

The complaint

Mr V and Mr V complain that Starling Bank Limited did not refund a series of payments they say they lost to a scam.

What happened

As Mr V was the individual actively involved in the communication and who primarily raised the complaint, I will mostly refer to him throughout this decision, but this is not meant to be a discourtesy to his father, Mr V.

Mr V was actively looking for investment opportunities in early January 2021 and found two companies he was interested in. I'll call them 'L' and 'B' for the purposes of this decision. For each of these investment opportunities, he was given access to an advisor who would help facilitate trades in commodities and in companies such as Tesla and Amazon. He had access to online platforms where he could see his trades, and he received a small amount of returns for B, as well as significant returns for L.

Mr V eventually felt both companies were operating as scams. For B, he was told he had lost significant funds on trades so he needed to keep investing to be able to make additional trades to recover. After some time, he was told that in order to withdraw his balance of over a million pounds, he needed to pay various fees. Mr V had significant doubts about the validity of the fees and charges, but paid these on a number of occasions. Eventually, when he still did not receive his returns, he blocked the company and realised he had been the victim of a scam.

For L, Mr V invested a significant amount of money in the company across various accounts he held, and between early 2021 and late 2022, he received returns somewhere in the region of £150,000. In November 2022, Mr V felt he had been lied to by L so they could get more money from him, and he felt he had been scammed. He made the following payments from his personal account with Starling:

- 29/7/21 - £100,000
- 29/7/21 - £84,000
- 31/8/21 - £250,000

Mr V has indicated that these payments were linked to the scam with L. He raised a scam claim with Starling in June 2023. Starling issued a final response letter in which they explained that they had intervened in the payments and asked some automated questions about them. Mr V's answers were reviewed by a member of staff before it was deemed that the answers were satisfactory, and the payments were then released. So, Starling felt they had acted reasonably when they processed the payments.

Mr V disagreed with the findings and referred the complaint to our service. Our Investigator looked into it and felt that B was a scam, but they did not think it was clear if L was a scam or not, as they still appeared to be operating two years after Mr V's last interactions with them. And while they recognised there was a warning about L operating while unregulated in the United Kingdom on the Financial Conduct Authorities ("FCA") website, they did not think this

was evidence of a scam. In any event, they did not think Starling had carried out an appropriate intervention and felt they should have telephoned Mr V to discuss the payments.

However, they did not think an intervention, no matter how good, would have revealed the scam. They felt due to the length of time Mr V had been investing with L (over six months) and the level of returns he had received as well as the fact Mr V had no concerns about L at that time that Starling would not have uncovered the scam.

Mr V's representatives disagreed with the findings. They reiterated that they felt L was a scam, due to the unrealistic returns and the warning on the FCA website. And they felt there were enough hallmarks of a scam that an intervention from Starling would have uncovered it.

As an informal agreement could not be reached the complaint has been passed to me for 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.

As the payments were going to cryptocurrency wallets in Mr V's name, they are not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which provides additional protection to victims of authorised push payment ("APP") scams such as Mr V.

I've firstly considered whether the payments in question were made to a scam, as Mr V has described. I can see L was licensed in a different country to trade securities as an agent, but I do note that in January 2021 the Financial Conduct Authority issued a warning that they were not registered in the United Kingdom to trade. But this alone does not mean they set out to defraud Mr V and take his money without providing him with a legitimate service.

Having looked into L further, I can see their license to trade securities in a different country was revoked in June 2022 but they continued to trade and still appear to have a website today. Mr V sent L a significant sum of money between January 2021 and late 2022, though it is difficult to quantify exactly how much due to the various accounts and currencies involved. But he also received around £150,000 in returns from what I have seen, and while I recognise this was just a portion of what he sent; this was still a significant sum to receive back on a scam. With all of this in mind, I can't say with certainty whether L was a scam, but to be fair to Mr V I have gone on to make an assessment as if he was the victim of a scam.

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.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr V authorised the payments in question as he believed they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Starling was obliged to follow his instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Starling did enough to try to keep Mr V's account safe.

