

## **The complaint**

Mr P is unhappy that Starling bank Limited has refused to refund the money he lost after falling victim to a 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:

Mr P was in contact with an individual - who I will refer to as Z – who he'd previously met when his family were renting a property in November 2019. At that time Z posed as the landlord (although it later transpired he was not the person they had rented the property from). Z left Mr P with his card explaining he could help with rentals in the future. In December 2021, Mr P got back in touch with Z as he needed a property to rent.

Having been provided with property details - Mr P sent Z two payments for £1,000 and £1,200 on 11 December 2021 and 13 December 2021 - as a deposit and part of the first month's rent respectively.

Starling felt this was a civil dispute, primarily as it was under the impression that Mr P had rented from Z before. It declined to refund Mr P and signposted him to other organisations, as well as referring him back to Z. However, as a result of further evidence it raised an APP scam with the beneficiary bank and £8.47 was recovered. However, it continued to maintain this was a civil dispute.

Our investigator didn't agree this was a civil dispute - as she felt the evidence indicated this was a scam. She felt the consumer had a reasonable basis for belief - so recommended Starling refund Mr P in full along with a payment for the distress and inconvenience Starling has caused Mr P.

Starling didn't agree. It felt Mr P had failed to notice the invoice he was paying was contradicting the information he'd gathered - but he decided to proceed with the payment. The customer was never told he'd receive a discount, and if he had received goods/services from this organisation before, paying less than what the market value is for the rent including bills, isn't something that is normal in the property/letting industry. So, it doesn't think the customer took complete care when making the decision to transfer the funds.

Starling also argued that it gave a warning based on mis information by Mr P. As in answer to its questions at the time of transfer, Mr P said he was renting a room from a trusted friend or family member and that he'd paid them before which wasn't the case here.

As the case could not be resolved informally it's 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.

Having done so I've reached the same outcome as the investigator broadly for the same reasons. I think Starling should refund all of the money Mr P lost to the scam (along with interest) and a payment for distress and inconvenience. I've reached this conclusion having taken the following into account:

Starling has signed up to the CRM Code and it was in force when Mr P 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 CRM 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 Mr P did not pay a legitimate supplier and has fallen victim to an APP scam. In summary, 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 customers who have been the victims of APP scams like this in all but a limited number of circumstances. Starling says one or more of those exceptions applies in this case. The exceptions relevant to this case 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 the person or business with whom they transacted was legitimate.
- The customer ignored an effective warning in relation to the payment being made.

There are further exceptions within the CRM Code, but they do not apply in this case.

### *Did Starling meet its obligations under the CRM Code*

The CRM Code says that Effective Warnings should be risk based and, where possible, 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 payments weren't for a particularly large amount (although I appreciate it is a lot of money to Mr P) and didn't leave the balance of his account at a particularly unusual level. So, I don't think the payments will have looked suspicious or would have stood out to Starling and I wouldn't expect it to have identified a scam risk as a result of it.

There's a balance to be struck between identifying payments that could potentially be fraudulent and ensuring minimal disruption to legitimate payments. And so, I don't think Starling was required to provide an effective warning under the CRM Code, or that it has failed to meet its obligations under the CRM Code by not doing so.

But that in itself does not mean Starling does not need to reimburse the customer in full. As mentioned above, it is for Starling to show one or more of the exceptions apply.

*Did Mr P ignore an effective warning?*

Although I've concluded Starling did not need to provide a warning in this case, Starling says it *did* provide a warning when the new payee was set up and it blocked the transaction – asking Mr P some further questions. It says it provided a link to its website which lists all types of scams. Whilst I note it warned that the funds may not be recoverable when the new payee was set up, I don't think referring to a variety of scams via a link is impactful enough. And there is nothing within the advanced fee warning that brings to life what this sort of scam looks and feels like. So, I can't say that Mr P ignored an effective warning or that Starling has shown this exception applies.

