

The complaint

Mr D is the sole director of a limited company called G. He complains on its behalf, and I'll mostly refer to him throughout this decision.

The complaint is that Starling Bank Limited hasn't refunded money he says G lost to a scam.

What happened

Mr D sought the services of a builder to convert and renovate a property. He secured two quotes, one of which was from a builder – whom I'll refer to as N, and is a limited company – who had been recommended to Mr D.

As N had been recommended to Mr D, and given the quote appeared in order and competitive, a contract for works was entered into. A schedule of payments linked to various stages of work was included.

Mr D made the first payment of £10,545 to N from G's account on 17 September 2021. This was the initial deposit, with a further payment of £16,515 made on 22 September 2021 marking the commencement of works.

There were other payments made as time passed and work progressed:

- 4 October 2021 - £14,980
- 8 November 2021 - £25,000
- 15 November 2021 - £3,681.92
- 30 November 2021 - £1,000

But Mr D has said the work he paid for was never completed and that some of the work that was done was of a poor standard. He's described that whilst extensive building work was paid for, N only carried out some early stage ripping out. He says some new construction was undertaken, but it had to be redone. And he says structural steels that were ordered were second-hand and not of the correct specification.

Mr D has also said he had to pay N's sub-contractors himself, with N having failed to pay their wages. He also had to pay for and provide materials.

Mr D has said it became difficult to contact N and eventually the director became unreachable.

Mr D told Starling G had been scammed and asked it to reimburse the loss. But Starling said it couldn't help as it didn't agree this was a case of G being scammed. Instead, it said G had a civil dispute with N, resulting from a breach of contract and failure to supply goods and services paid for.

One of our investigators considered G's complaint when Mr D referred it to our service. She didn't uphold it, concluding Starling's position was fair and reasonable. She agreed the dispute was a civil one, and that the circumstances didn't meet the definition of a scam. Mr D disagreed and asked that an ombudsman review the complaint.

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.

Having done so I'm not upholding G's complaint, and for broadly the same reasons as our investigator.

The payments made from G's account were properly authorised. There's no dispute about that. And so, as per the Payment Service Regulations (2017) and the terms and conditions of G's account, G is presumed responsible for them. That would remain true even were this to be considered a scam.

But there are other considerations that might apply. Starling is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code sets out that a signatory firm, like Starling, ought to reimburse the victims of scams in most circumstances.

But the Code is also clear on what is and isn't in scope. It states:

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 contends that G has a civil dispute with N and so has concluded the CRM Code doesn't apply to the payments made toward the building works. I find that position to be fair and reasonable as I'm not persuaded there is sufficient evidence to say a scam has taken place.

In making this finding I'm not saying G hasn't lost money here. I can accept that G hasn't received what it paid for. As I can accept that G has been treated very badly by N. But I'm persuaded this is a case of a breach of contract, where the supplier has failed to honour the agreement. Rather than there being sufficient evidence to establish there was an intent by N to scam G from the outset. I'm not persuaded the more likely than not explanation is that G has been scammed, rather than other possibilities, such as breakdown in relationship or an inability for N and its director to continue working for reasons unknown.

N is a limited company that has been established since 2014. Mr D received a personal recommendation for N. And a well-planned contract of works was entered into by G and N. There have been no other claims like G's lodged against N with the bank which holds its account. That account appears to have been held since N's conception. And so the history of the company doesn't suggest it was engaged in scamming people either before G contracted its services or around the same time it did so.

Reference has been made to some information on Companies House, where it's shown company accounts are overdue. That is true, but that doesn't set N out as a completely illegitimate supplier. N hasn't been struck off and there is no action pending that I can see. At the time G made payments to N the accounts were completely up to date. And I note there was a change of registered address in December 2022, suggesting N was still trading in some form or other at least up to that point. N remains active on Companies House today.

The nature of business stated on Companies House has been referred to as indicative of a scam company. And it is true there is a stated nature that doesn't appear to align with a construction firm. But then there is also a stated nature that does. So I don't find this information to be persuasive in establishing a scam.

I've considered the timeline of events and the evidence that is available to build a picture of what seems to have been happening.

Mr D has said that very little work was done by N. He's said that only early ripping out stages were completed. But it appears more was done. I can see reference is made to steels being supplied and installed, to the extent they were then covered over as evidenced by emails from Mr D about getting photos for building control. There is no evidence to show that these steels were removed or replaced but, even if they were, on the basis they turned out to be inappropriate for the job, that is a matter of goods/services not being supplied in accordance with the contract.

The same is true of soundproofing fitted on site, and there is clearly some other construction work that has taken place. Reference to these facts is made in emails in January 2022 and there are photos that have been provided which evidence at least some other work having taken place.

Mr D has said he and G paid for all the materials, with N paying for nothing. But that doesn't appear to be the case either. Neither Mr D nor G paid for the steels that were supplied for instance.

Mr D has also said that workers employed by N went unpaid, and that he and G covered those costs. I'm not saying this isn't true, but there is little evidence to support that being the case. I do have to wonder why the other workers would turn up if they were never being paid by their employer. I don't think the builders would have worked for free or have been particularly willing to continue to work for N if they knew their prospects of getting paid were poor.

I also struggle to understand why Mr D would continue to pay N more money – apparently without any deduction for costs covered – when there were such fundamental disputes underway.

Mr D's email to N of 15 November 2021 states he has spent £2,848 on materials. There is no mention of problems on site or that he had been covering wages. This is almost two months into the project and, going by Mr D's description, it seems the problems he's referred to ought to have been evident by this time. But there's no evidence of the issues being discussed with N, either in this email or in any other correspondence. The only evidence there is suggests an ongoing relationship with N and does little to show there were problems on site.

Looking back from the above-mentioned email, I can see an updated contract was set out on 4 October 2021, to arrange additional works. It seems strange a fresh contract would be agreed if there were already problems with the build emerging, as Mr D has suggested. Additional work was contracted for, and new costs incurred. Those costs were then paid and with no deduction to account for payments Mr D or G might have had to make in place of the N for materials or wages.

Communication with the builder clearly continues into February 2022, as evidenced by emails provided. These aren't demands for work to be brought up to date, complaints about building stages going unfinished, workers not being paid, or significant items being missing. There do appear to be some issues emerging, where reference is made to building control requiring photos of installed steels, but the evidence suggests work had been ongoing and the relationship maintained long after the final payment had been made. There is no evidence to show Mr D was raising concerns with N about any of the issues that are put forward as indicating a scam. There is very little evidence to suggest a scam has taken place.

I can't say why N failed to honour the contractual agreement with G. But I'm satisfied that is the nature of the dispute – a failure to deliver the goods and services that were contracted and paid for. And so the payments aren't covered by the CRM Code.

I've then thought about whether there is any other reason Starling ought to refund G. But there are no grounds on which I can say it needs to. Given I'm satisfied this matter is a civil

dispute, any other considerations linked to industry guidance and best practice around scam prevention and recovery fall away.

My final decision

I don't uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 7 March 2024.

Ben Murray
Ombudsman