

The complaint

Miss E and Mr K complain that Starling Bank Limited ('Starling') won't refund money they paid to a tradesperson.

What happened

In November 2022, Miss E and Mr K were interested in getting some garden work completed. A neighbour recommended a company they'd used – who I'll refer to as N. Miss E and Mr K had seen the work that N completed for their neighbour and their neighbour spoke very highly of N and the work they'd completed.

Miss E and Mr K say they checked N's website, N's online presence on two separate social media platforms and got a business card. They say N also had a link on their website to an online company that vets tradespeople, which gave them confidence.

N came to their property and provided a quote for the work, which was in excess of £5,000. Miss E and Mr K didn't want the work to be completed until spring 2023, but N required them to pay a deposit of 10% to secure a start date of 17 April 2023.

Miss E and Mr K made a payment of £579.80 from their Starling account on 18 November 2022.

In January 2023, N got in touch and asked Miss E and Mr K for a further payment to purchase materials, saying prices were going up. Miss E and Mr K told N they couldn't afford to make a further payment, which is why they booked to have the work completed in the spring.

In March 2023, Miss E and Mr K contacted N to confirm that work was due to start on 17 April as agreed. N told Miss E and Mr K about a personal situation which meant he needed to bring the start date forward, and they agreed on a new start date of 10 April. N again asked for a further payment to purchase materials for the job, and Miss E and Mr K made a payment of just over £1,100 from an account held with another bank.

The week before the work was due to start, N asked to postpone the start date. Ultimately N stopped communicating with Miss E and Mr K and didn't complete any of the agreed work. Miss E and Mr K raised a fraud claim with Starling at the end of April 2023.

Starling declined to refund Miss E and Mr K saying they didn't do sufficient checks before making the payment. Starling reached out to the beneficiary bank, but no funds could be recovered.

Miss E and Mr K weren't happy with Starling's response, so they brought a complaint to our service.

An investigator looked into Miss E and Mr K's complaint and upheld it. The investigator was satisfied that Miss E and Mr K had been the victims of an APP scam and recommended that Starling refund them in full.

Miss E and Mr K accepted the investigator's opinion, but Starling disagreed. Starling say Miss E and Mr K have a civil dispute with N, and therefore Starling aren't liable for their loss.

As the case couldn't be resolved informally, it was passed to me to review.

My provisional decision

Having reviewed the case, I intended to reach a different outcome than the investigator. So I issued a provisional decision sharing my reasoning with both parties and giving them an opportunity to respond. In my provisional decision I said:

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

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that Starling are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

However, Starling are a signatory of the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. However, the CRM Code does not apply to 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.

The CRM Code defines what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

So, I can only apply the CRM Code to Miss E and Mr K's payments or consider Starling's liability to them under the CRM Code, if I'm satisfied that the payment was made as part of an APP scam. Whereas a situation where N didn't fulfil the contract with Miss E and Mr K due to, for example, the business failing or ill health, would be considered a civil dispute not covered by the CRM Code.

Having carefully considered all of the information that Miss E and Mr K have given us, I'm not satisfied that I can safely reach the conclusion that they were the victims of an APP scam. I'll explain why.

I realise that N didn't complete any gardening work for Miss E and Mr K and have breached the terms and conditions of their contract. However, that isn't enough to say that N set out with the intention to defraud Miss E and Mr K from the outset.

From what I've seen N had been operating as a legitimate gardener in November 2022 when Miss E and Mr K made their payment. N was completing or had recently completed gardening work on their neighbour's property and the neighbour had fully recommended N based on that work. The evidence Miss E and Mr K have provided also suggests that in November 2022, N had a website and an online presence on at least two social media platforms.

I've seen third party information from N's bank, which I'm unable to share with Miss E and Mr K. However, that bank didn't have any concerns about the operation of the account at the time that they made their payment in November 2022.

