

The complaint

S, a limited company, complains that Starling Bank Limited (“Starling”) didn’t do enough to protect it when it fell victim to a scam.

What happened

In July and August 2023, Miss R, who is the director of S, made card payments from S’s business account to a company that she believed was a legitimate investment firm.

Miss R said the investment had been recommended to her by a family member and, having conducted her own research and having found good reviews, she felt confident to proceed. She was told that once the investment reached £100,000 in returns, she’d be able to withdraw the funds, less a 5% fee.

But Miss R realised she’d been the victim of a scam when she was unable to withdraw the funds and when the platform showed the account had a zero balance. She contacted Starling to try to recover the lost funds, totalling in excess of £24,000.

Starling said the payments were authorised and that there were no chargeback rights. It also didn’t think it had acted in error. So, Starling didn’t refund S’s losses.

Unhappy with Starling, Miss R brought the complaint to our Service on behalf of S. She feels that Starling didn’t do enough to protect her and/or S from falling victim to this scam. She pointed out that the only intervention was an automated phone call to check the payment was authorised and says that more should have been done.

The investigator considered this complaint but didn’t agree that Starling should refund the amount. In summary, she was satisfied that a scam had taken place. But she noted that Miss R had made the payments from S’s account for personal investment purposes which would mean that S had suffered the loss, not Miss R. And also that Miss R was liable for the return of these funds to S, not Starling.

Putting that to one side, for completeness she considered whether Starling ought to have taken any additional actions when these payments were being made. And she concluded that the payments wouldn’t have appeared unusual in terms of size or frequency when compared to prior payments on the account. She also noted that there was no information, including any warnings, about the payee online, so this wouldn’t have been a cause for concern. So, overall, she didn’t think Starling needed to take any further action.

Miss R disagreed. She maintains that Starling didn’t do enough to protect S, said the intervention by way of an automated call wasn’t enough, and suggested that the amount and frequency of the payments was unusual for S. Because of this, the complaint has been passed to me to decide.

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, while I recognise how disappointing this will be, I'm not upholding this complaint. I'm satisfied that I have enough information to reach a fair outcome without the need for further information from either party. I'll explain my reasons below.

As explained by the investigator, I don't consider that Starling should be held responsible for S's lost funds when these were used by Miss R for personal investment purposes. The transfer out from a business account by a director for personal reasons would generally be treated as a director loan, repayable by the director. So, the lost funds would be owed to S by Miss R.

Though there is later another reason for the funds being lost, i.e. the scam, this doesn't alter the position that the funds weren't in the account because they'd been used by a director – Miss R. And while S is a customer of Starling, Miss R isn't in relation to this matter. So Starling didn't have any obligation to protect Miss R in a personal capacity from falling victim to this scam.

While the above is, in itself, enough not to uphold this complaint, I do recognise that it will be a difficult message for Miss R, who has brought the complaint on behalf of S. I say this because of the specific nature of Miss R's relationship to S. So, for this reason and for completeness, just as our investigator did, I've gone on to consider the circumstances of the case if we were to put this matter to one side.

As the payments were authorised, the starting position would be that Starling would be expected to carry out the payment instruction. But, taking into account relevant rules, codes and best practice standards, I've thought about whether Starling ought to have intervened before processing these payments. And I don't think it ought to have.

I say this because the payments don't appear particularly unusual or out of character based on the recent history of the account. I don't consider the initial payments to be substantial enough, particularly in the context of payments already made from the account, to flag as indicators that S was at risk of financial harm. I recognise that the third and fourth payments were made on the same day and total a more substantial £8,000. But, a single (legitimate) payment of £6,000 had previously been made from this account so this isn't disproportionately more than this. And, by this time, the payee was somewhat established.

I'd also add that the payments were being made from a business account, where *typically* you might expect larger payments to be made. And the payee itself wouldn't have appeared concerning as there wasn't any information available online about it. While there were warnings about the company Miss R *thought* she was paying, Starling wouldn't have known who she was intending to pay – just who the payment was actually sent to.

Given that I don't think the payments should have flagged with Starling, I wouldn't expect it to have intervened. So I therefore won't go on to consider what would have happened if it had. I note that there was mention of an automated call to confirm the payments were authorised. Ensuring a payment is authorised is different to being concerned about the recipient of a payment or the nature of it. I maintain that there was no obvious need to intervene so this call appears to be proportionate to the perceived risk.

So, while I'm sorry that S has lost a large sum of money, I don't think it would be fair or reasonable to hold Starling liable.

My final decision

For the reasons given above, I don't uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 August 2024.

Melanie Roberts
Ombudsman