

Complaint

Mrs W is unhappy that Starling Bank Limited hasn't reimbursed her after she fell victim to a scam.

Background

In November 2022, Mrs W was contacted on a social messaging app from a number she didn't know. The sender of that message claimed to be one of Mrs W's children. Unfortunately, that wasn't the case and Mrs W had actually been contacted by a fraudster.

Mrs W responded by saying *"Is it No 1 or No 2?"* In reply, she received a message saying *"It's your eldest/favourite of course."* They said that their phone had been damaged and so this was now their new number. However, they'd tried unsuccessfully to re-register for online banking on their new device and so their account had been frozen. They told Mrs W that they had an urgent payment that needed to be made. They had bought Christmas presents using a 'buy now, pay later' arrangement and so, although they had received the goods in question, they still had to pay off the money they'd borrowed to buy them. The sender said they needed the payment to be made soon otherwise they'd face further interest and charges.

Mrs W agreed to make the payment to an account in the name of a private individual. She made 2 payments of £1,550.25 and £650 respectively. The scammer then attempted to obtain Mrs W's debit card details to make a further payment. It was at this point that she became very suspicious and suspected that she must have fallen victim to a scam.

She notified Starling. It contacted the receiving bank – i.e. the bank account controlled by the fraudster – and was only able to recover £7.44. It didn't agree to reimburse the remainder of Mrs W's losses. Mrs W was unhappy with that and so she brought her complaint to this service. It was looked at by an Investigator who upheld it. He considered the complaint under the terms of the Contingent Reimbursement Model ("CRM") Code and was satisfied that, as Mrs W had a reasonable basis to believe she was making the payments at the request of her son, she was entitled to be refunded.

Starling disagreed that Mrs W had a reasonable basis for believing she'd been messaged by her son. It pointed out that Mrs W started the process of making a payment and answering Starling's questions about its purpose. She then cancelled that payment request and started again but answered its questions differently. It considered this behaviour unusual.

In addition to that, in her exchange of messages with the fraudster, Mrs W said that she felt uneasy about doing what she was being asked to do. Starling says this suggests she had doubts about whether she was really interacting with her son.

Finally, Starling noted that Mrs W messaged the scammer and observed that they seemed to be having a hard time. Starling says that such concerns would justify a phone call to make sure everything is ok.

Because Starling disagreed with the Investigator's opinion, the complaint has been passed

to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mrs W authorised this payment. However, Starling has signed up to the Lending Standards Board's voluntary Contingent Reimbursement Model Code ("the CRM code"). Under that code, the starting principle is that a firm should reimburse a customer who is the victim of a scam like this one. There are a limited set of circumstances set out in the code in which a firm can choose not to fully reimburse its customer and Starling has argued that one of those exceptions are applicable in this instance

It is for Starling to establish that Mrs W failed to meet her requisite level of care under one or more of the listed exceptions set out in the CRM Code. The relevant exception here is where *"the customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate."*

I'm satisfied that Mrs W had a reasonable basis for believing she was genuinely interacting with her son. From the evidence I've seen, these messages were broadly similar in content and tone to legitimate messages she'd received from her son. They were in regular contact via this social messaging app and she had needed to send him money on a previous occasion.

The explanation given as to why Mrs W needed to make a payment on his behalf was a believable one. Furthermore, Mrs W told us that her family was anticipating a bigger Christmas celebration than normal in 2022 because pandemic restrictions had stopped them meeting for some time before that. As a consequence, it wasn't implausible that her son would've spent a large sum of money on Christmas gifts.

I've considered the arguments Starling has made about the red flags it considers Mrs W ignored, but I don't find them persuasive. The fact that Mrs W cancelled an earlier payment attempt and then restarted the process answering questions differently isn't necessarily an indication that she'd recognised something was awry about the request.

The options that were available to categorise these payments didn't perfectly fit the scenario she was faced with. To give an example, she told the app that she was *"paying rent or bills"* only to then be asked *"Have you visited the property?"* That follow up question wouldn't be relevant to her given what she believed she was doing and so it's understandable that she might want to restart the process and select the 'correct' option. Essentially, Mrs W was trying to fit a square peg into a round hole – I don't think this was an indication that she'd recognised something was awry.

Starling also pointed out that Mrs W told the scammer that she was *"uneasy"* about what she'd been asked to do. However, I interpreted this message as being one of concern for her son and whether she was doing the right thing in making this payment on his behalf. I don't think it was an indication that she recognised she might not be interacting with her son.

Starling also argued, as Mrs W messaged saying that her son appeared to be having a hard time, that this would've warranted a phone call. However, as with the argument above, I

think this was really an indication of her concern for her son's well-being rather than anything else. Whilst I recognise that some parents might call their child if they had such concerns, I'm not persuaded that is a correct way to respond in a scenario like that one given that every parent-child relationship is different.

Overall, I'm unpersuaded by the arguments Starling has made and so I don't find that it can rely on this exception to reimbursement.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mrs W accepts my decision, Starling Bank Limited should refund the money she lost to the scam, less the sum it was able to recover from the receiving bank. It will also need to add 8% simple interest per annum to this sum calculated to run from the date it declined her claim under the CRM Code until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 October 2023.

James Kimmitt
Ombudsman