

The complaint

Mr B is unhappy that Starling Bank Limited is not refunding him after he fell victim to what he considers a scam.

What happened

The circumstances that led to this complaint are well known, so I won't repeat them in detail here. I'll recap the key points and focus on giving reasons for my decision. But briefly:

Mr B works in the fashion industry and initially did some work for a designer - I will refer to as C. They met a few times and Mr B then became involved in helping with some decorating of C's offices. C then asked whether Mr B could loan him some money with an opportunity to invest/receive profits in C's business. C told Mr B he had agreed a contract to provide clothes to a well-known retailer but needed some money to complete the order. C said he would pay Mr B back what he lent him with a profit. So, Mr B made a number of payments to C, including two payments on 2 March 2021 (£1,600 followed by £3,400) totalling £5,000 from his Starling account.

Mr B did receive some money back from C in relation to some earlier payments he made from his other bank account, but by the time he had made the two payments from his Starling account no further returns were forthcoming.

Starling felt the situation was a civil matter between Mr B and C, so it didn't agree to refund the money he had lost. Mr B wasn't satisfied with Starling's response, so referred his complaint to our service.

One of our investigators looked at the complaint. Initially we said it was a civil dispute. But after further investigation we concluded that C set out with the intention to defraud Mr B so should be treated as a scam rather than a civil dispute. They also didn't think Starling had established that Mr B had ignored an effective warning when making the payment or that he didn't have a reasonable basis for believing C was legitimate. So, she thought Starling should refund the money Mr B had lost in full.

Starling disagreed with our investigator. It thinks this is a civil dispute, but it says that even if it isn't deemed one, it feels it shouldn't refund 100% of the money lost – as the deal was too good to be true. It also considers it gave effective warnings.

As the case could not be resolved informally, it has been passed to me for a decision. I am sorry for the length of time it has taken to reach this stage and thank both parties for their patience.

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 investigator's conclusions broadly for the same reasons.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Does the CRM code apply to the payments Mr B made?

Starling is a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code). This requires firms to reimburse customers who have been the victim of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. But customers are only covered by the CRM Code where they have been the victim of a scam; specifically, the CRM Code covers situations where:

"(i) The customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

And the Code does say it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So, in order to decide whether Starling should refund the money Mr B lost under the CRM Code, I first need to consider whether he has been the victim of a scam – or, in other words, whether C set out from the beginning with the intent to defraud Mr B.

Starling has said it still believes this is a civil dispute. I'm aware that C had a showroom and employees, showed Mr B convincing looking paperwork, and that Mr B had met C in person several times. So, at first glance it appears that this was a genuine business opportunity that just went wrong.

But the information I've seen suggests there were a significant number of other people who lent money to C for similar reasons to Mr B and didn't get their money back. It appears the paperwork Mr B was shown by C was fake, and C showed similar fake paperwork from different well-known retailers to the other people as well. The orders C told Mr B and the other people he needed to complete don't appear to have ever existed. So, I think it's more likely than not, C set out from the beginning with the intent to defraud Mr B.

Mr B thought he was lending C money so he could complete an order with a retailer. And that C would pay him back, plus some profit, once the order was complete. But the order didn't really exist. So, I think the purpose Mr B transferred the funds for was fraudulent, and this situation does fall under the CRM Code.

Is Mr B entitled to a refund under the CRM code?

The CRM Code requires firms to reimburse customers who have been the victim of authorised push payment scams in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made

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

There are further exceptions within the CRM Code, but these don't apply here.

Did Starling meet its obligations under the CRM Code and did Mr B ignore an effective warning?

The CRM Code says that effective warnings should be risk based and, where possible, tailored to the APP scam risk indicators and any specific APP scam types identified through the user interface with which the Customer is initiating the payment instructions.

The first transfer of £1,600 was relatively small (although I appreciate it was a lot of money to Mr B), and I don't think Starling ought reasonably to have identified a risk. That said, Starling did provide a 'friends and family' warning which was the payment purpose Mr B selected at the time. Starling has confirmed selecting the payment purpose 'investment' was also an option at the time. But I am also mindful in the overall context of the circumstances here (paying someone Mr B considered at the time to be a friend and whom he knew in person) his choice was not totally unreasonable.

