

The complaint

Mr C and Ms M complain that Starling Bank Limited won't refund all the money they've lost to a rogue trader scam.

What's happened?

A company, which I'll refer to as 'T', responded to Mr C and Ms M's online request for quotations in respect of building works to their property. Mr C and Ms M say that T was properly registered and active on Companies House, its website looked professional, and T's Director appeared to be genuine and credible. The cost of the required works was agreed, and Mr C and Ms M made an initial payment so that work could begin. Over time, T requested further payments so that work could continue. The table below sets out all the payments Mr C and Ms M made to T:

Date of payment	Amount of payment
8 October 2020	£10,000
19 October 2020	£5,000
19 October 2020	£10,000
18 November 2020	£1,750
25 March 2021	£11,000

Mr C and Ms M say that eventually, it became clear that T didn't intend to complete the agreed work on their property or refund the payments they'd made. They reported the matter to Starling in November 2021. They said that T has left their property in a worse state than it was in before building works were instructed, and they've had to pay someone else to sort out the mess T has left. They asked Starling to reimburse the money they paid T.

Starling declined to reimburse Mr C and Ms M. It said that this matter is a civil dispute between them and T, not an Authorised Push Payment ('APP') scam covered by the Lending Standards Board's Contingent Reimbursement Model ('CRM Code'). Starling acknowledged that Mr C and Ms M didn't receive all the goods and services they paid for but said that building works did begin, and they did receive a partial service. The bank said that T is in liquidation and Mr C and Ms M should seek recovery via that route.

Mr C and Ms M referred a complaint about Starling to this Service. They said that T was operating fraudulently and was not a legitimate supplier. T's Director was arrested in late 2021 and has defrauded lots of other people in a similar way. T's liquidators have confirmed that there are no funds to redistribute amongst T's creditors.

What did our investigator say?

Our investigator upheld Mr C and Ms M's complaint. She found that they'd been the victims of a scam and said they should be fully refunded under the provisions of the CRM Code.

Starling didn't accept our investigator's findings. The bank maintained that this case isn't covered by the CRM Code because Mr C and Ms M have not fallen victim to a scam. It said

that work began on their property and some work was actually completed (a new boiler was installed at a cost of £1,750 and a flat roof was repaired at a cost of £1,000). Nevertheless, Starling offered to refund 50% of Mr C and Ms M's losses in an effort to resolve matters.

Mr C and Ms M declined Starling's offer. They said:

- They didn't receive 50% of the goods and services they paid for.
- They would agree to a reduction of £1,750 because the new boiler they paid for was installed (albeit late).
- The repair of the flat roof took a long time to complete and that has led to rain damage to their property. The work was also not completed to a satisfactory standard (tiles are already falling off the roof).

Starling asked for this complaint to be referred to an ombudsman for a final decision.

My provisional decision

I issued my provisional decision on 15 June 2023. I'll set out my findings below.

Starling has signed up to the CRM Code, and it was in force when Mr C and Ms M paid T. Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an 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 has argued that this matter is a civil dispute which is not covered by the CRM Code. But, having reviewed all the evidence we've received in this case and others we've handled involving money paid to T, I'm persuaded that Mr C and Ms M have fallen victim to an APP scam.

It is not in dispute that T is a registered business. But the key question here is, what was T's intention when it persuaded Mr C and Ms M to pay money to it? If the intention was to obtain money by deception, and this deception is what induced Mr C and Ms M to hand money over, this would constitute a scam.

This Service has received evidence from various bodies confirming that T was operating a scam. The evidence I've seen from Mr C and Ms M persuades me that they've fallen victim to the scam. I acknowledge that T attended their property to carry out some 'work', and that a new boiler was installed, but it isn't unusual for fraudsters operating this type of scam to do some 'work' in order to keep the scam alive and obtain more money from their victims. I'm satisfied from what I've seen that, apart from the installation of a new boiler, none of the work Mr C and Ms M paid T for was completed to a satisfactory standard and T caused further damage to their property (which I wouldn't expect a legitimate builder to do).

Overall, I'm satisfied that T set out to defraud Mr C and Ms M, with no intention of completing the agreed works to a satisfactory standard. So, I don't think DS2(2)(b) applies here.

The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Starling hasn't argued that any of the permitted exceptions to reimbursement apply here, and I don't think they do. For example, I

haven't seen any evidence that the bank provided effective warnings in this case, and I agree with the bank that Mr C and Ms M had a reasonable basis for belief when they paid T.

So, Starling should've reimbursed Mr C and Ms M under the provisions of the CRM Code, and I've provisionally decided that it should reimburse all the payments they made to T now – apart from the £1,750 they paid for the installation of a new boiler. From what I've seen, this is the only work Mr C and Ms M paid for that was completed to a satisfactory standard and I don't think it would be fair or reasonable to require the bank to reimburse them for the goods and services they received. In addition, I cannot conclude that T set out to defraud Mr C and Ms M when it requested this particular payment given that T carried out the work that was paid for (albeit late).

Starling should also pay interest at a rate of 8% simple per annum from the date that Mr C and Ms M should've been refunded under the CRM Code to the date of settlement, to compensate Mr C and Ms M for not having their money available to spend on other things during this time.