The value of the payments sent by Mr V from his Starling account as part of this scam were significant, so I think they warranted some form of intervention prior to them being processed. I can see that each of the payments were stopped for additional questions by Starling and these were automated questions Mr V had to select the responses for. These asked what the payments were for, what Mr V was investing in, if he'd paid the payee before and how long had he been dealing with them. I can see Mr V was honest in his answers and set out he was investing in trades and cryptocurrency and had been doing so with the payee for over a month.

Starling has said that for each payment the answers Mr V gave were reviewed by a member of staff and it was deemed that they did not have concerns about the risk level of the payments, so allowed them to go through. However, while I accept Mr V's answers to the automated questions did not immediately bring cause for concern, due to the significant values involved I think a telephone conversation with him, at least for the initial payment, would have been reasonable. I've therefore considered whether I think a telephone conversation would have revealed the scam at that time.

I have firstly considered an earlier intervention in late January for one of the first payments made towards the scams that a third-party bank carried out. In this, Mr V was asked some basic questions about the investment such as where he found it and if he had carried out reasonable checks including the FCA website to see if they were regulated. Mr V confirmed he had been dealing with the company for some time, had checked them out and was happy they were genuine and in the call he came across as relatively confident and relaxed about the payment. As I do not think Mr V's answers had cause to give the third-party bank concern, I thought it was unlikely further intervention would have revealed the scam in the circumstances.

I do recognise that the situation had changed somewhat between the initial payments and the ones Mr V made from Starling. Mr V had been trading with L for around six months by that point and appeared to have built a relationship with the account managers he had used. While he had lost money on trades, he did appear to have made around £50,000 in returns by that point, though it is difficult to quantify the exact returns with the evidence I have been provided. While I do accept Mr V's representative's argument that these returns were a smaller percentage of what Mr V had put into the investment, I still think that the value of the returns was significant enough that both Mr V and Starling would not have had significant concerns at that stage.

Mr V's representatives have highlighted that there was a warning on the FCA website that L was not registered in the United Kingdom and that the advert for them featured a celebrity. They felt these would have been red flags to Starling that L was a scam. I firstly think it is unlikely Mr V would have gone into detail about L and the fact he was using them, considering the earlier intervention by the third-party bank and the limited information he shared with them. I also have to consider that in correspondence I have seen, Mr V refers to L's license to trade in a separate country, including their specific license number. So, I think he had carried out some research into the company and found they had a license, albeit not in this country. So, I think he was reasonably convinced they were legitimate at that time, and I don't think a meaningful intervention from Starling would have uncovered the scam.

I recognise that by the time Mr V made the payments from Starling, L's license had been revoked in the country it was issued. However, as Mr V appeared to have already looked this up, had been dealing with L for six months by that point and had received a significant amount of returns, I think it is unlikely he would have looked into this a second time if Starling had asked if he was satisfied L was a genuine company.

On balance, I think it is unlikely a better intervention would have uncovered the scam at that time. Mr V had dealt with L for over six months by the time he made the payments from his Starling account and did not appear to have concerns with them at that point. An earlier intervention by a third-party bank had not uncovered the scam, and I think it is more likely Mr V had looked into L previously and accepted them as a genuine company. While I accept that he had invested a lot of money, he had also received a significant amount of returns as well. He was able to access his online trading platform to carry out trades and had no reason to suspect the trades were not genuine. So, I do not think a better intervention by Starling would have uncovered the scam in the circumstances, and I don't think a better investment scam warning would have broken the spell.

I've finally considered if Starling took the steps that it should have once the scam claims were raised with them. On balance, I think that had Starling contacted the beneficiary banks once it became aware of the scams, it would not have been able to recover the funds. I say this because the funds went into an account in Mr V's name, before being passed onto the scammer. So, the funds had already left the beneficiary account before the scam was reported. As such, Starling wouldn't be able to recover any of the funds.

I want to acknowledge that Mr V and Mr V lost a significant amount of money and I'm sorry they've gone through this experience. But I can't ask Starling to refund them their losses when I don't think they could reasonably have been expected to uncover the scam at the time the payments were made.

My final decision

I do not uphold Mr V and Mr V's complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mr V to accept or reject my decision before 13 December 2024.

Rebecca Norris
Ombudsman