

## **The complaint**

Mr W complains that Starling Bank Limited won't refund all of the money he lost when he fell victim to an authorised push payment scam and transferred money to an account held at Starling.

He brings this complaint with the benefit of professional representation, and his representatives have submitted arguments and information on his behalf. But for clarity in what follows I will refer throughout to Mr W.

## **What happened**

The details and facts of this case are well-known to both parties, so I will not repeat them at length here. But in summary, Mr W was the victim of a vehicle purchase scam. He'd seen a van advertised for sale on an auction website. Believing that his money would be held by an escrow service he'd then sent a bank transfer of £9,000. Unfortunately, and unknown to Mr W at the time, in reality he'd been dealing with a fraudster and did not receive the van or recover his money.

He made transfers from his own bank account to an account held at Starling. Starling, once notified of the fraud, restricted the recipient account. However, it said that only £427.01 remained to be recovered by the time Mr W had reported the scam. This left Mr W significantly out of pocket.

Mr W's bank and Starling are both signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model (the "CRM Code"). The CRM Code provides additional protection for the victims of APP scams such as this. But it does not mean that all scam payments must be refunded in full.

Mr W's bank and Starling both accepted they could have done more to protect Mr W. But both banks said Mr W wasn't entitled to a full refund of what he'd lost, because he'd not had a reasonable basis for believing he was sending a payment for a genuine van from a legitimate seller, or that he was paying the person he believed he was paying. Each bank said that the resultant losses should be shared equally between the three parties involved – Mr W, his bank, and Starling.

As a result, I understand that Mr W's bank has refunded him £3,000 and similarly, Starling has refunded him £3,000, leaving Mr W with the remainder of the loss.

Mr W referred his complaint to this service for an impartial review and our Investigator looked into things.

The Investigator didn't recommend that Starling needed to do anything further, and said she thought it had assessed Mr W's claim fairly under the terms of the CRM Code. She didn't think Mr W was entitled to a full refund and thought that it was fair for the three parties to share the blame for the loss in equal proportions. And she didn't think Mr W was entitled to a larger refund than he'd received from Starling for any other reason.

Mr W didn't agree. He said Starling was at fault in what had happened, and it should have done more. He said he was aware of other similar complaints where the receiving bank (here Starling) had been required to pay the full value of the loss not just one third. He thought he should receive the full amount outstanding from Starling.

I issued my provisional findings on the merits of Mr W's complaint on 2 August 2023. In my provisional findings, I explained why I didn't intend to uphold Mr W's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

*I'm sorry to disappoint Mr W but I'm not upholding his complaint about Starling. I know he's been the victim of a cruel scam, and that he's been left significantly out of pocket despite the partial refunds he's received from his own bank and from Starling. But that originates from the actions of the criminals who deceived him. It doesn't necessarily follow that Starling should be held liable for the full amount of the remaining loss.*

*Having reviewed everything in detail, I don't believe Starling has acted unfairly or unreasonably in its response to Mr W's complaint. I'm satisfied that the sum Starling has already paid Mr W was fair in all of the circumstances, including but not limited to the requirements of the CRM Code. So in short, I don't find Starling is liable for the balance of Mr W's loss. I'll explain why in more detail.*

*As noted above, the CRM Code exists to provide additional protection to victims from the impact of APP scams. I'm satisfied that the payment made by Mr W here falls within the scope of the CRM Code.*

*The CRM Code requires signatory firms to meet a range of standards (either as the sending or the receiving firm). Where a firm hasn't met one or more of the relevant standards, and this is found to have been material to the success of the scam, the Code will usually require at least a partial refund to be made.*

*In its final response to Mr W's complaint, Starling accepted it could have done more and that it hadn't met all of the required standards. It accepted a share of the responsibility and has correspondingly made a partial refund to Mr W. That refund reflects an equal, three ways share of the loss, with a third being apportioned to Starling, a third to Mr W's own bank, and the remainder to Mr W himself.*

