

The complaint

F, a limited company, is unhappy that Starling Bank Limited (“Starling”) won’t reimburse the money it lost when it fell victim to a purchase scam.

F is represented by its directors Mr C and Mr Y. But I’ve referred to F throughout this decision.

What happened

Both parties are aware of the circumstances of the complaint, so I won’t repeat them all here. But briefly F lost £5,388 after it purchased event hospitality tickets from a cloned events company – I will refer to as V. F never received the tickets.

Starling originally said this was a civil dispute (on the basis that the emails and invoice from V looked legitimate) and therefore it said there was no recourse through the bank.

But our investigator explained the evidence indicated that this was a scam. She further explained that F should get a full refund under the ‘Lending Standards Board Contingent Reimbursement Model Code’ (the “CRM Code”). This was because she didn’t think Starling provided an effective warning and she also considered F had a reasonable basis for belief.

Starling didn’t agree and - whilst it accepted that F had a reasonable basis for belief - it considered it had provided F with an effective warning which F ignored. On this basis it didn’t agree to fully refund F.

Starling said it provided the following warnings:

Fraudsters can easily take over email and social media accounts or set up similar accounts so the contact looks legitimate. They can also ‘spoof’ phone numbers, meaning that their call looks like it is from a different number. They pretend to be from a genuine company or someone you know.

Fraudsters commonly advertise items or services online which they have no intention of providing to you. Where possible, we recommend you see the item in person or receive the service before sending a payment.

It felt the warnings were directly linked to this circumstance. But the investigator explained she didn’t think the warnings were effective for a purchase scam.

Because the case couldn’t be resolved informally, it has been passed to me for a 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.

In deciding what's fair and reasonable, I'm 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 time.

Starling has signed up to the CRM Code and it was in force when F made the payment. 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 Code is quite explicit that it doesn't apply to all APPs. It says:

"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 originally argued this was a civil dispute. But, having reviewed all of the evidence we've received in this case and for the same reasons the investigator has given, I'm persuaded F did not pay a legitimate supplier and has fallen victim to an APP scam. In summary:

- Evidence from the receiving bank suggests there were other victims to the same scam
- The payee name has no links to the cloned company name
- Reviews on trust pilot show others have been scammed by the same cloned company

Starling has not provided any further evidence or arguments to the contrary and I don't intend to explore this issue in any further detail.

The CRM Code requires firms to reimburse any customer who has been the victim of an APP scam in all but a limited number of circumstances. If Starling declines to reimburse its customer in full, it is for Starling to establish that one, or more, of the listed exceptions set out in the CRM Code itself apply. Those exceptions are:

- the customer made the payment without 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 that the person or business with whom they transacted with was legitimate; or
- the customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions within the CRM Code, but none of these are applicable here.

The CRM Code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Starling did identify a scam risk in this case, and I don't think that was unreasonable given the sum involved. Starling says it provided an effective warning. But I am not persuaded that any of the information that Starling says was shown to F was impactful enough in the context of this scam to meet the minimum requirements of an effective warning under the CRM Code. Nothing I've seen really brings alive what a scam of this nature looks and feels like. Spoof calls and email interceptions didn't apply here, and I think it is usual to buy tickets such as these remotely. There is no mention of cloned companies and the warnings don't

prominently explain the potential consequences of making an irrevocable payment. I think this would've been important information that would have had a material impact.

I have carefully considered Starling's representations about the warnings it gave. But they do not persuade me to reach a different view. It follows that I am not persuaded that Starling gave an effective warning to F, nor do I consider that F ignored one.

Starling has accepted what the investigator said about F's reasonable basis of belief. And I agree broadly for the same reasons. From what I have seen, it would have been very difficult for F, or anyone else, to tell that this was a clone of a genuine business and there was also no reason for F to think it wasn't communicating with the genuine events company.

I'm not persuaded that Starling has shown it can choose not to reimburse F under the terms of the CRM Code. It follows that under the provisions of the CRM Code, F should have been fully reimbursed for the loss. So, I think it's fair that Starling now refunds the money F lost, along with interest. I consider 8% simple interest to be an appropriate award in the circumstances of this complaint because F has been deprived of the use of this money and it's unclear how F would have otherwise used it.

It doesn't make a difference to the outcome here but for completeness, I've also thought about whether Starling took reasonable steps to recover F's funds once it was made aware F was the victim of a scam. The payment was made on 27 June 2022 and the scam was reported on 29 June 2022 at 17:00. Starling contacted the beneficiary bank the same evening, but no funds remained. From what I've seen Starling has done what it should've to try and recover the funds.

Putting things right

To put things right, Starling Bank Limited should now:

- Pay F a refund of the money that was lost to the scam
- As F has been deprived of the use of those funds, Starling should also pay 8% simple interest from the date Starling declined F's claim under the CRM Code until the date of settlement

If Starling considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell F how much it's taken off. It should also give F a tax deduction certificate if it asks for one, so F can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold this complaint and require Starling Bank Limited to put things right for F as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 1 September 2023.

Kathryn Milne
Ombudsman