

The complaint

Mr P complains that Starling Bank Limited says it won't refund him for money he transferred to a builder for what he now believes was a scam.

What happened

Mr P says he has used the same builder (who I'll refer to as B) a number of times over a period of around four years. In that time, Mr P says he'd met B many times in person and that B had worked for him on a number of different projects. In his prior experience this builder had proved reliable and completed the required work without any problem.

In March 2023, Mr P needed some work done urgently on one of his tenants' properties. He contacted B to arrange it. B gave Mr P a breakdown of the costs before he paid. B said he'd purchase the materials if Mr P paid him for them.

Mr P made two payments to B, for £120 and for £605. Both payments were sent from Mr P's sole trader bank account held with Starling. The first payment was for labour time on work that was carried out that same day (which I understand is not being disputed). The second was to cover the cost of the materials for work to be done at the start of the following week.

B was due to carry out the work on 3 April, but then gave excuses as to why he couldn't make that date. He told Mr P he'd purchased the materials needed, although Mr P now doesn't believe that B had actually done so.

Mr P explains that over the course of around three months, B booked in to attend the property four times but each time there was an issue that meant he couldn't, including saying he had medical issues.

Unhappy, Mr P says he carried out research into B. He found an online lifestyle magazine article from 2012, which said B had cheated on a woman with four other women and taken money from them. The article said B had been in prison and his imprisonment followed B pleading guilty to five counts of theft from a woman in 2008.

Having found this information, Mr P now suspects that B has defrauded him. In July 2023, he reported the payment he'd made to Starling as having been an Authorised Push Payment Scam (APP Scam).

At the time of Mr P's payment, Starling was a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). The CRM Code requires signatory firms to reimburse victims of APP Scams in all but a limited set of circumstances. However, it excludes claims brought for private civil disputes – such as between a legitimate trader and the customer. The CRM Code explains that this can include situations where a customer has paid for goods or services but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier. The terms of the CRM Code are available from the LSB.

Starling looked into what had happened but didn't think it was liable to refund Mr P. It noted

that he'd used this builder before without issue. It said this was a private civil dispute and not covered by the CRM Code.

Mr P didn't accept this. He noted that Starling had given its response within 35 minutes so could not possibly have investigated his concerns in any detail. He'd not had the chance to provide supporting evidence.

In its final response to Mr P's complaint, Starling explained that it had reviewed the matter but hadn't altered its original position – it considered this was a private civil dispute between Mr P and B. However, it accepted it hadn't given Mr P the chance to submit information during the very short time its initial investigation had taken. Because of this Starling paid Mr P £50 compensation.

Mr P asked our service to independently review Starling's answer to his scam claim.

Our Investigator looked at the matter afresh. She didn't think Starling had been wrong to say this appeared to be a private civil dispute rather than an APP Scam covered by the CRM Code.

Mr P didn't accept the investigator's findings. He explained he would pursue a civil claim against B if he could, but the address he had for B was bogus. He said Starling should provide him with B's actual address. Mr P further said that because the prior fraud conviction would have precluded B from opening a new bank account, B must have lied on the account application. He said B had likely breached conditions of his release from prison.

The Investigator sympathised, but explained she remained of the view that Starling wasn't at fault.

As no agreement could be reached, the case has been referred to me to review everything afresh and to make 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.

Mr P has been let down by B. He has paid out in advance for materials that B has failed to deliver as agreed. Mr P's been left out of pocket and now suspects foul play.

But the failure by B to deliver what was paid for is the fault of B. I'm not deciding a dispute between B and Mr P – I don't have the power to look into a complaint about the builder. My role is limited to deciding the dispute between Mr P and Starling.

Of course, Starling didn't contract with Mr P for the materials he wanted supplied. I can't hold it responsible for any breach of contract or other failings on B's part.

As a starting point in law, Mr P is responsible for payments he's instructed Starling to make. Unfortunately, at the relevant time there was little protection available to him for a bank transfer payment, as this was.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) can provide some protection to victims of Authorised Push Payment scams (APP scams). But it specifically excludes private civil disputes.

Starling says this was a private civil dispute, and so has told Mr P that the CRM Code

doesn't apply. The disagreement on this point is at the heart of this dispute.

What does the CRM Code cover?

Private civil disputes are defined in the code as being situations 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".

This recognises that there are a number of potential reasons (other than an APP scam) for a breakdown in a relationship between two parties and for such a dispute to exist. And that unfortunately, workmen will sometimes fail to deliver a satisfactory service, or a legitimate trader will sometimes fail to provide goods that were paid for. But that doesn't necessarily amount to evidence of an intent to commit an APP scam or mean that the payment must be reimbursed under the CRM Code.

And as a side note there may also be situations where fraud occurred, but which don't have the effect of the payment falling within the definition of APP Scam under the CRM Code. This might be so either because the fraud had no bearing on the purposes of the payment or because the fraud only began after the payment had been made. That is because the relevant part of the code's definition of the APP Scams it covers relates to the intention of the payee at the time the payment was made – not what that person might later have done or not done.

For something to be an APP Scam, the CRM Code says one of the following scenarios must be met (and it must not be a private civil dispute):

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

In this case, the evidence suggests that Mr P's payment reached the account of the person he was intending to pay. So, the first scenario won't apply. Mr P's payment can then only be an APP Scam covered by the CRM Code if the second option applies. That relates to the intentions of the person Mr P was paying, at the time Mr P made the payment.