I haven't repeated the warning that was shown during the online payment process because I accept that Mr B's choice made it very difficult for Starling to give a tailored and impactful warning. It wouldn't be fair to suggest that Starling had failed to adhere to an obligation that it was never possible for it to meet. It's also the case that, had its 'investment' warning met the definition of 'effective' under the CRM Code (that's not a finding I need to make here), it would be irrelevant because Mr B didn't see that particular warning. So, I don't find that Starling has failed in its obligation to provide an effective warning, but I also can't say Mr B ignored an effective warning either.

Did Mr B have a reasonable basis for belief?

I need to consider not just whether Mr B believed he was lending money for a return, but whether it was reasonable for him to do so. I've thought about the steps Mr B took to reassure himself about the legitimacy of the transactions and whether it was reasonable for him to proceed with the payments.

I think it is difficult for Starling to argue that Mr B had no reasonable basis for belief – when it still considers this to be a civil dispute (that is to say - Starling still considers this to have been a payment for legitimate purposes).

I don't think Starling has established that Mr B made the payment without a reasonable basis for belief that it was genuine. Mr B had met C in person and even helped C decorate the office. He saw manufacturing equipment and sewing machines - which further made it seem like a legitimate business. Mr B was also shown a genuine-looking letter between C and the retailer, showing the order he had supposedly agreed with them. C then sent him a relatively professional-looking loan agreement to sign. The company was registered on Companies House seemingly as a genuine clothing firm at the time. So, I think Mr B did have a reasonable basis for believing the payment he was making was genuine.

Whilst the promised return was high – Mr B did receive those returns for the initial payments. With these types of scams, it's usual for consumers to receive some returns, as it's money invested by other victims. This further reinforced his belief that this was a genuine deal.

With the benefit of hindsight, there may have been some 'red flags' (for example Starling cites the scammer's passport which it says is obviously fake). But I think it would have taken a lot of investigation to unearth the facts that have now come to light. And as Starling seems to readily accept this appeared genuine to the extent it made representations that this was a civil dispute, in all the circumstances, I don't think Mr B's response was unreasonable.

Should Starling have done more to try and prevent the scam and protect Mr B?

Aside from the CRM Code, a bank still has wider obligations and a duty to protect its customers, as far as is reasonably possible, against the risk of financial harm from fraud and scams. As such, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment to help protect its customers from the possibility of financial harm from fraud.

So, I've thought about whether Starling missed an opportunity to intervene at the time Mr B made these payments, potentially preventing him from experiencing financial harm. The payments were relatively small (although I appreciate it was a lot of money to Mr B) and did not look unusual or suspicious based on the account activity. Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

This finding doesn't change the overall outcome. The relevance of this point is that interest should be paid from the date the claim was declined rather than when the payments were made.

Did Starling do enough to recover Mr B's funds?

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But I've thought about whether Starling took reasonable steps to recover Mr B's funds once it was made aware, he was the victim of a scam.

The scam payments were made on 2 March 2021 and Mr B reported the scam on 15 July 2021. Starling contacted the beneficiary bank almost immediately the same day, but no funds remain. This is not unusual as most scammers move money within hours. From what I've seen Starling has done what it should've to try and recover the funds for Mr B but wasn't able to recover any funds.

In conclusion, I don't consider this case to be a civil dispute and therefore is covered by the CRM Code. I don't think Starling has established that any of the exceptions to reimbursement under the CRM Code apply. So, it should refund the £5,000 Mr B has lost as a result of this scam.

Putting things right

In order to put things right for Mr B, Starling Bank Limited should refund the two transactions totalling £5,000. To compensate Mr B for being deprived of the money he lost, Starling should add simple interest¹ at the rate of 8% per annum to the above, from the date his claim was declined to the date of settlement.

¹ If Starling is legally required to deduct tax from the interest it should send Mr B a tax deduction certificate so he can claim it back from HMRC if appropriate.

My final decision

My final decision is I uphold this complaint and require Starling Bank Limited to put things right for Mr B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 November 2023.

Kathryn Milne
Ombudsman