Mr C and Ms M have found themselves in an unenviable situation – they've been left without funds to carry out essential building works on their property, and their property has fallen into further disrepair as a result. They've explained how stressful this situation has been for them over a protracted period. I am mindful that their loss was ultimately caused by the callous acts of a fraudster. But, if Starling had reimbursed them under the provisions of the CRM Code when it ought to have done, then much of the trouble and upset they've experienced could have been avoided. For this reason, I am satisfied that a further award of £300 for trouble and upset is appropriate in the circumstances.

Finally, I will cover off the additional points Starling has raised in responding to our investigator's findings.

Starling has said that, if it had given Mr C and Ms M effective warnings and/or stopped the payments to T for further checks, they would've made the transactions anyway because they were paying a legitimate business which they had no suspicions about at the time. The bank has also said that Mr C and Ms M continued to pay T despite the delays and broken promises they experienced, so they should bear some responsibility for their loss. I don't believe these points to be relevant to the outcome of this case. The CRM Code requires firms to reimburse customers who have fallen victim to an APP scam unless a permitted exception to reimbursement applies. In this case, I am satisfied that there are no applicable permitted exceptions to reimbursement.

Starling has also raised a concern that Mr C and Ms M may recover some or all of their money through the liquidation process, but I haven't seen any persuasive evidence that they will.

Responses to my provisional decision

Starling accepted my provisional decision.

Mr C and Ms M accepted my finding that Starling should reimburse all the payments they made to T – apart from the £1,750 paid on 18 November 2020 – and pay interest at a rate of 8% simple per annum from the date that they should've been refunded under the CRM Code to the date of settlement. But they asked me to consider awarding them more than £300 for the trouble and upset the bank has caused them. They pointed out that they've waited almost two years for the refund they should've received under the CRM Code, because of the bank's persistent refusal to accept responsibility for refunding them. They said the delay

has caused them significant distress and anxiety, including monetary hardship and unacceptable living conditions.

My amended provisional decision

I thought about what Mr C and Ms M said and wrote to both parties again on 6 July 2023. I included extracts from Mr C and Ms M's further submission, detailing the trouble and upset they've experienced since being declined a refund under the CRM Code, and I said:

Mr C and Ms M have explained that they borrowed money from a relative in order to deal with the immediate damage – a) to clear rubble away and seal pipework b) to install a replacement bathroom c) to carry out electrical and pipework for safety reasons. They've also said that they were unable to claim on their home insurance policy so that works could be completed whilst they awaited a refund under the CRM Code because the damage to their property was not 'accidental'. Considering everything, I'm satisfied that they took action to mitigate their loss where possible.

I'm mindful that Mr C and Ms M's initial loss was caused by the cruel and callous acts of a fraudster – and I think that needs to be taken into account here. But Starling was aware of the situation that Mr C and Ms M were in, and I think the impact of the bank's mistake ought to have been reasonably apparent to Starling. Starling could have lessened the impact on Mr C and Ms M by reimbursing them under the CRM Code in a timely manner, as it ought to have done. Instead, the bank exacerbated the situation – leaving them without funds to complete essential building works on their property and in an unenviable living situation for many months.

In reconsidering what is fair compensation, I've specifically thought about the impact of the bank's actions, rather than the impact of the crime itself and I'm persuaded, from the further information Mr C and Ms M have provided, that Starling has caused them substantial distress, upset and worry over a protracted period. So, I think a higher award of £800 for trouble and upset is appropriate in the circumstances, and in line with the level of awards this Service recommends.

Responses to my amended provisional decision

Mr C and Ms M accepted my amended provisional decision.

Starling let me know that it doesn't think a higher award of £800 for trouble and upset is fair. The bank said it appreciates that I've decided this is not a civil matter as it believed. But if it had accepted our investigator's recommendations, it would have been incorrectly held liable for reimbursing the £1,750 Mr C and Ms M paid T on 18 November 2020. The bank said that it has assisted this Service in reaching a fair resolution and, although it appreciates the impact of the situation on Mr C and Ms M, it doesn't think it's reasonable to increase the compensation liability based on the time taken to reach a fair outcome for all parties.

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.

Both parties have accepted my provisional finding that Starling should reimburse all the payments Mr C and Ms M made to T – apart from the £1,750 paid on 18 November 2020 – and pay them interest at a rate of 8% simple per annum from the date that they should've been refunded under the CRM Code to the date of settlement. Neither party has provided any new evidence for me to consider in relation to this finding, so I see no reason to depart

from my conclusions in this respect.

I've carefully considered what Starling has said about my provisional finding that £800 is a fair and reasonable award for trouble and upset in the circumstances. But, taking into account what Mr C and Ms M have told me about their experiences since being declined a refund under the CRM Code, I still think that £800 is an appropriate amount overall, which is in line with the level of awards this Service recommends. Starling made an error when it declined to reimburse any of the money Mr C and Ms M lost to T under the provisions of the CRM Code. But for that error, much of the distress, upset and worry Mr C and Ms M have experienced could've been avoided. I understand Starling's position, but I'm satisfied that it's reasonable for the bank to fairly compensate Mr C and Ms M for the additional trouble and upset it's caused by not reimbursing them quickly under the CRM Code as it ought to have done, thus minimising the impact on them.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part and instruct Starling Bank Limited to:

- Reimburse all the payments Mr C and Ms M made to T – apart from the £1,750 paid on 18 November 2020 – and pay interest at a rate of 8% simple per annum from the date that they should've been refunded under the CRM Code to the date of settlement.
- Pay Mr C and Ms M £800 for the trouble and upset the bank has caused them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms M to accept or reject my decision before 18 August 2023.

Kyley Hanson
Ombudsman