

The complaint

Mrs A complains that Starling Bank Limited ("Starling") have failed to refund £1,350 she says she lost as part of a scam.

What happened

Mrs A visited a furniture shop ("R") in February 2022. She paid a £300 deposit for a dining table on 4 March 2022, with the remaining £1,050 balance becoming payable once it was ready for delivery. She was contacted by R around two weeks after paying the deposit saying she would need to pay the balance, which she paid on 16 March 2022. Both transactions were authorised push payments made from her Starling account to a personal account in the name of R's director.

However, despite having paid the balance, the dining table wasn't delivered. R gave a variety of excuses such as the delivery van having broken down. Mrs A was assured she would receive the goods she'd paid for, but the table never arrived. Mrs A subsequently established that R's shop had closed down, and its director had disappeared, meaning she had lost her money.

Mrs A contacted the police and also registered a claim with the small claims court. A county court judgment was issued in default as R's director failed to attend the hearing. However, Mrs A has had no success in recovering the funds this way as the director cannot be located and has also since filed for bankruptcy.

Mrs A also sought to recover the funds through Starling under the Contingent Reimbursement Model ("CRM Code"). However, Starling refused to provide a refund as it considered the matter to be a civil dispute and therefore out of scope for reimbursement under the Code.

Our investigator upheld the complaint. He was satisfied that Mrs A could be considered as having been scammed in these circumstances, such that Starling should reimburse her money under the CRM Code. Starling disagreed, so the matter has been escalated to me to determine.

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 the reasons set out below.

Starling has signed up to the CRM Code, which was in force at the time Mrs A paid the seller of the furniture. Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an Authorised Push Payment ('APP') scam. But the CRM Code is quite explicit that it doesn't apply to all APPs. In this regard, it states:

“DS2(2) This code does not apply to

(b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier”

Starling considers the matter between Mrs A and R to be a civil dispute and therefore outside of scope for reimbursement under the Code. I've considered the evidence Mrs A has provided, as well as evidence provided by the receiving bank. And having done so, I'm not persuaded the seller was a legitimate supplier for goods at the point Mrs A made the disputed payments from her Starling account.

The statements from the receiving bank show that Mrs A made payment to an account in the name of R's director (rather than a company account), where the money she paid was swiftly transferred out of the account to other individuals. The account had also been opened for less than a week prior to the payments being made by Mrs A, and the overall payment activity does not appear to be consistent with what would be expected from a legitimate business. I note that blocks have also since been placed on the account by the receiving bank as of 22 March 2022 following reports of fraud, and there are also other reports of people having paid money to the company and claiming they have been scammed after not receiving the goods they paid for.

I appreciate that R may have originally operated as a legitimate business. But having considered the circumstances I've set out above, I'm satisfied it's likely that R's director set out to defraud Mrs A from the outset and never had any intention of providing the furniture she paid for. The excuses provided by the seller as to why the goods hadn't been delivered were also spurious at best and were not plausible with regard to why it couldn't be delivered. So, on balance, I'm satisfied the seller did not have any legitimate intention at the point Mrs A made her purchase, but rather has shown an intent to defraud, and I do not consider this to be the type of civil matter excluded under the CRM Code.

The Code requires firms to reimburse customers who have been the victim of APP scams, like the one Mrs A has fallen victim to, in all but a limited number of circumstances. Other than submitting that Mrs A's dispute is a civil matter, Starling hasn't put forwards any other substantive reasons as to why any of the exceptions within the Code should apply. And having reviewed the evidence, I'm not persuaded that any of the exceptions would apply either. I've not seen, for example, that an effective warning was provided that was ignored by Mrs A. And neither do I think she had no reasonable basis for believing that the seller had genuine intentions, given she had visited the shop and had received invoices for what she thought she had purchased.

Therefore, I'm satisfied it would be fair and reasonable in the circumstances for Starling to refund the disputed payments Mrs A made to R. I am aware that Mrs A also has a county court judgment for the full amount to be recovered from R's director. So, should she eventually be successful in recovering her money through the judgment, she will be liable to reimburse Starling the amount it has paid her.

My final decision

For the reasons given above I uphold this complaint and direct Starling Bank Limited to:

- Refund the total value of the two disputed transactions (£1,350).
- Pay 8% simple interest per year on this amount from the date Starling declined Mrs A's claim under the CRM Code until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 23 August 2023.

Jack Ferris
Ombudsman