

The complaint

Ms D complains Starling Bank Limited won't refund the money she lost to a scam.

What happened

Ms D was approached on a business-focussed social media platform by a company, F, promoting a work opportunity. On 30 October 2022, she signed a six-month contract with F. She agreed to pay \$25,000 (via instalments). In return, F would provide a coaching programme and "done for you" appointment setting. F said she would make \$35,000 in sales during a 30-day timeframe within the contract period or she would get a full refund. Unfortunately, this was a scam.

Ms D made the following payments from her Starling account as part of the scam (more payments were sent from different accounts):

Date	Payment method	Merchant/recipient	Amount
28/10/2022	Card	F	£1,731.86
31/10/2022	Transfer	Ms D	£6,114.53
09/11/2022	Card	F	£1,399.92
15/11/2022	Card	F	£1,366.52
29/11/2022	Transfer	Ms D	£607.21
01/12/2022	Card	F	£1,344.69

The payments to "Ms D" were then sent on to the scammer via another regulated firm. I note the second transfer of £607.21 hasn't consistently been included in the list of disputed payments. But as it was included in the investigator's view, and neither party has disputed it, I've included it for completeness.

A few weeks after making contact, Ms D chased F about when the programme would start. She was told it could take a few months. In December 2022, they said they would be closing the business for the holidays, reopening in January 2023. After chasing up about the service several times after this, and then not getting a reply in response to her request for a refund, Ms D realised she had been scammed.

In May 2023, Ms D reported her dispute to Starling. It said it was too late to raise a chargeback claim for the card payments. Ms D complained about this outcome via a professional representative. As Starling maintained its position, she referred the matter to our service.

Our investigator didn't uphold her complaint. He didn't think Starling had reason to think the payments carried a heightened scam risk at the time. Nor did he think Starling could have recovered the funds.

Ms D appealed the investigator's outcome. Her representative argued the payment of over £6,000 was large and unusual for her, so should have been flagged for checking. And if it had been, relevant questioning would have uncovered the scam.

The case was then passed to me. I explained I agreed the payments didn't look particularly risky to Starling at the time. And they weren't covered by the Lending Standards Board's Contingent Reimbursement Model (CRM) code – which provides additional protection to authorised scam victims in some circumstances – as it doesn't cover international payments; card payments; or funds sent via other account(s) within Ms D's control.

However, I also found Starling had told Ms D it couldn't pursue a chargeback claim for those payments made by card on the grounds she was outside the "120-day time limit" which it said applied under the scheme rules. But there are exceptions to this limit. Including when the expected service wasn't provided, and there was a specified later/delayed anticipated date of performance.

Ms D provided records showing she chased up the company about not having received the expected service. I provided this to Starling, to reconsider if it ought to have looked into the claim further. It said the contact provided was of a group chat, and there was mention of other contact with the scammer that hadn't been provided. And the messages hadn't been downloaded until June 2024 – whereas the claim had been referred in May 2023.

Starling also said even if this transcript had been provided at the time, its interpretation of the rules was that, if the service didn't start on the first day of the contract, Ms D had 120 days from then to raise her dispute. It said there was nothing to show the six-month contract she had entered was due to start later.

I then issued my provisional decision explaining why I thought Starling should refund Ms D for the card payments she sent to F:

Broadly, the starting position in law is that firms are expected to process payments that a customer authorises it to make. But in line with good industry practice, we also expect firms to monitor for indicators its customers may be at risk from fraud – and to therefore take additional steps, or make additional checks, before processing payments in some circumstances.

I've considered whether Starling ought to have identified a clear fraud risk when Ms D made any of these payments – bearing in mind there is a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. Overall, I'm not persuaded Starling had cause to intervene here.

Most of the payments were for amounts which looked broadly in line with prior spending on the account. The merchant and account they were sent on to came to appear established payees. And the funds were not all sent in one go, meaning they didn't look particularly unusual, or as though they were being made under pressure (as can often be the case when a consumer is being scammed).

I appreciate the payment of around £6,000 was higher than Ms D normally sent. But it wasn't unheard of for her to make payments of a similar size. For example she had made a payment of around £4,500 a few weeks prior. I therefore don't think it appeared so unexpected or risky for her to send an occasional larger payment – going on to an account in her own name – that it was remiss Starling didn't intervene further.