*The CRM Code permits firms to share equal responsibility for the loss with the customer where (amongst other things) it can be established that the customer made the payment without having had a reasonable basis for believing they were: paying for genuine goods or services; dealing with a legitimate person or business; or paying the person they believed they were paying.*

*Starling says it has established this applies here, and so it seeks to share responsibility for the loss. I've considered whether I agree this is fair in the circumstances. In other words, I need to determine whether Mr W made this payment without having had a reasonable basis for believing he was paying for a genuine goods or services, dealing with a legitimate person or business, or paying the person he believed he was paying.*

*Mr W found the van advertised on a popular auction website. Mr W says he'd not used this auction site before, and he was making a relatively large purchase. I think in those circumstances it would be reasonable to expect he'd have taken more care than usual before making a payment by bank transfer.*

*Having researched the van's true value at the time, I'm satisfied that the quoted price*

*was around half the normal market value (or less) for the van Mr W was intending to purchase. The van was described as being in perfect condition, supposedly being sold due to lack of use. It doesn't appear Mr W was given a plausible reason for the price being so low, especially given that the seller said they had a lot of interest from other buyers. Rather, I think this deal was simply too good to be true.*

*The seller had no reviews on the auction site - which Mr W says he assumed meant it was a new seller. But that also meant he had nothing to rely on in terms of prior sales history. When Mr W asked to collect in person, he was told that wasn't possible as the seller was away through work. So, he was sending the money without having been able to verify that the seller actually had the vehicle. This was a significant amount of trust to place in a relative stranger and sending this size of payment for a vehicle found online and sight unseen was a risk.*

*Mr W says he didn't carry out an HPI check because the van's registration number looked valid when he checked it against the government's MOT website. But while that would have shown that a vehicle of that registration existed (and had been MOT checked at a point in time) this information was limited in use. It wouldn't show that the purported seller actually owned the van or its status.*

*The seller provided the names of two well-known and legitimate companies – supposedly acting as an escrow company and a delivery company. Had this been true it could have provided a degree of reassurance. But Mr W was told he'd need to pay an individual's personal bank account, not a business account belonging to either company. I think this unusual arrangement and apparent inconsistency in the story ought to have raised further concerns with Mr W.*

*Overall, having considered all of the evidence here, I don't think Mr W had a reasonable basis for believing he was paying who he expected to pay, nor that he was paying a legitimate seller for genuine goods. So, under the terms of the CRM Code, Starling is entitled to share responsibility for the loss with Mr W (and with Mr W's bank). I don't find Starling needs to refund Mr W more than the one third share it has already paid him.*

*Of course, I would not think it either fair or reasonable if the CRM Code (to which Mr W was not himself directly a party or even necessarily aware of) meant he would be left worse off than had the Code not existed. But I do not think that is the case here. For similar reasons as detailed above, I consider it fair and reasonable in all the circumstances of this complaint that Mr W bears a one-third share of those losses, to reflect what I consider the fair apportionment of liability.*

*In saying this, I understand Mr W's point that in some instances this service has found the receiving bank to be wholly liable for the loss incurred. But I must decide each case on its own merits and based on what I consider is fair and reasonable given the specific facts and circumstances applying to that complaint. Having done so here, I am satisfied that for the reasons set out above it would not be fair for me to require Starling to pay a greater proportion of the loss than it already has done.*

In my provisional decision, I asked both sides to provide any further arguments or information by 16 August 2023, after which point, I said I would issue my final decision on the matter.

### **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.

Neither side has responded to my provisional conclusions with additional information or arguments. In light of this, I see no reason to depart from the findings and the resolution I proposed in my provisional decision as quoted above, and for the same reasons.

In short, for the reasons set out above, it is my final decision that Starling has already paid Mr W a fair settlement, and I do not require it to do more than it has already done.

### **My final decision**

For the reasons set out in my provisional decision and above, I do not uphold Mr W's complaint about Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 September 2023.

Stephen Dickie  
**Ombudsman**