

## **The complaint**

Mr S complains that Starling Bank Limited (“Starling”) hasn’t refunded in full the money he lost when he fell victim to an email interception scam.

## **What happened**

The detailed background to this complaint is well known to both parties, so I won’t repeat it again here. Instead, I’ll provide an overview of what happened and focus on giving my reasons for my decision. I would, however, like to reassure the parties that I’ve read and considered everything in its entirety.

In October 2021, Mr S fell victim to an email interception scam. He was getting some building work done to his house and had engaged with a firm which had been recommended to him by a family member. Unfortunately, the firm’s email account was hacked, and Mr S received a request to pay a 50% deposit. He authorised a payment for £8,400 – 50% of the quoted price – from his Starling account to the account details included in the email. When the money didn’t leave his account, Mr S attempted the payment again. This time, the payment left his account.

The next day, Mr S learnt that the firm’s email had been hacked. He also discovered that two payments had debited from his Starling account – one at the time of the payment instruction, the other in the early hours of the following morning. Mr S contacted Starling and reported the matter. It accepted he’d been scammed and refunded the first payment. But it refused to refund the second payment – it said Mr S could have prevented the loss arising from the second payment by not instructing Starling to make the payment twice. Mr S complained and although its position remained unchanged, Starling paid £100 compensation in recognition of delays in responding to his complaint.

One of our investigators considered the complaint and ultimately concluded that Mr S was due a full refund of the second payment under the Contingent Reimbursement Model (CRM) code, which says that firms should refund customers that fall victim to authorised push payment scams like this one except in a small number of circumstances. The investigator recommended Starling to refund the second payment along with 8% interest. They also explained that as the compensation Starling had paid was in relation to complaint handling, it wasn’t something this service could comment on.

Starling didn’t agree with the investigator’s findings and requested an ombudsman’s decision. In summary, it argues that the second payment was made outside of the scam as it debited due to Mr S’s own negligence – he set up a future dated payment and didn’t cancel it after making an immediate payment.

## **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:

- I understand Mr S believes there was a glitch in the bank's systems which resulted in his original payment instruction not being executed until the following day. While I appreciate he didn't knowingly set up a future-dated payment, the evidence Starling has provided shows that the instruction it received from Mr S was for the payment to be executed the next day.
- Starling argues that the future-dated payment wasn't made because of the scam – it says it left Mr S's account because of his mistake which it believes amounts to negligence. I understand the point Starling is trying to make here. But I don't agree that the payment wasn't made in connection with the scam. It's unfortunate that Mr S unwittingly authorised two payments. The fact remains that they were initiated off the back of the scammer's instructions. But for the scam, Mr S wouldn't have made either payment. By instructing two payments, arguably Mr S's actions could be deemed as careless. But I'm not convinced they amount to negligence such that the provisions of the CRM code shouldn't apply. After all, as Starling itself acknowledges, Mr S didn't realise he what he'd done. It's not the case that he disregarded an obvious risk and purposely sent 100% of the money when only half had been requested.
- As I've found that the provisions of the CRM code apply to the future-dated payment as well, the starting position is that Starling should reimburse Mr S the payment in full except in limited circumstances (or 'exceptions'). It is for Starling to establish that one or more of the exceptions set out in the code apply.
- Given Starling accepted full liability for the immediate payment and offered a refund, it's reasonable to assume that it didn't think any of the exceptions under the code applied. I see no reason why Starling's own assessment of its obligations under the code – including exceptions – shouldn't apply to the other payment as well. In any event, for the sake of completeness of my review, I have considered Starling's obligations under the code.
- Starling has argued that Mr S ignored an effective warning. The code says an effective warning must be understandable, clear, impactful, timely and specific. I'm not persuaded that the warning Starling says Mr S saw met all the criteria. The text of the warning clearly had content that was relevant to this type of scam. But as the investigator explained, and I agree, the warning was too broad as it didn't provide any context on what an intercepted email could look like, or the steps Mr S could take to verify that the email was genuine. Given this, I don't think the warning was impactful. As such, I'm not persuaded it was an effective warning.
- I've considered whether Mr S had a reasonable basis for belief that (i) the payee was the person he was expecting to pay, (ii) the payment was for genuine goods or services, and/or (iii) the person with whom he transacted was legitimate. From what I've seen, I'm satisfied that there was no particular reason for Mr S to find the payment request unusual or to doubt its authenticity. I acknowledge that he'd been instructed to send the payment to an account held in the name of the firm's account manager. But that in and of itself isn't sufficient for me to conclude that he didn't have reasonable basis for belief. So, I don't think it was unreasonable for Mr S to have made the payment in the circumstances that he did.
- One of the other possible exceptions that could be relevant to this case is whether Mr S was grossly negligent. As I've already explained above, I don't consider his actions tantamount to negligence. Gross negligence is an even higher bar. I'm not satisfied that Mr S's actions displayed a serious disregard for an obvious risk involved, such that I would consider it to be grossly negligent. He simply didn't realise he'd set up a future-dated payment.
- As I've not seen anything that leads me to think that one or more of the exceptions apply in this case, it follows that under the provisions of the code Starling needs to

refund the remaining payment in full. And it needs to add interest to compensate him for being out of pocket.

- I also think that Starling could have prevented the payment from being sent in the first instance. Its system had already flagged an £8,400-payment as out of character given the normal account activity, and I can see it asked additional questions during the payment journey. But having reviewed the 'payment review' questions, I don't think they went far enough in ascertaining whether Mr S was at risk of being defrauded. Had Starling contacted Mr S and asked more probing questions, I consider it likely the scam would have been uncovered and the loss prevented.
- Given that my finding is the loss could have been prevented in the first instance, I agree with the investigator that the interest element of the redress should be calculated from the date of transaction to the date of settlement.
- In relation to the compensation that Starling has paid, as the investigator has explained, it relates purely to how it handled Mr S's complaint. As complaint handling isn't a regulated activity, I'm unable to comment on any offer of compensation in relation to it.

### **Putting things right**

To put matters right for Mr S, Starling Bank Limited needs to:

- refund in full the remaining disputed transaction of £8,400; and
- add simple interest at 8% per annum to that sum, calculated from the date of transaction to the date of settlement (less any tax lawfully deductible – it should tell Mr S how much it's taken off).

Starling Bank Limited must put things right within 28 days of the date on which we tell it that Mr S accepts my final decision.

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. I require Starling Bank Limited to put things right for Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 July 2023.

Gagandeep Singh  
**Ombudsman**