

The complaint

Mr H is unhappy that Starling Bank Limited (“Starling”) won’t refund the money he lost as a result of a third-party 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 September 2022, Mr H received a call from someone who said they worked for his bank but, ultimately, turned out to be a scammer. The scammer persuaded Mr H that his account was under attack, and he needed to move his money to a safe place. They coached Mr H through the process to move money into a ‘safe’ account. Mr H moved a total of £3,500 over three transactions (£1,700, £900 and £900). Mr H started to become suspicious and called the real Starling Bank which led to the scam being uncovered.

Our investigator upheld the complaint. He felt that the warnings Starling gave weren’t effective. He also thought Mr H had a reasonable basis for belief.

Starling didn’t agree – whilst it accepted the arguments for the customer’s reasonable basis for belief. It said it didn’t feel it should be held 100% liable in this case. It felt the warnings were specific to the case and should have alarmed Mr H to disconnect the call. It also said that as the consumer gave the wrong information, it suppressed Starling’s opportunity to probe and question the customer further.

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.

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.

The CRM Code

When thinking about what is fair and reasonable in this case, I’ve considered whether

Starling should have reimbursed Mr H in line with the provisions of the Lending Standards Board's Contingent Reimbursement Model (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.

There's no dispute here that Mr H was tricked into making the payments. He thought he was protecting his savings, but this wasn't the case. 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 such circumstance might be when a customer has ignored an effective warning.

A second 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.

I am also mindful that when Mr H 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 it processed 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 Mr H ignore an effective warning?

Starling did provide a warning for 'friends or family' which is what Mr H selected at the time the payment was processed. Starling says Mr H providing the wrong information suppressed Starling's opportunity to probe and question the customer further.

I note Starling says despite being misled as to the payment purpose – it still thinks the warnings it gave were effective. But regardless of why this particular warning was provided, I don't think it was effective and so I don't think Starling can apply this exclusion under the CRM Code. I'll explain why.

I don't think this warning is effective – especially in the context of the circumstances of a safe account scam. Visually it's not an impactful warning. There's a lot of text within the warning, which during a safe account scam could be difficult to follow. The warning is also not particularly direct, personal or clear enough which is essential in a safe account scam, given the level of coaching that's often involved and the fact the consumer thinks they are speaking to the bank.

More often than not, the scammer will be pretending to be the customer's bank, so it lacks impact in saying 'a genuine organisation' – it ought to be more specific on this point.

The explanation of spoofing is also not clear enough. I don't think it really gets across the point, through the use of the term 'a different number', that scammers can make phone numbers look like the genuine bank's phone number or a very similar one which is a common safe account scam feature.

The warning also puts the onus back on the consumer to identify whether it's a scam by saying 'Are you speaking with who you think you are?' when in fact, it should be more direct in confirming that such scenarios are highly likely to be, or will be a scam, so it's not impactful.

So, I don't think Mr H ignored an effective warning.

Did Mr H have a reasonable basis for belief?

Starling accepted the investigator's conclusions that Mr H had a reasonable basis for belief. So, I won't go in detail on this – but for completeness I agree and broadly for the same reasons the investigator outlined. On balance, I believe that it was difficult for Mr H to think clearly in the moment and once in the call he had little opportunity to make further enquiries. In all the circumstances, I don't think his response was unreasonable.

All of this means I don't think any of the exclusions under the CRM Code apply and so I find that Starling should fully refunded Mr H for his losses.

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

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'm not going to go into detail here because it doesn't change the outcome I've reached above. The only relevance of this point is in respect of the date from when interest should be paid on any refunds.

The payments were relatively small (although I appreciate it is a lot of money to Mr H) and did not look unusual or suspicious based on the account activity. Banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So I don't think Starling needed to do anymore in this case.

Recovery

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But Starling was able to recover £50.29 which has been returned to Mr H - so that should be taken into account below.

Putting things right

In order to put things right for Mr H, Starling Bank Limited should refund all the transactions, (£3,500) less the funds already recovered (£50.29).

To compensate Mr H for being deprived of the money he lost, Starling should add simple interest¹ at the rate of 8% per annum to the above from the date his claim was declined to the date of settlement.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 November 2023.

Kathryn Milne
Ombudsman