

The complaint

S, a limited company, complains that Starling Bank Limited (“Starling”) won’t refund the money it lost as a result of a third-party scam.

Mr V, director of S, is bringing the complaint on behalf of S. It was he who fell victim to the scam, so I have referred to him throughout this decision.

What happened

In summary, Mr V was the victim of an HMRC impersonation scam. He was tricked into sending 24 payments of £999 and one of £991 from S’s Starling account to the scammer’s accounts, which he believed was for tax he owed.

Starling declined to refund Mr V under the CRM code as it didn’t believe he had a reasonable basis for believing the scammers were genuine.

Mr V disagreed as he felt the payments were out of character and should’ve been picked up for questioning. He felt that, had this been done, it could’ve prevented S’s losses.

Our investigator upheld the complaint in part. He felt Mr V did not have a reasonable basis for belief, but he did think Starling ought to have intervened on the seventh payment as he felt the activity was concerning by this point. He therefore recommended Starling refund 50% of the transactions from the seventh payment onwards.

Mr V did not agree. He said he was 26 years old at the time, naïve and inexperienced in running a business and in related matters, such as tax. He also thinks Starling ought to have intervened at the outset. He felt the point at which the investigator has suggested Starling should have intervened – is arbitrary and has no specific point of reference in any banking regulation.

As the complaint could not 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.

I’m aware that I’ve summarised this complaint in far less detail than Mr V has presented to us, but I have read all of his submissions. I’m not responding to every single point made but instead I’ve concentrated on what I think are the key issues material to the outcome of this complaint.

There is no dispute that Mr V has been a victim of fraud and I am deeply sorry for that, but it doesn’t automatically mean Starling is liable for some or all of his losses. In fact, the relevant regulations (and the terms of S’s account) make him responsible for payments he’s made himself in the first instance.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mr V authorised the payments.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Starling should have reimbursed Mr V in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) it has signed up to and whether it ought to have done more to protect Mr V from the possibility of financial harm from fraud.

There's no dispute here that Mr V was tricked into making the payments. He thought he was paying tax he owed and this wasn't the case. But this isn't enough, in itself, for Mr V to receive a full refund of the money under the CRM Code.

The CRM Code

Starling has signed up to the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

One circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having 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
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM Code, but they do not apply in this case. The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

I am also mindful that when Mr V made these payments, Starling should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). 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.

Did Starling meet its obligations under the CRM Code?

The CRM Code says that where firms identify APP scam risks in a payment journey, they should take reasonable steps to provide their customers with effective warnings. It also says that effective warnings should, where possible, be 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 individual transfers were relatively small, (although I appreciate overall it's a lot of money to Mr V) and I don't think Starling ought reasonably to have identified a risk on the individual payments through the user interface.

Did Mr V have a reasonable basis for belief?

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

Overall, I don't think Mr V had a reasonable basis for believing these were genuine payment requests from a genuine person. I say this because:

Mr V received a telephone call out of the blue from someone purporting to be from HMRC. Mr V initially told Starling that the caller advised there was a warrant out for his arrest as he had not paid taxes for the 2016/2017 tax year (although he told out investigator a more recent tax year). But Mr V was employed at this time and would have paid tax through his employer. The total bill was disproportionate with the salary he earned at the time. So I think this ought to have been a sign that things were not right.

I appreciate the second telephone number calling Mr V appears to have been a spoof for his local police station, but from what Mr V told Starling - both the initial number that called him and the number that he was contacted by on a social media messaging forum did not belong to HMRC or the police station. I don't think a social media messaging forum would generally be used for requesting tax payments and I think warranted further scrutiny.

Mr V was not provided with any kind of documentation for the 'charges' or for the payments which were being requested. Mr V made 25 payments in total to a variety of different accounts which were in different people's names. It is very unlikely that an official governmental institution or firm of solicitors would request for funds to be paid to individual accounts instead of and business official account. I appreciate Mr V was given an explanation, but I don't think the explanation he received was plausible. I consider that Mr V ought to have had greater concerns and that, in turn, ought to have led to a greater degree of scrutiny on his part.

So, I'm not persuaded Mr V had a reasonable basis for believing the payee was the person he was expecting to pay; that the payments were for genuine goods or services; or the person with whom Mr V transacted was legitimate.

Overall, I think there was enough going on (certainly by the time I think the bank ought to have intervened) that Mr V reasonably ought to have had concerns and taken further steps before he made the payments. And this would have ultimately prevented his own losses.

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

As well as 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.

I don't think the first six transactions would have caused Starling concern. The payments were relatively small. The account had only recently been opened so there was little history

to compare. Businesses do from time to time need to make transactions. And the account balance wasn't cleared. Starling needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. But overall given the sums and the pattern involved, I think by the seventh payment, Starling should have intervened.

There is no documented threshold for intervening on a payment, but it is for me to decide when assessing this particular case - what I think is fair and reasonable in all the circumstances. The amount of money Mr V sent, while clearly not insignificant to him, doesn't in and of itself suggest to me any heightened risk of fraud before the point I'm upholding from.

I'm persuaded that had Starling intervened and asked Mr V about the reason for the payments, the scam would quickly have been uncovered. I appreciate much later on Mr V was told not disclose this detail to the bank, but I see no reason why Mr V wouldn't have told the truth at this earlier point - as he doesn't appear to have been given a cover story at the time and genuinely believed that he was making payments to HMRC.

Could Mr V have done more to mitigate his losses?

But I still also need to consider Mr V's actions and how those contributed to his losses. Having done so, I do think it is fair and reasonable for him to share in the responsibility - broadly for the same reasons as I set out above when I said he didn't have a reasonable basis for believing the person he was paying was genuine or that the payment requests were genuine.

Given that Starling could have prevented the loss (but Mr V should share in the responsibility for his loss) I think it refunding 50% of the transactions from the seventh transaction onwards is fair and reasonable in this case.

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

I've also thought about whether Starling took reasonable steps to recover S's funds once it was made aware Mr V was the victim of a scam. The first scam payment was made at 15:27 and last scam payment was made on 17:44 (the last scam payment not being refunded here was made at 16:15) and the scam was reported at 18:36. Starling contacted the receiving bank almost immediately on the same day but was told no funds remained. This is not unusual as scammers usually remove funds within minutes or hours.

Putting things right

In order to put things right for S Starling Bank Limited should:

Refund 50% of each transaction from the seventh transaction onwards

Add 8% simple interest to the above refund from the date of the transaction to the date of settlement.¹

My final decision

My final decision is that I uphold this complaint in part and require Starling Bank Limited to put things right for S as set out above.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 November 2023.

Kathryn Milne
Ombudsman