In short, for the CRM Code to apply to Mr P's payment there needs to be evidence to show that the person who procured the payment had fraudulent intent at the time. There needs to be convincing evidence of criminal deception about the purpose at the point the payment was made. To reiterate - if for example, the person initially intended to do what was agreed but later changed their mind for whatever reason that would not be an APP Scam under the code's definition.

So to find Starling was wrong to say this was a private civil dispute, 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 a private civil dispute between Mr P and B. That also means being able to exclude on the balance of probabilities the alternative possibility that this is simply a matter of that person breaching their legitimate contract with Mr P.

Put this another way, that means deciding whether the available evidence shows it is most likely that this person set out to defraud Mr P with criminal intent. That is a high bar to meet – I'd need to consider there was strong evidence to support that finding.

What evidence is available in this case?

It's important to note that it isn't for Starling to investigate B, or somehow evidence that he wasn't operating legitimately or held fraudulent intent for the purpose of the payment under dispute. It was for Mr P to provide evidence to support those allegations.

Mr P has provided a link to a magazine article showing that in the past B had been convicted of theft. He has also explained that B hasn't provided what was paid for and has given repeated excuses for not doing so. He doubts B's actions.

Of course, I don't have the power to conduct a criminal investigation into B. My determination of this complaint can't convict anyone of a criminal offence – that is the role of the criminal courts. And I only have one side of the story – I do not have any testimony from B nor does it seem likely that could ever be available to me. That means I am limited to making a decision based on the balance of probabilities – in other words, on what I consider is most likely given the evidence I do have.

The online information about a previous crime of theft against women *could* point towards fraud having happened here – if B has offended before then perhaps this is simply a case of repeating the theft using a different methodology and with a new victim. But while I think this information is relevant evidence, it is not proof of what happened when Mr P made this payment. The events in the article concern quite different circumstances and events that took place over a decade before Mr P made that disputed payment. An allegation of fraud requires convincing proof, and I cannot simply conclude that because someone has previously committed theft, they must always be guilty should any suspicion arise in future – particularly after a time-period of a decade or more has elapsed.

Knowing that Mr P had himself dealt with B for some years, and without previous issue, there is good evidence to indicate that B was previously operating as a legitimate trader. I accept it is a possibility that, in between the payment of £120 and the payment of £605, B decided to cease operating legitimately and instead defraud his customer of several years standing.

However, I simply don't have evidence that leads me to believe that's the most likely explanation. By defrauding Mr P he'd lose a customer. Mr P indicates that the later installation of the goods he'd paid for would have meant an additional payment to B for the labour. And it doesn't seem unreasonable for B to have presumed Mr P might continue to use him for future projects. He'd have been throwing away the potential for future income for a few hundred pounds, as well as running the risk of criminal conviction.

The alternative possibility is that at the time Mr P paid B for the goods, B had intended to supply the goods (and potentially to later carry out any associated work). That initial intention could have changed for any one of a number of different reasons which may not have been due to having intended *from the outset* to defraud Mr P in this transaction. I can't discount the possibility that B's intention might have changed from legitimate purposes to a later decision to defraud Mr P (which wouldn't be something the CRM Code would cover). Neither can I exclude the possibility that B was simply unable to provide the goods paid for as the result of any other number of possible explanations.

I don't find there is sufficient persuasive evidence to show that at the time Mr P made the payment B had a fraudulent intent in mind for it. The evidence available to me simply isn't enough to support such a finding. That means I can't say that Starling was wrong in reaching the conclusion that this wasn't an APP Scam covered by the CRM Code.

Is Starling at fault for any other reasons?

Mr P would like Starling to disclose the address of B as the address he holds for B is incorrect. I haven't found Starling was wrong to say that this was a civil dispute rather than an APP Scam. Starling has no obligation to disclose the address of another account holder where a payment was correctly paid to the person intended and where the payment wasn't made as the result of fraud. I don't find the bank was at fault here.

Mr P also explains his belief that B must have breached conditions of his release. But that simply isn't something I can reasonably hold Starling to blame for. That would be something B would be responsible for, and not something I could investigate. Nor could I find the bank to blame if, as Mr P alleges, B deceived Starling at the time of the account opening. Of course, if I thought Starling had been aware of the deception that would be different but there is absolutely no evidence to suggest that is the case. I cannot fairly find against Starling on any of these ancillary points.

Summary

I appreciate how frustrating and disappointing this answer will be. Mr P has been left out of pocket because the builder he paid didn't deliver the goods as agreed. He now can't track the individual down. But I can't exclude the possibility that B entered the agreement in good faith, intending to supply what was agreed (in line with Mr P's prior experience of paying B for work) and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't allow me to conclude it's more likely than these alternative possibilities that B intended to defraud Mr P from the very outset and never had any intent 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 P. It also means I find the bank had no ability or obligation to try and recover his money or provide him with B's personal address.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr P – I am sorry he has lost out through no fault of his own. He has been let down by B. But that fault lies with B, not with the bank. And it's simply the case that I can't fairly tell Starling to pay Mr P the money he's lost, because I don't think Starling has treated him 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 P to accept or reject my decision before 10 April 2025.

Stephen Dickie
Ombudsman