

## **The complaint**

Mr O complains that Starling Bank Limited (Starling) is refusing to refund him the amount he lost as the result of a scam.

## **What happened**

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, around September 2022 Mr O started to trade with a company called MIT-IC Trading (X). Mr O thought X to be genuine. However, when he attempted to make a withdrawal from the trading account he was met with obstacles and was unable to make a withdrawal.

Mr O made two payments into the scam from his Starling account each for the value of £1,000. The payments were made using Mr O's debit card, via genuine cryptocurrency exchanges Moonpay and Ramp.

Our Investigator considered Mr O's complaint and didn't think it should be upheld. Mr O disagreed, so this complaint has been passed to me to decide.

## **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.

It has not been disputed that Mr O has fallen victim to a cruel scam. The evidence provided by both Mr O and Starling sets out what happened. What is in dispute is whether Starling should refund the money Mr O lost due to the scam.

### *Recovering the payments Mr O made*

Mr O made payments into the scam via his debit card. When payments are made by card the only recovery option Starling has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr O was dealing with X, which was the business that instigated the scam. But Mr O didn't make the debit card payments to X directly, he paid separate cryptocurrency exchanges. This is important because Starling would only have been able to process chargeback claims against the merchants he paid, not another party (such as X).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr O's payments into cryptocurrency. Therefore, they provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants Mr O paid.

I understand that Mr O feels his payments in relation to the scam should be refunded in accordance with the CRM Code. But the CRM Code does not apply to payments made by card so I'm satisfied the CRM Code wouldn't apply in this scenario.

*Should Starling have reasonably prevented the payments Mr O made?*

It has been accepted that Mr O authorised the payments that were made from his account with Starling, albeit on X's instruction. So, the starting point here is that Mr O is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Starling should have been aware of the scam and stepped into question Mr O about the payments he was making. And if it had questioned Mr O, would it have been able to prevent the scam taking place.

The payments Mr O made into the scam were not of a significant value and were made to legitimate businesses. The payments were also not out of keeping with the payment values normally seen being paid from Mr O's account. So, I don't think it's unreasonable that the payments didn't trigger Starling's fraud prevention systems prompting it to step in and question Mr O about the payments.

As I don't think it was unreasonable that Starling's fraud prevention systems weren't triggered, I don't think Starling missed an opportunity to prevent the scam and it is not responsible for Mr O's loss.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 March 2024.

Terry Woodham  
**Ombudsman**