

## The complaint

Mrs P complains that Starling Bank Limited ("Starling") will not refund the money she lost after falling victim to a romance scam.

## What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

In January 2020, Mrs P met someone on a dating website who will I refer to as T. The conversation quickly moved to a messaging platform and after a few weeks T started to ask Mrs P to lend him money. She initially made payments from her other bank accounts elsewhere but both banks raised concerns with Mrs P that she was a victim of a romance scam and blocked payments and involved the Police. In July 2020, Mrs P opened an account with Starling. Between 20 July 2020 and 22 November 2021, Mrs P made 11 transfers (three of which were international payments) totalling over £70,000.

Transaction number	Date	Sum	GB/International
1	20/07/2020	£8,000.00	GB
2	25/11/2020	£8,750.00	International
3	15/01/2021	£8,001.06	International
4	25/03/2021	£7,505.00	International
5	30/04/2021	£10,000.00	GB
6	03/05/2021	£5,320.00	GB
7	04/06/2021	£4,500.00	GB
8	03/08/2021	£2,300.00	GB
9	23/10/2021	£7,500.00	GB
10	09/11/2021	£6,250.00	GB
11	22/11/2021	£2,000.00	GB

The investigator upheld the complaint in part. He recommended that Starling refund the domestic payments (transaction one and transactions five to eleven) Mrs P made under the Contingent Reimbursement Model (CRM) Code. This is because he felt Mrs P was vulnerable when making the payments to the scammer.

He also recommended Starling should pay 8% simple interest from the date Mrs P's claim was declined up until the refund is paid.

However, the international payments (transactions two, three and four) are not covered by the CRM Code, and he didn't find any reason to uphold those. He felt that any intervention from the bank wouldn't have made a difference.

Starling acknowledged that Mrs P may have been vulnerable to this particular scam, but it felt that this was only up until the point that she was explicitly told by Police that this was a

scam. As all the payments being considered by Starling were made after these warnings by the authorities, Starling concluded that any vulnerability fell away at this point and therefore Mrs P was no longer vulnerable to this scam by the time she made the payments through Starling. Further it felt that if it had intervened in any way, Mrs P would have still made the payments as she had not even believed the Police.

As the case 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, 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 be good industry practice at the time.

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 Mrs P 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 Mrs P 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 Mrs P from the possibility of financial harm from fraud.

There's no dispute here that Mrs P was tricked into making the payments. She thought she was helping someone she believed she was in a relationship with, and this wasn't the case. But this isn't enough, in itself, for Mrs P 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 doesn't cover international payments, so it doesn't cover the second, third and fourth transactions Mrs P made.

### Transaction one and transactions five to eleven

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mrs P. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions. I haven't outlined them here as they are not relevant in this particular case.

#### *Vulnerability under the CRM Code*

Section R2(3) of The Code also requires firms to assess whether a customer is vulnerable to the APP scam they fell victim to. It says:

*A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.*

The CRM Code also says that in these circumstances, the customer should be reimbursed notwithstanding the provisions in R2(1), and whether or not the firm had previously identified the customer as vulnerable.

As this provision under the CRM Code might lead to a full refund, notwithstanding the provisions in R2(1), this is the starting point for my decision in this particular case.

Starling argued that, whilst Mrs P may have been vulnerable to this particular scam, it felt that this was only up until the point that she was explicitly told by the Police that this was a scam. As all the payments being considered by Starling were made after these warnings by the authorities, Starling concluded that any vulnerability fell away at this point.

The Code says vulnerability should be considered on a case-by-case basis. The Code outlines some factors for firms such as Starling to consider. Whilst I consider the factors to be indicators of potential vulnerability and a non-exhaustive list, it is readily apparent from what Mrs P has described of her personal circumstances at this time that she was vulnerable and, in my view, - specifically vulnerable to a romance scam. I do not think it would be reasonable for Starling to have expected Mrs P to be able to protect herself from this particular scam, especially given its timing and nature.

From the information Mrs P has provided to both us and the bank, it's clear that she was experiencing a particularly difficult time in her personal life when she fell victim to the scam. Mrs P had been with her husband since her teens for 40 years and this relationship ended in 2016. She became ill and had serious health struggles in the years leading to the scam which left her medically 'vulnerable' to Covid when the pandemic hit in 2020. She'd also suffered redundancy and became furloughed during lockdown. She was dealing with things on her own. Perhaps more significantly, as she was self-isolating due to her vulnerability to Covid – she was lonely, and the 'relationship' soon became her only outlet from her loneliness.