It appears that N had a change in circumstances between November 2022 and April 2023, when their website and online social media presence were deactivated. In January 2023, N got in touch with Miss E and Mr K, letting them know about a personal situation. And in March 2023, N was still having issues which resulted in him asking to change the start date for the work. I accept that ultimately N didn't complete the work as agreed and hasn't refunded Miss E and Mr K, but that doesn't mean that I can reach the conclusion that this was an APP scam rather than a civil dispute where they've paid a legitimate supplier but haven't received the services they paid for.

Based on all of the evidence, I can't safely conclude that N took the money from Miss E and Mr K with no intention of doing the work or that Miss E and Mr K made a payment for what they believed was a legitimate purpose but in fact was fraudulent. On that basis, I'm not satisfied that their situation meets the bar to be considered an APP scam which means I can't hold Starling liable under the CRM Code.

I've also thought about whether Starling could've prevented Miss E and Mr K's loss when they made the payment as there is an obligation on Starling to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Starling to intervene and attempt to prevent losses for the customer.

In this case, based on the low value of the payment made, and considering the previous transactions and payment activity on the account, I can't fairly say that Starling should've been concerned about the payment Miss E and Mr K made. So, I wouldn't have expected them to have intervened before following Miss E and Mr K's payment instruction.

I'm really sorry that Miss E and Mr K have lost this much money. I appreciate that they made a slightly larger payment from an account they hold with another bank, and that bank chose to refund them in full. But that doesn't mean that I can fairly ask Starling to refund them. I have to consider each case on its individual merits, and for the reasons I've already explained I can't fairly hold Starling liable for their loss.

My provisional decision was that I didn't intend to uphold 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.

Miss E and Mr K responded to my provisional decision, disagreeing with the outcome I'd reached saying N had set out with the intent to defraud them. They raised the following points:

- In April 2023, N was persistently contacting them to try and get additional money.
- When they made a payment to N on 3 April 2023 through a payment service provider, N wasn't happy with them choosing that payment method. N returned the money to them and asked them to make a bank transfer instead.

- It was clear in April 2023 they were desperate for the work to be completed due to their personal circumstances, and N used this to pressure them to make a further payment.
- N referenced being a member of an online company that lists approved tradespeople, however his membership hadn't been renewed in some time.
- As soon as Miss E and Mr K asked for a refund, N blocked their numbers. All of N's social media pages were suddenly removed or blocked as was their website.
- The address used by N on the invoice is not a valid address.

Nearly all of the points Miss E and Mr K have made relate to a payment made in April 2023, which wasn't made from their Starling account and isn't part of this complaint. Also, the events and behaviours they're referring to all occurred months after they'd made the payment from their Starling account in November 2022, so doesn't evidence N's intent when they made this payment.

Miss E and Mr K say the address on the invoice N gave them is incorrect and N's membership with an online company that lists approved tradespeople hadn't been renewed. However, it's unclear when his membership expired and whether it was before or after Miss E and Mr K made their payment. Also, because N have taken down all social media profiles and their website, I can't verify whether the address on the invoice is incorrect or whether it may've changed. But regardless, even if these two specific details are correct and happened at the time Miss E and Mr K made their payment, they aren't enough for me to reach a different outcome. I find the fact that N was referred by a neighbour for whom N had recently completed work to be more persuasive in reaching a finding on whether they were operating legitimately in November 2022. Especially taking into account that N's bank didn't have any concerns about the operation of the account at that time.

Having carefully considered all the points that Miss E and Mr K have raised, I'm still not satisfied that I can fairly say they've met the high bar required for this to be considered an APP scam. I'm still persuaded that it's more likely than not that N was trading legitimately in November 2022, and that something happened after this time which resulted in the business failing. This means I'm still persuaded that this is a civil dispute and not covered by the CRM Code.

I'm sorry to disappoint Miss E and Mr K but I can't fairly hold Starling liable for their loss.

My final decision

My final decision is that I don't uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr K to accept or reject my decision before 14 March 2024.

Lisa Lowe
Ombudsman