

## The complaint

Mrs R complains that Starling Bank Limited won't refund the money she lost when she was the victim of what she feels was a scam.

## What happened

In October 2023, Mrs R was looking to get some building work done at her property. She posted the work on a listing website for tradespeople and was contacted by a builder interested in carrying it out. The builder provided a quote, which Mrs R was happy with so agreed for them to carry out the work. And Mrs R then made a number of payments from her Starling account to the builder as the work proceeded.

I've set out the payments Mrs R made to the builder from her Starling account below:

Date	Amount
20 October 2023	£5,000
3 November 2023	£5,000
1 December 2023	£3,000
22 December 2023	£3,750

Unfortunately, the building work wasn't completed and Mrs R discovered a number of issues with the work that had been done. She then reported the payments she had made to Starling as a scam and asked it to refund the money she had lost.

Starling investigated but said partial work had been completed and its research suggested the builder was a legitimate business. So it felt this was a civil dispute between Mrs R and the builder and didn't agree to refund the payments. Mrs R wasn't satisfied with Starling's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think the evidence suggested the circumstances here met the definition of a scam. So they didn't think Starling should have to refund the payments Mrs R had made. Mrs R disagreed with our investigator, so the complaint has been 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.

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 the customer even though they authorised the payment.

Starling is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mrs R has been the victim of a scam as defined in the CRM code I need to consider whether the purpose she intended for the payments was legitimate, whether the purposes she and the builder intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the builder.

I'm satisfied Mrs R made the payments here with the intention of paying for building work. And I haven't seen anything to suggest she didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the builder intended a different purpose for the payments, or that Mrs R's and the builder's purposes for the payments weren't broadly aligned.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

The builder started the agreed work at Mrs R's property and appears to have been working there, at least on and off, for a number of months. They appear to have been doing enough work that Mrs S was happy, at least at the time, to make some of the scheduled payments it was agreed she would make as the work went on. And from the pictures of the work I've seen it appears a significant amount of work, and certainly more than just initial clearing or preparation work, has been done – albeit to a standard Mrs R is now not happy with.

But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So more work appears to have been done here than I'd expect from someone who never intended to complete the work, which I think suggests the builder did intend to complete the work here.

The bank the payments were made to has also told us they didn't have any concerns about the way the account was run at the time Mrs R's payments were made. And I've seen evidence relating to the account the payments were made to, and while I can't share any details of this evidence, I think it shows the account appears to have been run at the time as I would expect a legitimate tradesperson's account to have been run and doesn't suggest it was being used to operate a scam.

I appreciate Mrs R has raised a number of issues about the way the builder's company was being run. And I recognise that this suggests the builder wasn't acting as I would expect a professional tradesperson to do. But acting unprofessionally does not mean the builder intended to operate a scam. And I don't think any of the issues Mrs R has raised mean the builder didn't intend to carry out or complete the work at her property.

I also haven't been provided with evidence of any investigation by an external organisation which concludes that the builder was operating a scam.

Mrs R has highlighted that she has been in contact with a number of other people who have similar complaints about the builder. But we must look at each case individually, on its own merits. So I don't think these other complaints necessarily mean Mrs R has been the victim of a scam here.

Based on the evidence I've seen, I think it's more likely the builder here intended to complete the agreed work, but that other factors ultimately meant the building work wasn't completed. While Mrs R has highlighted a number of issues with the work done at her property and the actions of the builder, I don't think I can safely say the circumstances here meet the high legal threshold and burden of proof for fraud or the specific definition of a scam I must apply here. I don't think the evidence I've seen suggests the builder deceived Mrs R about the purposes of the payments. I think both Mrs R and the builder's intentions for the payments were the same – to carry out the agreed work. So I don't think the circumstances here meet the definition of a scam from the CRM code.

And so I don't think the payments Mrs R made to the builder are covered under the CRM code, or that Starling should be required to refund the money she lost.

I sympathise with the position Mrs R has found herself in. I appreciate that her property was left in an incomplete and unsafe condition, and she will have to pay another builder a significant amount in order to fix or complete the work done by the builder here. I'm also in no way saying she did anything wrong or that she doesn't have a legitimate grievance against the builder. But I can only look at Starling's responsibilities here and, for the reasons I've explained above, I don't think it would be fair to hold Starling responsible for the money she lost.

It's possible that material new evidence may become available at a future date, which suggests that the builder did take the payments using dishonest deception. If that happens, Mrs R can ask Starling to reconsider her claim for these payments and, if not satisfied with its response, bring a new complaint to our service.

## **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 28 February 2025.

Alan Millward

**Ombudsman**