

The complaint

Mrs F and Mr F complain that Starling Bank Limited (Starling) won't refund money lost in a safe account scam.

What happened

What Mrs F and Mr F say:

On 2 November 2023, Mr F got a call from someone purporting to be from Starling's fraud department. He checked the number and it was Starling's number, apart from one digit. The caller said it was the extension number of Starling's fraud department.

The caller said Mr F and Mrs F's accounts had been compromised and a payment made to a pizza retailer in Liverpool. And a payment to buy bitcoin for £5,000 had been attempted but blocked by Starling. Over the course of three hours, the caller convinced Mr F to move money to a 'safe account' to protect himself and his wife from fraud. The caller had his Starling bank account and card details and also those for an account with another online bank. Throughout, Mr F could hear the caller apparently liaising with other fraud department staff.

Mr F says the caller was very convincing and professional. At one point he asked Mr F to make transfers from his wife's account, and these were refunded to him as the caller promised.

Mr F and Mrs F had three accounts with Starling – Mr F's sole account, Mrs F's sole account and a joint account. This complaint deals with the payments made from Mrs F's and Mr F's joint account, and Mrs F's sole account; but I set out all the transactions to give the full picture.

Mr F was persuaded to make debit card payments from all three accounts as shown. Mr F received authorisation requests in the Starling app on his phone, and he confirmed the payments - as the scammer asked him to. He has no idea how the scammer got his account details, or how he had knowledge of his Starling account – or that of the other online bank.

(continued)

The transactions regarding this complaint are shown in *italics*:

Date	Time	Account	Payment	Amount	Notes
<i>2 November</i>	<i>3.53pm</i>	<i>Joint account</i>	<i>Card payment to</i>	<i>£5.99</i>	<i>Refunded by</i>

2023			<i>pizza retailer</i>		<i>Starling</i>
2 November 2023	8.36pm	Joint account	Card payment – international money transfer provider	£4,901.99	Subject to this complaint
2 November 2023	8.38pm	Joint account	Card payment – international money transfer provider	£2,001.99	Refunded by Starling
2 November 2023	8.45pm	Mr F	Card payment – international money transfer provider	£4,001.99	Subject to separate complaint
2 November 2023	8.53pm	Mr F	Card payment – international money transfer provider	£4,801.99	Refunded by Starling
2 November 2023	8.54pm	Joint account	Card payment – international money transfer provider	£2,901.99	Refunded by Starling
2 November 2023	9.09pm	Joint account	Card payment – international money transfer provider	£9,897.01	To Mrs F's sole account
2 November 2023	9.18pm	Mrs F	Card payment – international money transfer provider	£2,401.99	Subject to this complaint
2 November 2023	9.20pm	Mrs F	Card payment – international money transfer provider	£2,301.99	Refunded by Starling
2 November 2023	9.43pm	Mrs F	Card payment – international money transfer provider	£1,901.99	Refunded by Starling
2 November 2023	9.44pm	Mrs F	Card payment – international money transfer provider	£1,951.99	Refunded by Starling
2 November 2023	9.46pm	Mrs F	Card payment – international money transfer provider	£1,301.99	Refunded by Starling
2 November 2023	9.56pm	Mr F	Card payment – international money transfer provider	£651.99	Refunded by Starling
2 November 2023	10.54pm	Mr F	Faster payment	£400	Refunded by Starling

					(CRM code)
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The scam took place over three hours. The caller said that the money would be returned to the accounts by the following day, but this didn't happen. Mr F called Starling at 11.50 in the evening of 2 November 2023 to report the scam. Starling told him it wasn't they who called him and he then realised he had been the victim of a scam. He says the payments were to a new payee and were out of character for the way he used the accounts. He says he didn't get any warnings from Starling, nor did they stop the payments. He says Starling should've done more to protect him and should refund the money they've lost.

Mr F say he feels shamed and embarrassed by what happened. He couldn't sleep for many nights. He was ashamed to tell his wife – as he had also authorised payments from the joint account and her account.

What Starling said:

Starling agreed to refund several the payments as shown, leaving the couple's losses as:

Party	Amount not refunded
Mr F	£4,001.99 (separate complaint)
Mrs F	£2,401.99 (this complaint)
Joint account	£4,901.99 (this complaint)
Total Losses	£11,305.97

Starling cancelled and reissued Mr F's and Mrs F's debit cards and reviewed the claims. On 3 November 2023, Starling refunded £12,361.94 to Mrs F and Mr F, being six of the payments made.

But that left Mrs F's and Mr F losses as £7,303.98. Starling said they had systems in place to prevent fraud, but they didn't always prevent all losses. In this case, Mr F had authorised the payments online in the app. They said they sent a warning message but it wasn't acknowledged. Starling advised that that Mr F should've hung up on the call and called Starling on their known number. **(continued)**

Our investigation so far:

Mr F brought the complaints to us. Our investigator upheld it. He said Starling should refund

the outstanding amount of £7,303.99, plus interest at 8% p.a. simple. The crux of his argument was that the first payment for £4,901.99 from the joint account should've been triggered as suspicious by Starling. On the joint account, there were no other card payments of a similar amount in the six months leading up to the scam. Neither were there any similar payments to money remittance services.

