

## **The complaint**

C, a limited company, complains that Starling Bank Limited (“Starling”) won’t refund money its director lost to a scam.

C is represented by one of its directors - Mr R.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I’ll only provide a brief overview of some of the key events here.

C’s director, Mr R, transferred £20,000 from C’s business banking account to what he believed was an investment (and now believed to be a scam).

Starling has declined to offer Mr R a refund of the payments that left C’s business account. Mr R complained and the matter was referred to our service. One of our Investigators looked into things. He initially considered the case on the basis that Mr R was making the complaint and upheld it. However, subsequently the case was set up with the eligible complainant as the business Mr R is a director of – C. The investigator didn’t recommend that the complaint should be upheld. He said he wasn’t persuaded that C had suffered a loss in these circumstances.

Mr R, on behalf of C, disagreed and asked for an Ombudsman to make a decision. So, the complaint was passed to me.

## **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 I’ve reached the same outcome as the Investigator for much the same reasons.

In deciding what’s fair and reasonable, I’m required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive or contradictory, I reach 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 and the wider circumstances.

This decision is solely in relation to the payments that left C’s business account. In these circumstances, C is the eligible complainant. As the director, Mr R can represent C, but personally he is considered a separate legal entity, distinct from C.

It isn’t in dispute that Mr R made the payments from C’s business account that went to an investment (Mr R now deems to be a scam). Mr R had authority to make these payments, on

behalf of C. So, the starting position here is that Starling ought to have followed the instructions it was provided with and processed the payments.

Based on everything I've seen; the money being paid from C's account was to make an investment for personal gain. Initially Mr R confirmed this was the case – but subsequently he said the Investigator's question wasn't clear and what he meant was the investment return would be paid to C and then Mr R would be able to draw the company profit for him personally as a director. As the rate of dividend tax is lower than personal income tax, this is what he was referring to when he referred to as this being by far the most tax efficient way to invest for him and his family to gain personally.

In light of the conflicting information provided, our Investigator asked Mr R if he could provide any evidence that could show that the investments were being made on behalf of C - showing the funds were being used to raise capital for business purposes.

I've thought very carefully about what Mr R has told us and based on everything I've seen; I'm persuaded that it's more likely than not that the money being paid from C's account was for a personal investment being made by Mr R.

I say this because the loan agreement between the investment company and Mr R was in Mr R's name rather than the business name – C. Mr R's name was also used as the reference for the payment rather than C.

I've considered the chain of emails between Mr R and the investment company. I appreciate Mr R was asked for his 'personal' details which is what he then provided. But there is nothing within the chain of emails that indicates the loan agreement had been set up incorrectly or that Mr R has asked for the investment to be in C's name. The evidence doesn't suggest, at the time, that the intention was to invest for business purposes.

Based on this, I'm satisfied that, on balance, the spending on C's account was for the purposes of Mr R's own personal gain, rather than for any business-related purposes.

Broadly speaking there are two potential scenarios in relation to the debt created by the spending on C's account. Firstly, that this was, in effect, C lending money to Mr R personally.

If Mr R had borrowed money in this way from C for personal gain, then he would be liable to repay that debt to the company. In this situation C can't fairly be considered to have suffered a loss, as it is still owed the money by Mr R as the debtor in these circumstances.

The second potential scenario is that by spending on C's account in this way, C was discharging some debt owed to Mr R. Be that a dividend payment, wages or similar. But in this situation, again, C hasn't suffered a loss. The debt has been discharged and Mr R was provided with what he was owed (which he then paid to the investment).

Starling do have obligations to be alert to fraud and scams. But, I don't think the fair and reasonable outcome here is to tell Starling it needs to do more.

Whichever approach I take to the spending on C's account, I'm not persuaded that C itself has suffered a loss. So even if I were to conclude that there had been a clear and obvious failing by Starling in its handling of matters, it wouldn't be fair and reasonable for me to ask it to do more. This is because any failures that might have occurred didn't cause a loss to C.

I realise this will be a significant disappointment to Mr R, but for the reasons given above, I'm not directing Starling to do anything further to resolve this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

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

Kathryn Milne  
**Ombudsman**