DRN-5211502

The complaint

Mr H complains that Starling Bank Limited won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

Sometime around July 2022, someone Mr H had worked with previously told him about an opportunity to invest with a trading company they'd had success with. Mr H looked into the trading company and was told his funds would be used for trading in foreign exchange. And as Mr H thought the company was genuine and appeared to be a good investment opportunity, he then made a number of payments from his Starling account to invest with it.

I've set out the payments Mr H made from his Starling account below:

Date	Amount
27 July 2022	£5,000
23 August 2022	£7,000
21 October 2022	£6,000

In January 2023, Mr H tried to make a further payment to the trading company but Starling blocked it and said it had concerns that the company was a scam. Mr H investigated further and ultimately saw warnings about the company posted by financial regulators. He then contacted Starling again and asked it to refund the money he had lost.

Starling investigated but said it felt it had sufficient fraud prevention measures in place at the time. It also said it felt this was a civil dispute between Mr H and the trading company, rather than a scam. So it didn't agree to refund the payments he had made. Mr H wasn't satisfied with Starling's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the available evidence suggested the trading company was a scam. And they didn't think Starling had established that Mr H wasn't entitled to a refund. So they recommended it refund the money Mr H had lost, in full. Starling 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.

Can Starling delay making a decision under the CRM code?

Starling has argued that the payments Mr H made are the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse him. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Starling only raised this after it had already reached a decision on Mr H's claim in its final response letter to him of 2 October 2023, when it said this appeared to be a dispute between him and the trading company. So I don't think Starling can now rely on this provision here.

Is it appropriate to determine this complaint now?

I've also considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Mr H's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr H was the victims of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr H first raised his claim with Starling in mid-2023 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr H an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm also aware the above processes might result in some recoveries for the trading company's investors. So in order to avoid the risk of double recovery, I think Starling would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr H

under those processes in respect of this investment before paying anything I might award to him on this complaint.

For reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of the FCA investigation for me fairly to reach a decision on whether Starling should reimburse Mr H under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with the trading company were dishonestly deceived about the purpose of the payments they were making and that Mr H was the victim of a scam. So it is appropriate for me to consider this complaint.

Has Mr H been the victim of a scam, as defined in the CRM 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 Mr H has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payments was legitimate, whether the purposes he and the trading company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr H made the payments here with the intention of investing with the trading company. He thought his funds would be used to trade in foreign currency, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr H didn't think this was legitimate.

But I think the evidence I've seen suggests the trading company didn't intend to act in line with the purpose for the payments it had agreed with Mr H.

The trading company needed to be regulated by the UK financial regulator, the FCA, to operate an investment of this type within the UK. Mr H has said he was told the trading company was in the process of becoming regulated by the financial regulator in Luxembourg, the CSSF. And from what I've seen of the marketing material potential investors were shown, the trading company said on a number of occasions that it either was, or was in the process of becoming, regulated by the CSSF. But the CSSF has confirmed it was not in contact with the trading company, and the company was not supervised by it. So this strongly suggests the trading company was dishonestly misleading investors about the regulatory status of the company.

In March and April 2023 respectively, both the CSSF and the FCA issued warnings about the trading company. The CSSF warned that the company was pretending to be registered and supervised by the CSSF, but that it was neither registered or supervised by it. And the FCA warned that all companies must be authorised by it if they offer, promote or sell financial products in the UK but that the trading company was not authorised and was targeting people in the UK.

In a number of its emails to Mr H, and its marketing materials, the trading company also claimed to be partnered with an FCA regulated broker it held a trading account with. But this broker has confirmed that it doesn't have any relationship with the trading company, or with

either of the individuals involved in running the company. So as the trading company told investors their funds were immediately transferred to trading accounts with this broker, this strongly suggests it was dishonestly deceiving investors about the payments they were making. Funds investors sent to the trading company weren't used for the specific purpose of trading in foreign exchange via the regulated broker – which is what investors thought was happening with their funds.

While some funds sent to the trading company were sent to another foreign exchange trading platform, those funds weren't held and traded on a platform that was regulated in the UK by the FCA – as investors were told their fund would be. The funds sent to this other trading platform also didn't benefit from FSCS protection – as investors were also led to believe. And it is impossible to say whether any trading the company carried out on this other platform was done on behalf of investors, or was solely for the benefit of the trading company itself.

Investors in the trading company were also told all the funds they sent to the company would be immediately moved to the FCA regulated broker and available for trading. And I've seen copies of deposit confirmation emails Mr H received which confirmed this. But, from what I've seen of the accounts the funds were sent to, no funds were sent to the FCA regulated broker the trading company mentioned and only around 60% of the funds were sent to the other trading platform. This means a significant proportion of the funds the trading company received weren't used for trading in foreign exchange – contrary to what investors were told.

The funds that weren't used for trading in foreign exchange appear to have been used for a number of other purposes, including transfers to other accounts held by individuals involved in running the trading company and their family members, credit card repayments, luxury vehicle purchases, flights, hotels, and gambling. And these purposes don't appear to be connected to the trading investors were told their funds would be used for.