So, he said Starling should've been alert to the possibility of a scam.

He'd seen no evidence that Starling displayed or sent any warnings to Mr F, nor did they intervene. If they had done so, the further payments from all three accounts would likely have been prevented. He said by November 2023, we would've expected Starling to have had the necessary systems in place to prevent such scams; or at least provided a tailored warning to Mr F. If they had, the payments to a 'safe account' – a common scam – would likely have been prevented.

He didn't think it was reasonable to have expected Mrs F and Mr F to be partly liable for the losses. The scammer was very skilled and believable. He appeared to have knowledge of the account details, including the payment for £5.99 earlier in the day. And two payments had been reversed as the scammer promised. This gave a further layer of legitimacy.

Starling didn't agree. They said they couldn't be expected to intervene in the first transaction, given the volume of genuine payments to such a money remitting service.

So, the complaint has come to be to look at and 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.

I'm sorry to hear that Mrs F and Mr F have lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although they didn't intend for the money to go to a scammer, they are presumed to be liable for the losses in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Starling should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Starling acted fairly and reasonably in its dealings with Mrs F and Mr F when Mr F made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to a UK beneficiary – and in this case, the payments were made by debit card.

First payment from joint account:

If the payments were of a sufficient size and were out of character with how Mr F and Mrs F normally used their account – then we would expect Starling to have intervened and spoken to Mr F about the payments. I looked at the joint account – as this was the account from which the first payments were made. This is the crux of this and the associated complaints.

I consider that it's fair to say that the payments were unusual compared to the way in which the joint account was used. In the six months prior to the scam there weren't any payments to external third-party payees of over £1,000. Most payments were of low value (less than £500). There were two internal transfers of £900 and £700 to Mr F's own account – which I discount for the purpose of seeing if there were typically large external payments being made. Other than that, the other low value payments were for day-to-day expenses.

So here – the first scam payment of £4,901.99 was unusual. And it was to a new payee which hadn't been used before. I'm also mindful that Starling haven't provided any evidence that they provided any tailored or general warnings when the payment was being made. Starling told us they may have done so but can't be sure. And the bank hasn't provided evidence they did.

Therefore, in such circumstances, we would have expected Starling to stop and hold the first payment and contact Mrs F and Mr F.

Starling was the expert in safe account scams (which were by this time common) and if they'd intervened, held the payments and contacted Mrs F and Mr F – either by phone or by targeted and tailored 'safe account' messages/warnings - we would have expected them to ask questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How were you contacted?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?
- How are they asking you to make the payments?

Starling would've found out that Mr F had been contacted by someone purporting to be from Starling's fraud department and that this was a safe account scam. This was a common scam which Starling would've been aware of. I'm satisfied that Mrs F and Mr F would've been warned about the risks involved and wouldn't have made the payments from that moment on – and it's likely the subsequent payments from all three accounts would've been prevented.

Therefore, Starling must refund the outstanding amounts.

Contributory Negligence:

I considered whether Mrs F and Mr F could've done more to protect themselves and whether they should therefore reasonably share some of the losses. But I consider there wasn't much more he could've done. This was a sophisticated and clever scam in which:

- The scammer spoofed Starling's phone number (apart from one digit). Mr F challenged the caller about that and was given a credible answer.
- The scammer had information about a payment from the account for £5.99.
- The scammer apparently had access to the account and debit card information and could ask for authorisations via Starling's app.
- The scammer had knowledge of Mr F's other online bank account details.
- The scammer refunded a series of payments as promised (to Mrs F's account) and this gave credibility to the scam.
- The scammer spoke perfect English and carried out the scam over three hours. He apparently spoke to 'colleagues' in Starling's fraud area throughout.

There is an argument to say Mr F should've hung up on the call and called Starling. But other than that, having listened to Mr F's call to Starling on 2 November 2023 and read his testimony, I'm satisfied there was little he could have done to prevent the scam.

I'm also mindful here that Starling can't show us if they sent any tailored warning messages to Mrs F and Mr F at the time. If they had, and Mr F ignored them, then I might have formed a different view about contributory negligence.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. Mr F called Starling late in the evening of 2 November 2023. If the payments had been made by faster payment, we would've expected Starling to contact the recipient bank to try to recover the funds. But here, the payments were made by debit card and so the card scheme rules meant these were 'confirmed' payments which couldn't be recovered. So – there wasn't anything Starling could've done. **(continued)**

Putting things right

Starling must refund £7,303.98 to Mrs F and Mr F's sole and joint accounts, plus interest at 8% per annum simple.

My final decision

I uphold this complaint. Starling Bank Limited must:

Refund £7,303.98 plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 23 April 2024.

Martin Lord
Ombudsman