

## **The complaint**

Mr H complains that Starling Bank Limited won't refund the money he lost after he fell victim to a bank impersonation scam.

Mr H is represented by solicitors. To make my decision easier to read, I refer to Mr H. I do this even where it was his representatives rather than Mr H who said or did something. I mean no discourtesy in taking this approach.

## **What happened**

Mr H owns a small business. A client that he'd previously done work for (who I'll refer to as L) contacted him out of the blue whilst he was working to say her account had been hacked and money had been sent to his business account. Mr H logged into his business account and saw an incoming payment from L for over £9,000.

Mr H explains that he'd known L for several years, they were friendly as they'd met in person on several occasions and that L is well respected within the local community. Mr H explains he did not think anything of it when L asked if Mr H could speak to her bank about returning the money. He explains he was happy to help as the money did not belong to him. L told Mr H that she needed the money to be paid into a safe account by 6pm that day else it could impact her credit rating. Mr H says that he knew L was in the process of buying a property and wanted to get the situation resolved as quickly as possible so he could return his attention back to the job he was working on.

Unfortunately, L was the unwitting victim of a scam and the caller Mr H spoke with wasn't from L's genuine bank, it was a fraudster. Mr H tried to make the payment directly from his business account, but was unable to. So he transferred the money to his Starling account and then followed the fraudster's instructions to send it to a new payee.

L discovered she'd been the victim of a scam when she did not receive her funds back. She reported it to her bank. Mr H's business bank account provider debited the balance of his business account to revert the funds back to L, leaving Mr H out of pocket for the £9,875.69 that he'd sent on from his Starling account.

Mr H reported what had happened to Starling, but it turned down his claim for a refund because it did not believe Mr H took reasonable steps to check the payment was genuine. Starling contacted the beneficiary bank to see if it could recover any of the funds that had been sent, but sadly none remained.

Mr H complained, but Starling did not change its position. It said it had followed its policy and guidelines. It felt it was highly suspicious that Mr H had been asked to create a payee in the name of an unconnected third party and said no steps were taken to verify or enquire why the beneficiary was not an account held at L's bank.

As Mr H remained unhappy with Starling's position, he referred the complaint to us. One of our Investigators looked into it and recommended that it should be upheld. He thought Mr H should have been reimbursed under the Lending Standards Board's (LSB) Contingent

Reimbursement Model Code (the CRM Code) which Starling has signed up to. He didn't think Starling had provided an effective warning about this scam risk at the time Mr H made the payment and he felt Mr H had a reasonable basis for believing the situation was legitimate.

Starling disagreed. It was concerned that it was being asked to refund a payment that was not Mr H's own funds. It asked if we had investigated with Mr H's business bank account provider why the funds were recalled. It felt Mr H had trusted the caller without any reason to do so and that Mr H must have known that no credit rating is affected so quickly. It wasn't persuaded Mr H had verified that the caller was genuine and pointed out that he was being asked to transfer the funds to an account at an entirely different bank which he did not question. It suggested Mr H had ignored many red flags and the point of loss here was with Mr H's business bank account. It concluded by saying it was "*harsh*" to hold Starling 100% liable in the circumstances without onus on Mr H in any capacity.

As no agreement could be reached, the complaint was referred to me for a final decision.

### *My further investigation*

When the complaint was referred to me, I contacted Mr H's business account provider to understand more about what happened there. That bank provided evidence of what had been reported and it aligned with what Mr H told us. It said that L had been the victim of a scam and that Mr H was unaware that the payment from L had been reversed at the time he moved funds into his Starling account.

I contacted Starling and confirmed what Mr H's business account provider had said. I explained that I had seen evidence in the business account provider's records to support that Mr H had been caught up in a scam and that it was not in question that both L and Mr H had been duped.

I suggested to Starling that receiving money was a very powerful confidence trick that went right to the very heart of why this scam was able to succeed. I thought that Mr H's balance increasing would have cemented the circumstances. At the time Mr H made the payment, he thought he was doing the right thing. I suggested that I'd not seen anything to make me think Starling could fairly apply any of the exceptions to full reimbursement under the CRM Code.

Starling responded to say it wanted more clarification from Mr H's business account provider as to why it debited the account. It felt that Mr H was part of the journey of the scam but was not the direct victim of the scam.

