

The complaint

Mr B and Miss M complain that Starling Bank Limited won't refund money they paid for replacement windows and doors which they didn't receive from the merchant.

What happened

In late 2021, Mr B and Miss M were seeking replacement windows and doors. They obtained a quote from a company (which I will refer to as W).

Mr B and Miss M explain they carried out research into W including checking Companies House and reading reviews. Those reviews mentioned delays but didn't cause them any particular concerns about W's legitimacy.

They decided to proceed and paid the initial 50% deposit – an amount of £8,580. This was sent by Faster Payments bank transfer from Mr B and Miss M's joint Starling account.

W visited their property and measured up. Mr B and Miss M were provided with design drawings. At that point, everything seemed to be progressing as expected. However, they were subsequently unable to contact W. Mr B and Miss M later learned that W might have entered administration.

They contacted Starling about the matter in January 2022, asking if Starling could help recover their payment. Starling advised contacting W's administrator.

However, Mr B and Miss M began to suspect that W hadn't been operating legitimately and had in fact defrauded them. A different window installer told them the measurements and drawings were faulty and extremely inaccurate. He thought this meant W had never intended to fulfil the contract.

So, Mr B and Miss M reported the matter to Starling as a scam. However, Starling said it believed they had a civil dispute with W. In other words, Starling didn't consider Mr B and Miss M had been the victim of an Authorised Push Payment scam (APP scam). Starling couldn't help and didn't consider it was liable to refund Mr B and Miss M.

Mr B and Miss M didn't accept this. They'd reported the matter to Action Fraud and said it told them a civil dispute would only apply where goods or services were provided (at least in part). They'd not received any goods and so this was fraud. They continued to believe this had been a scam and disputed that W had been operating legitimately.

Mr B and Miss M referred their complaint to our service. One of our Investigators looked into what had happened, but she didn't uphold their complaint. The Investigator sympathised with the situation Mr B and Miss M now found themselves in but agreed with Starling that the matter was a civil dispute rather than an APP scam. The information she'd gathered from relevant third parties indicated this had been a legitimate business that had encountered trouble following the pandemic and that it had failed, rather than having been fraudulent. She therefore thought the bank had no obligation to provide Mr B and Miss M with a refund.

Mr B and Miss M didn't accept this. As no agreement could be reached, I have been asked to reach a final 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.

I'm sorry to hear about what happened here. Mr B and Miss M have paid a considerable sum and received nothing in return.

It seems hard to argue other than that W has breached its contract with Mr B and Miss M. They have a claim against that business as a creditor, and I understand that they have already registered this claim with the liquidator. But I'm not deciding a dispute between them and W – I don't have any power to look into a complaint about W. My role is limited to deciding Mr B and Miss M's dispute with their bank.

Of course, Starling didn't contract with Mr B and Miss M for the works, and I can't fairly hold the bank responsible for any breach of contract or other failings on W's part. As a starting point in law, Mr B and Miss M are responsible for the payment they instructed Starling to make for them. Unfortunately, there's little protection available for bank transfer payments, as this was. The protections that would apply against breach of contract or misrepresentation if Mr B and Miss M had paid by card aren't available.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams where the payment is made by bank transfer. But it only applies to APP scams, and it includes a specific exclusion for: *"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"*.

In other words, failure to provide goods or services isn't sufficient for the code to apply. Neither would a defective service, such as significant measurement errors or faults in the plans. In order to find that Starling was somehow liable to Mr B and Miss M under the CRM Code, I'd need to find that the evidence was strong enough to show this had been a deliberate, criminal scam from the outset rather than it being such a private civil dispute between them and W.

The question I need to address then is whether the available evidence demonstrates W was most likely acting fraudulently when Mr B and Miss M made this payment - deliberately setting out to deceive them into making the payments whilst never having intended to supply or fit the windows and doors as agreed. That also requires that I can exclude, on the balance of probabilities, the alternative possibility that this is simply a matter of W breaching its legitimate contract with Mr B and Miss M.

Simply put, that means deciding whether the available evidence shows it is most likely that W set out to defraud Mr B and Miss M with criminal intent. That is a high bar to meet.

In their submissions, Mr B and Miss M have provided evidence and documents in support of their claim that W was a fraudulent enterprise.

Aside from faulty measurements and drawings, it seems likely no other work was completed. Mr B and Miss M have also obtained written comments from the director of the window company they contracted with to carry out the works after W's failure to do so. He

believes W “had no intention of providing products or installation based on sizes and incorrect format I was shown and believe to be a fraudulent sale”.

I've taken account of these points and the other arguments and evidence submitted by Mr B and Miss M.

But I have also considered the other evidence available to me, including that gathered by our Investigator. W appears to have been trading for around 20 years. It seems unlikely to me that a firm such as this could have operated continuously for that length of time if it had been consistently failing to fulfil its agreements. That is perhaps reflected in the lack of concerns Mr B and Miss M's research revealed – if the feedback about W they'd seen had suggested this was a fraudulent firm I doubt they'd have gone ahead.

After W entered administration, I understand that some concerns about the failure and potential fraud were referred to the Police and Action Fraud. But I am not aware that either is pursuing a live investigation.

During her investigation, the Investigator obtained evidence showing the usage of the account held by W at the recipient bank. While I cannot share that evidence here, I have reviewed it and find it appears more consistent with legitimate operation than fraud. This interpretation is supported by the opinion of the insolvency practitioner that W was likely operating legitimately but encountered financial difficulties which finally led to the failure of the company.

All considered I simply can't safely conclude that W took Mr B and Miss M's money without ever having the intention of carrying out any of the work. The evidence available to me simply isn't enough to support such a finding. It isn't inconsistent with this having been a legitimate business that failed. So, I don't think Starling was at fault in reaching the outcome it did.

And while Mr B and Miss M point out that some customers with other banks have been refunded, I can't fairly require Starling to do so unless I find it was somehow required to.

I appreciate how frustrating and disappointing this answer will be. Mr B and Miss M have lost a lot of money as a result of W's failure to complete the agreed work. But I can't exclude the possibility that W entered the agreement in good faith, intending to fulfil the work (as it appears to have done previously for other customers) and then was unable fulfil the agreement due to the unanticipated failure of the business or some other reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that W essentially intended to steal Mr B and Miss M's money from the outset and never had any intention of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Starling responsible for the loss suffered here by Mr B and Miss M. In saying that I don't underestimate the impact this whole matter has had on them – I am sorry they appear to have lost a significant sum through no fault of their own. But it's simply the case that I can't fairly tell Starling to pay them the money they've lost, because I don't think Starling has treated them unfairly or was otherwise at fault here.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss M to accept or reject my decision before 24 November 2023.

Stephen Dickie
Ombudsman