

The complaint

Mr H complains that Starling Bank Limited won't refund money he lost as a result of a scam.

In making this complaint Mr H is represented by a third-party, but for the ease of reading I'll refer to Mr H throughout this decision.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. Instead, I will provide a summary and focus on giving the reasons for my decision.

Mr H made two payments to a third-party (who I will call A), as follows:

Date account debited	Payment type	Amount
28/09/2021	International Transfer	£9 (Euros 10 approx.)
05/10/2021	International Transfer	£2,588 (Euros 2,989 approx.)

Mr H later realised he'd been the victim of a type of scam known as a 'romance scam' – having met someone (who I will call B) through a dating app. He complained to Starling (around a year later) about the payments as he didn't think it had done enough to prevent him from falling victim to the scam.

Starling didn't uphold the complaint. It said it had completed due diligence by contacting Mr H and requesting further information about the second larger payment.

Unhappy with the outcome, Mr H referred the complaint to this service. One of our investigators looked into it and upheld the complaint. He said that the first payment – given the low value, wouldn't have been considered as suspicious by Starling. But, while he acknowledged that Starling had spoken to Mr H about the second payment, he didn't think it had done enough to warn Mr H that the payment he was making had the hallmarks of a scam. He recommended that Starling should compensate Mr H for the loss he has suffered as a result of the second payment.

Mr H accepted the investigators findings, but Starling didn't agree. It said – in summary, it had blocked the transaction and contacted Mr H before releasing it. It added that the investigator hadn't put enough onus on Mr H.

The investigator considered what Starling said, but he didn't alter the outcome he had previously reached. He said Mr H was a victim of a sophisticated scam, and he didn't think that the documentation he had provided Starling was enough for it to lift the block it had originally placed on the payment.

As agreement couldn't be reached Starling asked for an ombudsman's review. So, the complaint has been passed to me.

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.

Having done so, I'm upholding this complaint for largely the same reasons as our investigator previously set out.

The starting position in law is that Mr H is responsible for payments he's authorised himself. But Starling also has an obligation to be on the lookout for unusual and out of character transactions which might, among other things, indicate its customer was at risk of financial harm from fraud. So, the first thing I've thought about is whether Mr H's payment instructions were particularly unusual or uncharacteristic, when looking at the normal payments on his account.

The first payment Mr H made to A was for 10 Euros (£9 approx.). Like the investigator, given the low value of the payment, I don't find that there was enough suspicion about the transaction that I would've expected Starling to intervene.

Starling accepts that it had concerns about the second payment. And it's not in dispute that Starling contacted Mr H about it. So, what I need to decide is whether Starling's intervention went far enough to prevent Mr H falling victim to a scam.

I've seen that Starling provided a warning about potential scams when Mr H first set up a new payee for these transactions. I've also seen that Starling asked him about his relationship with A and B and blocked the payment at one point. These steps and additional checks are what I would expect Starling to take.

But having listened to the call recording, I'm not persuaded that the questions Starling asked Mr H went far enough. But, even based on the limited questions asked, I'm persuaded Mr H's answers – he admitted to not having met A or B and he told Starling that A was a friend of B not his friend, should have prompted Starling to warn him that the payment he was making had the hallmarks of a scam. But it didn't do so. So, I'm not persuaded that Starling did enough here to put Mr H on notice that he was potentially being scammed.

I appreciate that Starling still had concerns after this call and restricted Mr H's account. And I've seen that it contacted Mr H to ask more details about the payment. But Mr H didn't provide all the evidence Starling asked for – such as, evidence of the conversations he'd had with B. I've seen Mr H sent Starling a copy of a 'loan agreement' that B had signed as evidence that there was an agreement in place for the money to be repaid. But I find that the provision of this document should have been of significant concern to Starling – particularly as the loan agreement set out the money was supposedly being provided so B could access his inheritance, which is typical hallmark of a scam. But again, I've not seen anything to persuade me that Starling explained to Mr H the reasons for its concerns.

Given the information that Starling had gathered and the concerns it clearly had, I'm not satisfied that the 'loan agreement' (which was also between Mr H and B not A - who the money was being sent to) was sufficient for it to have released the payment. While I appreciate Mr H later became insistent that the payment was sent, like the investigator, I think Starling should have engaged Mr H in the reasons for its concerns. Had it done so, I think it's most likely that Mr H would have then had more understanding as to why Starling had initially blocked the payment and was asking questions about it. And, ultimately, I'm persuaded he wouldn't have made the second payment.

I've gone on to consider whether Starling met the standards I'd reasonably expect of it in terms of attempting to recover these payments from the beneficiary bank. And I'm persuaded it did. Starling has explained that it contacted the beneficiary bank but didn't get a response. Given the time that had passed before Mr H contacted Starling about this matter, I find it's most unlikely that Starling would have been able to recover the payments. When an international payment is made any recovery attempt is made on a best endeavours basis and relies on both the money still being present in the beneficiary account and the willingness of the receiving bank to give it back.

I've also thought about whether Mr H should bear some responsibility for the loss he has suffered, and whether he acted reasonably in the circumstances. But, in the particular circumstances of this complaint, I think Mr H acted reasonably. This was a sophisticated romance scam and I'm persuaded Mr H thought he'd made a genuine romantic connection with B – they shared photographs and engaged in conversations on a personal mobile app. He also made attempts to protect himself by asking B to enter into a loan agreement. But I'm not persuaded that this meant Mr H thought he was being scammed. I think it's more likely he simply thought he was taking normal precautions to ensure the money he was lending would be repaid.

Overall, I'm not persuaded that Mr H would have known he was the target for a sophisticated scam. I find that Starling was better placed to pick up on the potential significance of what Mr H was saying and the documentation he provided. As I have already explained, banks should be on the lookout for the possibility of financial harm, and I find that Starling missed opportunities to engage with Mr H about the payment he was intending to make. In the circumstances, I'm satisfied that Starling should fairly and reasonably compensate Mr H for the loss he has suffered as a result of the second payment.

I've considered whether Starling should pay Mr H compensation for the distress and inconvenience he's experienced as a result of this matter. But the primary cause of the distress Mr H experienced was caused by the fraudster not Starling, and that isn't something I can award compensation for.

Finally, while I understand why Mr H chose to instruct a third-party representative, he was able to refer his complaint to our service free of charge. So, I make no award for any costs he has incurred by his decision to use a third-party representative.

My final decision

For the reasons set out above, I uphold Mr H's complaint. Starling Bank Limited should now:

- Refund Mr H the value of the second payment - £2,588 including any fees associated with that payment.
- Pay Mr H 8% simple interest per annum from the time he made the second payment until date of settlement.
- Refund any overdraft fees and interest incurred as a result of the second payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 September 2023.

Sandra Greene
Ombudsman