I said that Mr H's business account provider had verified the version of events and allayed any concern that Mr H was somehow in cahoots. I thought that on the face of it the other bank was entitled to make its own decision about whether to debit Mr H's business account and that transaction was distinct to the one at issue here. I said it was not in question that Mr H had been duped into making a payment and had ended up out of pocket.

I let both parties know that our Investigator's recommendation for Starling to pay 8% simple interest on the funds was overly generous because Mr H's business bank account statements showed the credit balance was not interest bearing and it seemed more likely than not that these funds would have remained in that account but for the scam. I made Starling aware that my intention was to now issue 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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2018 and the terms and conditions of the customer's account.

However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse its 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 fully reimbursed Mr H in line with the provisions of the CRM Code it has signed up to and whether it ought to have done more to protect Mr H from the possibility of financial harm from fraud.

Starling is a signatory of the CRM Code which requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams in all but a limited number of circumstances.

The CRM Code only applies to APP scams as defined by DS1(2)(a). But I think the payment Mr H made from his Starling account meets this definition of a scam. There's no question in my mind that when he made the payment in dispute, he transferred funds to another person for what he believed was a legitimate purpose but was in fact fraudulent. As such, an APP scam has taken place here.

Starling has suggested that Mr H's business bank account provider is the point of loss. But the LSB has confirmed that the CRM Code specifically includes payment journeys which have been "*intentionally elongated to involve more than one individual.*" Whilst this is a complex and multi layered scam, I do not consider that L or Mr H have orchestrated it. The information I have seen from Mr H's business bank provider shows that both L and Mr H's explanation of events are consistent with what Mr H has told both Starling and this service. Whilst I appreciate Starling's position that this is an unusual multi-stage fraud, the involvement of an unwitting intermediary does not exclude the possibility of the CRM Code applying. The LSB has said that consideration should be given to the point at which the consumer lost control of their funds. Here, the funds were ultimately lost to Mr H when he transferred them out of his Starling account, so I consider the payment Mr H made from his Starling account is capable of being covered by the CRM Code.

This means that Starling should refund Mr H unless it can show that one of the exceptions to reimbursement set out in the CRM Code at R2(1) apply to this case. Starling has argued that exceptions to reimbursement under the CRM Code do apply to this case.

The exceptions relevant here are:

- The customer ignored an effective warning in relation to the payment being made.
- 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
  - The person or business with whom they transacted was legitimate.

### *Effective warnings*

Mr H was making a payment of over £9,000 to a new payee. Under the CRM Code, Starling should have identified a potential scam risk in the payment journey and provided an “effective warning.” When considering any warning given, consideration must be given to whether the warning is likely to have had a material impact on preventing the scam.

Starling says that as part of the payment journey Mr H answered guided questions to say that he was paying to a family friend, repaying money they had lent them, that they had met face to face, that they had paid each other before and that they did not receive a request unexpectedly. I don’t think Mr H’s responses to get to this point were deliberately misleading. He’s explained that his primary motivation was to return the money he’d received that did not belong to him. The purpose of these questions is to enable Starling to provide a warning intended to give Mr H a better chance of protecting himself from potential fraud. As a result of Mr H’s answers, Starling provided a warning that was tailored to the risk of a bank impersonation scam. The information said:

*## Warning Fraudsters will tell you how to answer these questions to scam you. A genuine organisation will never do this. A bank or any other organisation will never tell you to move money to a new, 'safe' bank account. Fraudsters can make phone calls appear to come from a different number. Are you speaking with who you think you are? If in doubt you can call us on 0207 930 4450.*

Starling says this warning was specific and impactful as required by the CRM Code. But I don’t consider it brings to life how this scam looks or feels when it is happening to the extent that it would have given Mr H a better chance to protect himself from being defrauded. It is clear that Mr H was reading the information as it was displayed on the screen in order to be able to answer the guided questions, but I don’t think what he was reading resonated with him so that he recognised his own circumstances. Mr H has explained he did not doubt that he was speaking with L’s bank. He was speaking with the same person that L had spoken to and he describes the caller as “*highly professional*.” Mr H recalls that he did not feel pressured into making the payment and that the caller was happy for him to verify information directly with L, which reassured him he was doing everything right.

