

The complaint

D, a limited company, complains that Starling Bank Limited didn't refund money it lost when it was the victim of a scam. D is represented by Mr T (one of D's directors) and it was Mr T who interacted with the fraudsters in this instance.

What happened

D was looking to invest some funds. Mr T was part of a network which meant that he received emails regarding investment opportunities, and he received an email purporting to be from a well-known UK based business (which I'll call B) setting out details of a corporate bond it was offering with a rate of 7.5%. Mr T was already aware of B, and as the bond seemed to meet D's needs, he asked for some more information.

Mr T was then contacted by someone claiming to be from another well-known company – which I'll call M – which said it was managing the bond for B. Mr T agreed to invest £85,000 into the bond, which was due to mature in 2027, and was taken through a process by M that included 'know your customer checks', opening an account with M, and a detailed application form. On 6 October 2023 Mr T made the payment for £85,000 to a third-party business – which he was told handled payments on behalf of M – and received a certificate confirming D's investment.

Mr T was then offered another bond by M, but he began to feel suspicious of the legitimacy of this offer, and so he contacted M directly to ask some questions. At this stage he realised that he had not been corresponding with a legitimate representative of M, and had not invested in a bond with B. He had been the victim of a scam; D's money had been lost.

Mr T, on behalf of D, complained to Starling Bank and asked for a refund, but it rejected the complaint. Starling considered it under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code and determined that it didn't need to pay D a refund. It said that Mr T should have been much more cautious about the investment opportunity and conducted further research before agreeing to make the payment. It considered that he didn't have a reasonable basis for believing that the company he transacted with was legitimate and this meant it didn't have to pay him a refund under the CRM Code.

Mr T was unhappy with this response from Starling and so he referred a complaint to this service. It was looked at by an Investigator who upheld it. The Investigator was satisfied that Mr T's belief in the legitimacy of this investment opportunity was a reasonable one. She also noted that the warnings Starling gave during the payment process didn't meet the definition of an "Effective Warning" under the CRM code.

Starling disagreed with the Investigator's opinion. It said that there were various red flags that should have indicated to Mr T that all was not as it seemed with the investment. It also said that Mr T had not sought any independent advice before deciding to invest in the bond, and that when he had been asked questions about the payment before it was approved, he had not given accurate answers, impacting Starling's ability to protect D's account from harm.

Because Starling disagreed, the complaint has been passed to me to consider and issue 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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

The Lending Standards Board's Contingent Reimbursement Model (CRM) Code sets out that, as a starting point, a customer should receive a refund if they fall victim to an APP scam such as this one. There's no dispute here that Mr T – and by extension D – was tricked into making the payment. But even though he was a victim of a scam, Starling doesn't have to pay D a full refund if Mr T failed to meet his requisite level of care under one or more of the exceptions set out in the code.

I've considered Starling's submissions carefully and I'm not persuaded that it's shown any of the exceptions apply here and I'll explain why.

Reasonable basis for belief

Under the terms of the code, Starling is entitled to say that Mr T didn't meet his requisite level of care if it can establish that Mr T "made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate." I've considered this point carefully and I'm satisfied that Mr T did have a reasonable basis for believing that the payment he was making was legitimately towards an investment in a corporate bond.

Mr T believed he'd been sent details of the bond through a network he was part of which shared investment opportunities. When he asked for more information, he was then contacted by someone who appeared to work for a well-known financial firm. And all the correspondence between Mr T and the scammers appears to have been detailed and professional. Mr T also wasn't cold-called or approached on social media – both common features of investment scams.

As a result, Mr T believed he was dealing with legitimate, well-established businesses. I acknowledge that Starling thinks the email addresses the scammers used should have flagged as potentially suspicious with Mr T, but I don't agree. Given the tone and appearance of the correspondence, and the absence of any other clear indicators that the emails might not be legitimate, I don't think the email addresses alone would have been an obvious cause for concern.

Furthermore, I'm also not persuaded that this investment opportunity should have appeared too good to be true. Mr T had been told that he could expect a return of 7.5% per annum. That is a higher rate than would've been typical at the time. However, the details of the fake investment look to have been chosen to mimic those of a legitimate bond that had been issued - one which did carry a coupon rate of 7.5%. So, while this was a generous return it was deliberately selected to match that of a genuine bond that was available at the time, I therefore don't think it can fairly be considered as too good to be true.

Starling has also pointed to the fact that the firm that handles M's payments is named on its website, and is different to the payment processor Mr T was told to use. But I wouldn't expect Mr T to have been aware this was something he needed to check, particularly given that he was already convinced that he was legitimately dealing with M.

I note that Mr T has said that the security and verification processes he was taken through by M seemed 'light' and that he was a somewhat experienced investor with an awareness of how these processes usually worked. But given the overwhelming volume of convincing documentation and correspondence I don't think these issues would have affected his belief that he was dealing with a legitimate investment.

Overall, I'm satisfied that Mr T made this payment with a reasonable basis for believing that it was connected with a genuine investment. It follows that Starling can't rely on the exception described above to decline to pay D a refund.

Effective warnings

Under the provisions of the CRM Code, as a minimum, an "effective warning" needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance of protecting themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams. I don't think the warnings Mr T saw met all these requirements.

On creating a new payee, I understand Mr T would've been asked "Could this be part of a scam?" and a suggestion would've been made to visit the Starling website for more information about how to avoid falling victim to one. Just before making the payment, Starling says Mr T was given another scam warning which stated that customers should research a company before investing and that an investment is likely to be a scam if the returns sound too good to be true. But given that Mr T believed he was investing with a well established and widely known UK business, and that the bond he believed he was investing in was based on a legitimate bond that was available at the time, I can't see that this warning would have given him second thoughts about what he was doing.

I also don't consider that the warnings given to Mr T meet the definition of an effective warning as set out in the Code. They didn't given any detail about the potential consequences of scams or any real detail about how a scam could look. There's also no mention of cloning or information about how to verify an investment or what to look out for when checking a company is legitimate.

So, I don't consider that Mr T ignored an effective warning here. And while I note that Mr T apparently told Starling the bond had been recommended by a financial adviser when that was not the case, I don't agree that this means Starling was hindered in its ability to protect D's account as it would still have been aware of the underlying reason for the payment – an investment – and so could have provided effective warnings relating to scams likely to be associated with investments.

Overall, I am not satisfied that Starling has demonstrated that any of the relevant exceptions to reimbursement apply in this case. It follows that I consider Starling is liable to refund the scam payment to D in this case.

Putting things right

To resolve this complaint Starling should:

- Refund the £85,000 lost to the scam
- Pay 8% simple interest on this amount from the date it declined D's claim to the date of settlement.

My final decision

I uphold this complaint. Starling Bank Limited should now put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 11 July 2024.

Sophie Mitchell
Ombudsman