment one: £4,100
- Payment two: £2,100
- Payment three: £500

Following payment two, Mr K (at the scammer's behest) attempted a payment of £790. This was declined due to insufficient funds – around £740 remained in G's account. The scammer directed him to pay £500 instead, which went through successfully. It also appears that a further payment may have been attempted after this.

Mr K says he became suspicious as the caller kept directing him to make further payments. When he questioned this, the caller hung up and he realised it was likely a scam. He reported this to Starling and asked it to refund G. It didn't agree. It said he hadn't completed due diligence and had disregarded a warning it gave when he authorised the payment. It also said it couldn't raise a chargeback claim to retrieve the funds from B.

Unhappy with this, Mr K referred the matter to our service. Our investigator thought Starling ought to have identified a fraud risk and performed further checks by the point of the second payment. And he didn't think G was negligent in not spotting the scam. So he recommended Starling refund payments two and three. Starling disagreed.

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, I agree with the conclusions reached by the investigator for these reasons:

- It is not in dispute that Mr K, as G's director, authorised these payments. He

understood that he was using his security details to allow payments to leave his account. And the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed. But it is also not in dispute that Mr K fell victim to a scam.

- Starling is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that their customer is at risk of fraud; and in some situations, make additional checks before processing payments or to decline them altogether to protect customers from possible financial harm from fraud or scams.
- I have looked at how G's account was being operated in the months prior to the disputed payments. They rarely made payments over £1,000. So the payments made during the scam were significantly higher than G's usual spending.
- I consider it reasonable that Starling wasn't immediately concerned about the first payment of £4,100. Customers may make the occasional payment that is higher value than usual without that indicating a fraud risk. But by the point of the second payment (for £2,100), G had made two higher-value payments, totalling £6,200, in quick succession, to a new payee. This was out of keeping with G's usual account activity. I'm satisfied there were enough 'triggers' here to have alerted a responsible, regulated bank such as Starling that G's account was being subjected to unusual and uncharacteristic activity.
- If Starling had contacted Mr K and asked him further questions and for more of the basic surrounding context, I have no reason to doubt he would have explained that he was being directed by who he thought was Starling to move funds to a 'safe account'. So I think Starling would have realised this was a scam. Had it told Mr K that the call wasn't genuine, I think it would have succeeded in preventing G's loss beyond the initial payment.
- I've also thought about whether G should be held partly responsible. Starling argues they should as Mr K would have seen a warning saying: "Starling will never contact you and ask you to use this screen" on the 'confirm your payment' screen. But I don't consider it negligent that Mr K didn't realise the scam because of this. The message was part of the standard process that he would always have seen, so wouldn't have particularly stood out. It doesn't look particularly attention grabbing – it's at the bottom in smaller font, and the user doesn't have to interact with it directly to proceed. I also consider the wording about using the screen a little unclear.
- Starling has also pointed out that the scammers asked Mr K to make a payment that was higher than his balance. But again, I don't think that's enough to have reasonably alerted him something was wrong. Mr K was under pressure, fearing G's funds were at risk. And he'd already been drawn in, persuaded by the details the scammers knew when they called. And the further payment they instructed him to make went through. In the context of this urgent and sophisticated scam, I don't consider G partly to blame for the loss.
- I don't think Starling could have done more to recover the first payment. Starling has explained it falls under Mastercard's chargeback scheme. But such a claim (subject to specific evidence requirements) would only succeed if G had an issue with the service of the merchant they paid directly. B operates a genuine cryptocurrency exchange, and there's no suggestion it didn't provide a genuine service for the payment received. So Starling isn't at fault for not recovering this.
- Overall, I consider it fair for Starling to refund G's loss from payment two onwards plus interest for G's loss of use of the funds.

My final decision

For the reasons given above, I uphold this complaint and direct Starling Bank Limited to refund G £2,600 for their loss from the second payment onwards. It should also pay 8% simple interest on this amount, from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 2 January 2023.

Rachel Loughlin
Ombudsman