In my view, the information Mr H was presented with was not enough to give the typical customer a better chance to protect themselves. It didn’t give any information about the risks and consequences of proceeding with the payment, which is a key standard set out in the CRM Code.

I don’t find this warning meets the standards for firms set out in the CRM Code and so it can’t be said to be an effective warning. Starling can’t then fairly apply it as an exception to reimbursement in this case.

### *Reasonable basis for belief*

I’m also not persuaded that what Starling has said is enough to establish that Mr H did not have a reasonable basis for belief when making the payment. I have no doubt that Mr H believed he was doing the right thing at the time. It’s clear it didn’t occur to him there was any possibility that his own money was ever going to be at risk by following the caller’s instructions. People don’t enter into situations wanting or expecting to be scammed and I’ve not seen anything that makes me think Mr H ought to have had a heightened awareness of how a bank impersonation scam works. I think it was reasonable for Mr H to believe this situation was genuine in all the circumstances as they were here, and I don’t agree Mr H “*blindly trusted the caller without any reason*.”

I don't agree that Mr H ought reasonably to have had doubts about the situation. I don't consider that Starling has placed sufficient weight on the environment created by the fraudster. This was a very sophisticated, multi layered scam. The level of subterfuge was such that at one point Starling questioned whether Mr H and L were involved in its execution.

I don't think Mr H should have had greater concerns about the situation he was unwittingly placed in. L is someone that Mr H knows personally and had no reason not to trust. L is a respected member of the local community and a previous client of Mr H's business. There was a good reason why L had Mr H's business account details saved as a payee and the situation that a payment had been made to Mr H's account due to a problem at L's end, was, on the face of it, entirely plausible.

When Mr H checked his balance, he had received the funds. I've seen Mr H's business bank account statements and the deposit has L's name as the payment reference. This is incredibly powerful, and I don't think Starling has given this enough weight when assessing Mr H's actions. Mr H had received a significant amount of money that did not belong to him. It was clear the funds had come from L and L was in direct contact with him to try and arrange getting the funds back.

The situation unfolded at a time when Mr H was working. The nature of Mr H's job meant it was not possible for him to stop what he was doing for extended periods of time. This meant that he did not have much time to think. In addition to this, Mr H wanted to return the money that did not belong to him promptly. I don't think it was unreasonable of him to follow L's lead on how best to do this and I don't think he ought to have been concerned when L asked if he would be willing to speak to her bank. I don't think Mr H should have contacted Starling at this stage, as Starling has suggested. Mr H did not perceive any risk of harm from fraud to him or L at this time and nor should he have done.

Mr H has explained that he was in contact with L whilst speaking to the fraudster. It is possible to send a text from a smart phone whilst on a call, so I don't think what Mr H has described is implausible.

I have carefully considered Starling's representations about the warning it gave and whether Mr H had a reasonable basis for believing the payment to be genuine. But they do not persuade me to reach a different view to the overall position our Investigator took. In particular, I am not persuaded that Mr H failed to take the requisite level of care required for Starling to choose not to reimburse under the terms of the CRM Code. It follows that under the provisions of the CRM Code, Mr H should have been reimbursed for the funds he lost.

I do appreciate Starling's frustrations that it, rather than another financial business, will be solely responsible for Mr H's loss. But given that Starling is a signatory to the CRM Code, I don't find that Starling being responsible creates an unfair outcome.

Turning to interest, it's necessary for me to consider both the point at which Starling ought reasonably to have refunded the claim under the CRM Code and whether Mr H can satisfactorily demonstrate that he has been caused loss by being deprived of the money since that point. Having looked at Mr H's business bank account statements, I think it's more likely than not that the funds would have remained in that account but for this scam. The account typically runs with a high balance of working capital, and I don't think Mr H had any immediate plans to use the funds. As this account does not pay interest on credit balances, I am unable to fairly say that Starling should have to pay any additional interest on the refund.

### **Putting things right**

For the reasons I have explained, I have decided it is fair and reasonable to uphold this complaint about Starling. Starling should have reimbursed Mr H under the terms of the CRM Code— and I therefore require it to:

- Refund the £9,875.69 Mr H lost as a result of the scam within 28 days of receiving notification of acceptance of my final decision

### **My final decision**

My final decision is that I uphold this complaint about Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 June 2023.

Claire Marsh  
**Ombudsman**