Overall, I therefore don't think Starling is at fault for not uncovering the scam at the time of the payments.

I've considered whether there are any other reasons why Starling should fairly be held liable for Ms D's loss. I don't think it could have successfully recovered the funds sent by transfer. Those went via another regulated firm in the UK, and were then sent internationally from that entity to the scammer. Nor is Starling obliged to refund Ms D under the terms of the CRM code – as explained, that doesn't apply to the types of payments she made. However, I think there was more Starling ought to have done when considering whether to pursue a chargeback claim for the card payments.

The chargeback scheme is a voluntary process to resolve payment disputes between consumers and merchants. As it is voluntary, banks are not obliged to raise claims for every dispute their customers report. But I would consider it good practice to do so if the claim looked likely to succeed under the scheme rules (as set by the card scheme provider – in this case, Mastercard).

Ms D contacted Starling about her dispute in early May 2023 – so shortly after the contract period came to an end. It sent her a form to complete to consider raising chargeback claims for the card payments. Ms D explained her dispute was about not having received the (goods or) services she was expecting. When asked what date she was expecting to receive this, she said 26 April 2023. That – broadly – aligns with the term of her contract.

In reply, Starling said it couldn't pursue a claim for the card payments, as there was a deadline of 120 days to dispute them – and that had passed. However, that doesn't acknowledge the entirety of what the rules say about the time frame. Relevant here is that it says:

“In cases involving delayed delivery of goods or services and the delivery or performance date was not specified by the merchant: The issuer must wait 30-calendar days from the transaction date before submitting a chargeback and not to exceed 120-calendar days from the transaction settlement date.

[...]

In cases involving delayed delivery of goods or services and the delivery or performance date was specified by the merchant and the latest anticipated delivery or performance date was specified by the merchant has passed: Within 120-calendar days of the latest anticipated delivery or performance date specified by the merchant.

[...]

In cases involving interruption of ongoing services: Within 120-calendar days of the date the cardholder becomes aware that the service ceased. A chargeback must not be processed after 540-calendar days from the Central Site Business Date of the first presentment.”

So, if the performance date was specified by the merchant, that means the rules allow the consumer 120 days to claim from the last anticipated performance/delivery date. Arguably, as the contract was set to run for six months, I think that could be taken as the latest specified performance date. It is after six months that the contract says Ms D is guaranteed to receive \$35,000 – or a refund of what she has paid.

To expand – my interpretation of Ms D's contract is that she should have been up and running and hitting the guaranteed sales target within six months, or else she would get a refund. So until that timeframe passed, and Ms D had neither received the guaranteed sales amount, nor a refund, it was not clear the contract performance had not been delivered. Which is why I think it was wrong for Starling to take the first day of the contract as the expected performance/delivery date.

There is also further evidence to support a later/delayed expected performance date. While Starling argues it's unclear whether all contact has been provided, the messages do show Ms D was chasing up the lack of service – and received replies which told her this would be remedied.

The messages show Ms D chasing in November 2022 due to not receiving any calls or being allocated a "setter" (who I understand was the person due to be arranging appointments for her). She is told it generally takes four to six months for the service to get going.

In late November 2022, Ms D is told she has been allocated a setter. Shortly after, she is told there will be a one-month extension as the business will be closed for a month over the holiday period.

Ms D chases again in February 2023 to say her setters aren't replying. She is then told a new setter has been assigned to her. She chases again in March 2023 to say she still doesn't have any calls booked. On 14 March 2023, she is told a new setter has been assigned to her. In April 2023, she explains she is still waiting for her first call.

On 24 April 2023, Ms D says she is six months in but hasn't had any calls yet, so asks for a refund. She continues to chase this until 17 May 2023 – reporting the dispute to Starling in the meantime.

I think the messages further show the expected performance date wasn't the first date of the contract. She has provided evidence that F told her the service wasn't expected to be delivered fully until four to six months into the contract (so late February 2023 at the earliest). The messages from F's employees arguably pushed the expected performance date – as they were still allocating her setters into March 2023. So, given Ms D reported the dispute in early May 2023, I don't agree the claim was raised too late.

