

The complaint

Ms L complains about Starling Bank Limited.

She says that Starling didn't do enough to protect her from being the victim of a scam and would like Starling to refund her the money she has lost

What happened

In February 2021, Ms L was contacted via WeChat by a scammer offering investment opportunities.

Ms L was persuaded to purchase cryptocurrency from 'B' and 'BDA' (legitimate crypto exchanges) and transfer the funds to the scammer. In total, she made six payments totalling £24,750.

Once Ms L realised she had been the victim of a scam, she reported this to Starling and made a complaint.

Starling didn't uphold her complaint, so Ms L brought her complaint to this Service.

Our Investigator considered the complaint and thought that it should be upheld in part. They felt that while Starling may not have been able to prevent some of the loss that Ms L had suffered, it could have intervened from the fourth payment she made and prevented the loss from this payment onwards.

However, they also thought that Ms L should bear some of the responsibility for the loss – and said that 50% of the payments from payment four should be refunded due to Ms L's contributory negligence.

Starling agreed, but Ms L did not. So, the complaint has been passed 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.

Having done so I've decided to partially uphold Ms L's complaint for materially the same reasons as our Investigator. I'll explain why.

Was Ms L the victim of a scam?

I don't think that it is in doubt here that Ms L was the victim of a scam. She was contacted out of the blue by an individual on WeChat and was persuaded to purchase crypto and then transfer this onto the scammer.

I've listed the payments that Ms L made below.

Date	Payment type	Payee	Amount
17 February 2021	Debit card	B	£750
5 March 2021	Debit card	B	£4,000
16 April 2021	Debit card	B	£5,000
16 April 2021	Debit card	B	£5,000
22 April 2021	Debit card	BDA	£5,000
22 April 2021	Debit card	B	£5,000

In line with the Payment Services Regulations 2017 (PSRs), Ms L isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe. Accordingly, I've considered whether Ms L authorised the payments.

Having done so, I'm satisfied that Ms L did authorise the payments in question here. They were made by her using her debit card. I understand that Ms L had been tricked by the scammer into instructing Starling to make the payments – but while Ms L never intended the payments to go to the scammers, this doesn't change the fact that she authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of the payments Ms L made

After the payments were made, I wouldn't reasonably expect Starling to do anything further until it had been notified there was a scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Starling) and the merchants (here, B and BDA).

However, a chargeback in these circumstances would unlikely have been successful. This is because B and BDA are legitimate companies and provided the services that Ms L had requested of them – the purchase of crypto and subsequently moving that crypto onto a wallet of Ms L's choosing. What happened after that crypto was successfully moved is therefore a separate matter – and so a successful chargeback would never have been possible – and so I don't think that these payments were recoverable once they had been made.

Should Starling have reasonably prevented the payments in the first place?

I can only uphold this complaint if I think that Starling reasonably ought to have prevented some or all of the payments Ms L made in the first place – therefore preventing the loss before it happened.

Ms L authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Starling should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic

transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Starling should fairly and reasonably:

- Been monitoring accounts – including payments made and received – to counter various risks including anti-money laundering, countering the financing of terrorism and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; 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.

So, I've carefully considered what this means for Ms L and the payments in question here.

Payments one and two

Having considered the first four payments Ms L made, I'm not persuaded that Starling should have become involved at this point. I say this because as I've explained above, there is a balance to be struck. I've reviewed Ms L's account transactions and activity and I don't think that they are sufficiently unusual or uncharacteristic to have triggered Starling into taking extra steps before processing Ms L's payment instructions.

Payment three

The third payment is a closer call. It was unusual for Ms L to spend £5,000 in a single payment. And the payment was clearly intended for a crypto exchange – and Starling ought to have been well aware of the rise in fraud and scams in recent years, including sophisticated scams in relation to crypto. However, as I've explained, there is a balance to be struck. And whilst the parties will see below that I think Starling ought to have intervened from payment four, I'm not sufficiently persuaded this payment was sufficiently unusual and uncharacteristic to say Starling reasonably ought to have been obliged to have just yet. I would reiterate this payment is a close call. But I'm just not sufficiently persuaded I can say this payment, which was more a month after the previous two smaller payments, was sufficiently unusual yet.

Payment four

This was the second payment Ms L made for £5,000 in the same day – taking the daily total to £10,000. I think that this payment should've triggered a response from Starling in order to meet its obligations I've set out above. With this in mind, Starling should reasonably have contacted Ms L to establish whether the transaction posed any possibility of placing Ms L in financial harm before processing it. But it did not do so.

Had Starling contacted Ms L, I would've expected it to have questioned Ms L about the payment – including what the payment was for, and the surrounding context – and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam

I've seen nothing to suggest that Ms L had been coached, or told to lie about the payments she was making – so I think that had Starling acted as I would've expected, it would quickly have uncovered that Ms L had been contacted through WeChat and been persuaded to purchase crypto and transfer this on to the scammer.

By January 2019, Starling should already have had a good understanding about how scams like the one Ms L fell victim to work – including that a consumer is often persuaded to move money from one crypto-wallet in their own name to the scammer. I also note that Ms L had previously been the victim of a scam and Starling were aware of this. I think that this should've made Starling even more cautious of the payment.

Had Starling given Ms L a meaningful warning that what she had told it bore all the hallmarks of a sophisticated scam – I think that she would've taken this warning seriously and not taken the risk of continuing with the payment.

So, I think that Starling could've prevented Ms L's loss from payment four onwards.

Should Ms L bear some responsibility for the loss?

While I do consider that Starling should have prevented the payments from payment four, I do also need to consider if Ms L should bear some responsibility for the loss by way of contributory negligence.

Ms L was sadly a victim of a scam which was uncovered in January 2021. While it was a different type of scam, initial contact was made with Ms L through the same platform (WeChat). I think that this should've given Ms L cause for concern as she had already lost money via contact with a scammer in this way.

Ms L says that she researched the company on Google – and didn't find anything negative about the 'company' she thought she was dealing with at the time, so she was satisfied of the legitimacy of the scammer. But having looked myself at the results provided by a quick Google search for the 'company' name prior to Ms L making the first payment I can see that there were several extremely negative online reviews about this 'company'. So, I think that she should have applied more caution than she did.

That said, Starling were the experts here – and had more knowledge on the intricacies of these types of scams. And it didn't intervene when it ought to have done.

So, on balance, I think that responsibility for the loss that could have been prevented should be shared equally between Starling and Ms L.

Putting things right

Starling should refund Ms L 50% of the loss from payment four onwards.

I calculate this to be £7,500.

Starling should also pay Ms L 8% simple interest from the date the payments were made until the date it makes payment to Ms L.

My final decision

I uphold this complaint in part, Starling Bank Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or

reject my decision before 14 April 2023.

Claire Pugh
Ombudsman