Mrs P was deceived into a false relationship by the scammer. He gained her trust by communicating for an extended period of time. He alluded to wanting the same things. He used the pandemic and thoughts of him being able to return with his 'goods' held up in customs, to manipulate and extort money from her. I think Mrs P was particularly susceptible to detriment at this time.

In my view, Mrs P was significantly less able to represent her own interests and I think this is something the scammer picked up on. Mrs P has shared some of the messages she exchanged with the scammer with us and Starling. It's clear that the scammer exploited Mrs P. Her state of mind coupled with her desire to have a loving relationship again - meant she wasn't in a position to protect herself from falling victim to the scam. I consider Mrs P's situation to have left her with a low ability to withstand financial and emotional shocks.

The impact of this scam both financially and non-financially has been significant for Mrs P. It created a debt as she borrowed the money in the form of loans and used her mother's savings which were supposed to be for care home fees. She has been left emotionally devastated by the betrayal in her trust. I don't agree with Starling that this vulnerability would simply have 'fallen away' following intervention from her previous banks and the Police. Indeed, it seems to me, such was her vulnerability, that this intervention did not break the spell she was under.

For the reasons I have already explained, I do not think it would be reasonable to have expected Mrs P to protect herself from becoming the victim of this particular romance scam in her circumstances. As a result, I find Mrs P was vulnerable to this particular APP scam and I think Starling should have identified that when it considered her claim under the CRM Code.

Starling mentioned in its response to the view that it wasn't aware of any vulnerabilities until the scam report was made. But as I've mentioned above - the CRM Code is clear that where the consumer meets the definition of vulnerability under the CRM Code – they should be reimbursed in full *whether or not the firm previously identified the customer as vulnerable*. It is also the case that if a customer meets the definition of vulnerability set out under the CRM Code that exceptions to reimbursement (such as reasonable basis for belief, ignoring effective warnings and gross negligence) do not apply.

So, I haven't gone on to consider whether any of the exceptions under the CRM Code would have (otherwise) applied in this case.

#### Transactions two, three and four

Although these three transactions are not covered by 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.

So, I've thought about whether Starling missed an opportunity to intervene at the time Mrs P made these payments, potentially preventing her from experiencing financial harm. I agree with the investigator that Starling ought to have intervened from the point when Mrs P made the payment of £8,750 on 25 November 2020 (and broadly for the same reasons). However, I'm not going to go into detail because I also agree with the investigator that any intervention by Starling would not have made a difference. I have explained why below:

Mrs P had already been told by the Police and two of her other banks that she was being scammed. Mrs P opened the Starling account when those banks would not allow her to make these payments anymore. So, I think it more likely than not she would have continued to find a way to make payments – regardless of anything Starling could or should have done. I am therefore not upholding transactions two, three and four.

### *Recovery of these funds*

I've also thought about whether Starling took reasonable steps to recover Mrs P's funds once it was made aware she was the victim of a scam. The first scam payment was made in July 2020 and the last in November 2021. The scam was reported on 13 December 2021 and Starling sent notification to the beneficiary accounts almost immediately the same day. I understand that Mrs P didn't know she was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful as scammers usually remove funds within hours.

Some of Mrs P's funds were transferred to an international bank account. International banks aren't bound by the same rules and regulations as banks within the UK. And Starling is reliant upon the international bank choosing to return funds. It can't require or force them to and unfortunately no funds have been returned. From what I've seen Starling has done what it should've to try and recover the funds for Mrs P but has been unable to obtain a refund for her.

### **Putting things right**

In order to put things right for Mrs P, Starling Bank Limited should:

Refund all the domestic transactions (transaction one and transactions five to eleven inclusive)

To compensate Mrs P for being deprived of the money she lost, Starling should add simple interest<sup>1</sup>. at the rate of 8% per annum to the above, from the date her claim was declined to the date of settlement.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 November 2023.

Kathryn Milne  
**Ombudsman**

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<sup>1</sup> If Starling is legally required to deduct tax from the interest it should send Mrs P a tax deduction certificate so she can claim it back from HMRC if appropriate.