While I appreciate the contact records weren't provided to Starling at the time, I don't think it gave Ms D a fair opportunity to provide them. Banks know more about what supporting evidence they need for claims than consumers, so we expect them to provide guidance on this. But as Starling refuted the claim as being out of time immediately – despite Ms D explaining the expected delivery date was later – it didn't seek any further information from her (which she would have been able to provide) to support this.

I also think Ms D's messages (if requested) would have supported that the service wasn't provided – as the messages show her chasing it up. At no point do F's employees refute this and say the service has been provided – they acknowledge that she hasn't had any calls set up, and that her setters haven't done what they were supposed to do. Ms D also provided the contract she signed with F – and it's clear she neither received the guaranteed sales money, nor a refund of her payments, as the contract said she would.

I'm also persuaded, from what I've seen, that F were operating fraudulently. I think that also supports that they wouldn't have been able to successfully defend a claim, had one been pursued.

Overall, I think it was remiss for Starling to decline Ms D's chargeback claim submissions on the grounds they were out of time. And had it looked into the circumstances further, I consider it more likely than not it could have successfully retrieved the funds through this scheme. I therefore think Starling holds liability for the card payments, due to missing an opportunity to (likely) recover them from F directly.

I invited both parties to provide any further comments or evidence in response to my provisional decision. Ms D's representative has confirmed she accepts my findings. But Starling disagrees. In summary, it says:

- 1) The amount Ms D paid was less than the cost stated in the contract (\$25,000). So F could have contested a chargeback on the grounds Ms D didn't keep up with her contractual obligation to pay the full sum for the service.
- 2) The contract started on the date it was signed and had expired by the time Ms D contacted it about claiming.
- 3) It could not have used a "conditional satisfaction guarantee" to support that the services were not rendered. And "could not use it to show that the merchant agreed to refund the customer because they did not agree to refund."

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 come to the same overall conclusion as I did in my provisional decision – which is set out above and also forms part of my final decision. The reasons for this are largely the same, so I'll focus here on responding to the points Starling has raised in response to my provisional findings.

My provisional decision already explained that Ms D sent further payments from other accounts to F. I have seen evidence that she maintained the expected payments until at least December 2023. While I haven't seen records of later payments, this was the point at which F told Ms D the contract was being extended as they were closing over the holiday period.

There is no indication of F chasing Ms D for payment after this point. Rather, she chases them about having not received the service she was promised – and F say they are arranging for this to be provided.

I therefore don't think the issue of whether Ms D made further payments following F (allegedly) reopening would be key to whether the chargeback would have succeeded. By the time Ms D reported her dispute, I think it was clear F never had an intention to provide the services. And the contemporaneous messages show they weren't withholding the service due to non-payment.

As I have also previously addressed, given there is compelling evidence that F were acting fraudulently, I think that further suggests they were unlikely to be able to defend the chargebacks. I do not think it seems likely they would want to risk a dispute being raised and flagging up their practices to Mastercard. Nor do I think they would have been able to demonstrate providing any services to Ms D, nor that they were withholding services due to non-payment (as a potential defence).

I have considered what Starling has said about the start and end date of the contract. For the reasons already covered in my provisional decision, I still consider the claim to have been raised in time. I think the six-month contract – which was then extended – set the expected performance date as the *end* of the contract. Ms D raised her claim within 120 days from that point.

I find Starling's third point in response to my provisional findings less clear. It seems to suggest it could not have successfully claimed on the basis the service wasn't provided, because F didn't agree to refund Ms D. I don't agree. The contract said she would *either* receive the guaranteed sales amount, *or* a refund, by the end of the contract period. The fact she received neither is precisely why I believe she had reasonable grounds to claim.

Overall, on balance, I think Starling made an error in not looking into the claims further. Had it done so, I consider it more likely than not that the card payments could have been recovered through the chargeback scheme. That is why I consider it fair to expect Starling to refund Ms D for those payments.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. Starling Bank Limited must refund Ms D for the card payments she sent from her Starling account to F. It should also pay 8% simple interest per year on this amount, running from the date it declined her claim to the date of settlement, to compensate her for the loss of use of the funds.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 21 November 2024.

Rachel Loughlin
Ombudsman