

## **The complaint**

Mr O is unhappy that Starling Bank Limited didn't reimburse him after he told it he'd fallen victim to fraud.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it all in detail here, but in summary I understand it to be as follows.

Mr O has explained that, in or around June 2023, he met somebody online who I'll refer to as 'J', who he went on to meet and spend time with. During the course of knowing J, Mr O started to lend them money. Mr O has explained that this was for various things and he was expecting to receive the money back. Between June 2023 and September 2023, Mr O made several payments, totalling £1,550, to J. Mr O has added that during this time, he also referred J to get a job at the company he worked for.

Mr O has said that he believed he was in a genuine relationship with J, but when they started to ask for money and didn't repay it, he suspected he'd been the victim of a romance scam and reported the matter to Starling. He also began court proceedings against J.

Starling looked into things, but it didn't agree to reimburse him. It said that his claim wasn't covered by the CRM Code because it was a civil issue, rather than fraud.

Unhappy with Starling's response, Mr O brought his complaint to this service and one of our Investigator's looked into things, but didn't uphold it. In summary, it was our Investigator's view that this was a civil matter, so it wouldn't be fair for this service to ask Starling to refund the money Mr O had said he'd lost.

Mr O disagreed with the Investigator's opinion and so the complaint has been passed on to me to consider and come to 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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Starling is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

However, none of the requirements of the Code are applicable unless Mr O is the victim of a scam, rather than being in some other kind of dispute. The Code defines an APP scam as:

*“...where the Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

The question this case turns on then is whether the purposes for which Mr O made these transfers were, in fact, fraudulent. To reach a determination on that point, I need to consider the intentions of J – in other words, did J plan to deceive Mr O and take his money from the start? I can't know for sure what was in J's mind when they were taking money from Mr O. I have to look at the available evidence and infer what their intentions most likely were. Unless that evidence shows that it's more likely than not that J intended to defraud Mr O, I can't make a finding that Mr O is a victim of fraud.

I've considered that point carefully and, having done so, I'm not persuaded that there's enough evidence to say that he was the victim of APP fraud, as defined in the Code. Mr O has confirmed that J gave reasons as to why they needed to borrow money and that it was intended to be paid back. I've seen from Mr O's bank statements that J did pay Mr O some of the money back, albeit I accept, from what I've seen, he hasn't received all of it back. But it does, however, make it much harder to unambiguously conclude that there was an intention to defraud throughout.

It's difficult to rule out the possibility that J did intend to repay Mr O at the time they borrowed money from him but that circumstances changed or their personal finances were so chaotically mismanaged that they didn't realise they wouldn't be able to. Unfortunately, based on the available evidence, that's just as likely a conclusion as J intending to commit fraud.

It's also significant that Mr O has met J in person, seemingly on a number of occasions. And since Mr O raised his concerns, J has, at least in part, still been contactable. I've seen that Mr O has begun court proceedings against J, who has responded and denied the allegations against them. It is not typical for somebody who has set out with the intention to defraud to remain contactable after taking a victim's money, as seems to be the case here.

I'm mindful that the issue has been raised with the courts and that, at present, no findings have been made against J. It is, of course, possible that the situation may change and new material evidence may come to light about J's actions and intentions. That could affect the outcome here. However, I have to decide the case on the facts and information before me. And currently I'm not able to conclude there is convincing evidence that Mr O has been the victim of an APP scam. If new material information does come to light, at a later date, then Mr O can bring a new complaint to Starling, who may consider it. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

I know that Mr O will be greatly frustrated by the outcome I've reached here. I want to make it clear that I can't categorically rule out that what happened to him was fraud. It's possible that it was, but I'm afraid the weight of the evidence doesn't support such a finding. I don't say any of this to downplay or diminish what Mr O has been through and the emotional impact this has had on him. However, my role is limited to looking at the actions and inactions of the bank and, while I'm sorry to have to disappoint him, I'm satisfied Starling's decision under the CRM Code was correct.

### **My final decision**

My final decision is that I don't uphold this complaint.

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

Stephen Wise  
**Ombudsman**