Starling has also suggested that Mr P did not answer its questions correctly. But I think Mr P was arguably tricked into believing he was paying a trusted friend and someone he'd paid before – so I don't think it's entirely unreasonable he answered these questions as he did. I'm not sure what Starling is saying here. But if it's suggesting Mr P's choice of answers made it very difficult for Starling to give a tailored and impactful warning – I've already concluded that it didn't need to provide one. This is not the reason why Starling is being asked to reimburse the consumer. If it's saying it was prevented from providing an alternative 'effective' warning that would also be irrelevant because Mr P didn't see that particular warning. So, whilst I don't find that Starling has failed in its obligation to provide an effective warning, but I also can't say Mr P ignored an effective warning either.

All of this means that this case turns purely on whether the final exception applies.

*Did Mr P have a reasonable basis of belief or could he have done more to mitigate his losses?*

Starling says the CRM Code permits a bank to choose not to fully reimburse a customer in some cases where the bank is able to establish that the customer didn't take sufficient care in making the transaction. But there is no standard of care or specific responsibilities placed on customers via the Code, and in any event, the Code does not bind customers. This is something the Lending Standard Board pointed out in its 2022 Review of adherence to Contingent Reimbursement Model Code <https://www.lendingstandardsboard.org.uk/wp-content/uploads/2022/09/CRM-22-Summary-report-Final-0922.pdf>

Starling has already acknowledged that the same reasons why it thought this was a civil dispute – go some way to explain why the consumer had a reasonable basis for belief. I think this was a sophisticated scam where the consumer was tricked into believing Z was working for the same people/person he had rented from before. Mr P had met Z in person, and they were in contact over a prolonged period of time. Furthermore, Mr P was given a business card which appears to be a clone of a genuine business and he was provided with a contract for the rental property. He asked a number of questions during the conversation with Z about the property and was provided with a video of its interior and a photograph of the exterior. He has given a plausible explanation of why he couldn't visit the property in person at the time.

I appreciate Starling has said Mr P failed to notice the invoice he was paying was contradicting the information he'd gathered. Of course, there is more Mr P might have done with the benefit of hindsight. But the question for me is whether it was reasonable for Mr P to believe, in all of the circumstances, that the payee was the person he was expecting to pay, the payment was for genuine goods or services and/or the business or person he was transacting with was legitimate. And I think he was. I wouldn't expect Mr P to see all the red flags that a bank, with its industry knowledge of fraud, can now see after the event.

Overall, I am satisfied Mr P had a reasonable basis for belief. No other exceptions apply in this case so Starling should refund Mr P in full along with interest to compensate him for being deprived of the use of this money.

#### *Distress and inconvenience*

In considering this, I've specifically thought about the impact of Starling's actions, rather than the impact of the crime itself.

The investigator's recommendation for distress and inconvenience was not made because Starling declined the claim. It was made because it became evident during the course of Starling's communication with Mr P that Mr P had been mistaken (I would go as far as to say - he 'd actually been misled or tricked) into thinking Z was part of the same organisation as the original landlord they used in November 2019.

As a result, Mr P was given confusing information by Starling – about contacting Z, then not to contact Z. This left Mr P confused and unsure as to how to progress as Z was uncontactable. Starling's failure to sufficiently act has had an impact on Mr P, not least because he has been facing the very real possibility that he would not get his money back. And, as the investigator mentioned, all of this happened at an already stressful time when Mr P was planning to return to the UK with his family for work.

So, I agree with the recommendation and therefore award Mr P £150 for the distress and inconvenience he has suffered.

#### *Recovery of funds*

In view of my finding to uphold the complaint in full, it is not necessary for me to reach a finding about whether Starling took reasonable steps to recover Mr P's funds once it was made aware he was the victim of a scam. But for completeness, the scam payments were made on 11 December 2021 and 13 December 2021. Mr P reported the scam on 21 December 2021. But Starling didn't report it to the beneficiary until 24 December 2021 and the total amount recovered was £8.47. There was a delay of three days here, although I think it unlikely that delay would have made a difference here as scammers usually remove funds within hours.

## **Putting things right**

Your Starling Bank Limited should put things right for Mr P as follows:

- Reimburse Mr P's loss within 28 days of receiving notification of his acceptance of my final decision; (so a refund of £2,200 minus the £8.47 which was recovered)
- Add simple interest to the above at the rate of 8% per annum from the from the date Mr P should have received a full refund under the CRM Code to the date of settlement.
- Pay £150 for the distress and inconvenience caused.

## **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 September 2023.

Kathryn Milne  
**Ombudsman**