Of the funds that were sent to the other trading platform, the trading company only appears to have withdrawn around a third of the amount that was then paid to investors as returns. This raises significant questions about how the remaining returns that were paid to investors were funded, and I think strongly suggests deposits from later investors were being used to pay returns and withdrawals of earlier investors.

Some of the funds received into the trading company's accounts from investors were also sent to a cryptocurrency exchange – which is not in line with what investors were told their funds would be used for.

So I think the available evidence shows the trading company wasn't acting in line with the features of the investment it had led Mr H to believe he was making. And so the purpose the company intended for the payments he made wasn't aligned with the purpose Mr H intended for the payments.

Given the incorrect information given out by the trading company, particularly about its regulatory status and its relationship with the broker, I also think the discrepancy in the alignment of the payment purposes between it and Mr H was the result of dishonest deception on the part of the company.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. As I've explained above, there is significant evidence about the actual activity carried out by the trading company already

available. And while the FCA's investigation is still ongoing, there is no certainty as to when it would be concluded and what, if any, prosecutions may be brought in future, nor what, if any, new light it would shed on the evidence and issues I've discussed.

And so I think the circumstances here meet the definition of a scam from the CRM code.

Is Mr H entitled to a refund under the CRM code?

As I explained above, Starling is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr H fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer 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

There are further exceptions within the CRM code, but these don't apply here.

Did Mr H ignore an effective warning in relation to the payments?

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Starling has sent us a copy of the warning it says Mr H was shown when setting up the first payment to the trading company, which said:

> *"**Could this payee be part of a scam?***
>
> *Always verify who you are sending money to as **you made not be able to recover these funds**. A fraudster may tell you to ignore these warnings. Call us on [phone number] or visit **our website** for scam advice."*

Starling has also said that, before allowing the first payment to the trading company to go through, it asked Mr H a series of questions about it. These included questions about the purpose of the payment, what Mr H was investing in, and how he had found out about the investment. It then also showed him two further warnings, which said:

> *"Always research a company and check reviews from other people. If the investment returns sound too good to be true – this could be a scam.*
>
> *All Financial Advisors and Financial Institutions should be FCA registered. You can check the FCA register here [internet link]"*

… and:

> *"Fraudsters will tell you how to answer these questions to scam you. A genuine organisation will never do this.*

A bank or any other organisation will never tell you to move money to a new, 'safe' bank account.

Fraudsters can make phone calls appear to come from a different number. Are you speaking with who you think you are?

If in doubt you can call us on [phone number]."

These warnings did advise Mr H to research the company and check reviews, and that returns that sound too good to be true could be a scam. But I don't think they were clear enough about what research Mr H could do and what might suggest a company was a scam, or about what types of returns could be considered too good to be true.

I also don't think the warnings were clear enough about what this kind of investment scam could look or feel like, or did enough to set out the seriousness of the possible consequences of falling victim to a scam. The warnings also included a number of points that weren't relevant to Mr H's circumstances here.

And while the warnings did also say that all financial institutions should be FCA registered, I don't think it was clear enough that an institution not being registered should be a significant red flag that they are a scam. And Mr H had been given a detailed and plausible explanation of the company's progress in becoming registered with a foreign regulator.

So I don't think these warnings were clear or impactful enough to be effective in Mr H's circumstances. Or that Starling has established that Mr H unreasonably ignored the warnings he was shown.

And so I don't think Starling has established that Mr H ignored an effective warning in relation to these payments.

Did Mr H make the payments without a reasonable basis for belief?

I've also considered whether Mr H acted reasonably when making these payments, or whether the warning signs ought to have reasonably made him aware that this wasn't a genuine investment.

Mr H was first introduced to the trading company by someone he'd worked with previously. He's said they were his business coach, and had helped him with his self-employed business for over a year several years ago. They'd then stayed in touch, and met up at a later event. And they told him they had been investing with the company for more than a year, and that it was legitimate. Mr H says he was also in touch with other people who had worked with the person, who had also invested and said everything was going well.

And I think it's reasonable that receiving these kinds of personal recommendations, particularly from someone who had helped him in the past and he'd had such a long-standing relationship with, would have made the trading company seemed legitimate.

The person who introduced Mr H to the trading company also arranged for him to attend an internet video call with the individuals running the company, where they explained who they were and how the investment would work. And I think having this kind of in-person interaction with the individuals involved will also have reasonably made the trading company seem legitimate.

This was also a relatively sophisticated scam, where Mr H was given access to a portal which showed him details of his investments and the trades being carried out. He's also said he was in regular contact with the trading company and was given weekly updates about the profit he was making. And I've seen copies of some of the emails he received, as well as some of the marketing material he was shown – which I think looks relatively professional and legitimate. So I think it's reasonable that this kind of contact and communication will have reassured Mr H that the trading company was genuine.

I appreciate that the returns some of the marketing material says the trading company had been making were unrealistic and significantly too good to be true. But Mr H has said the person who introduced him said these returns were due to volatility in the markets, that those returns weren't guaranteed to continue, and that he was more likely to receive a much more realistic return on his investments. So I don't think it's unreasonable that these high suggested rates of return didn't cause Mr H more concern.

Before investing, Mr H says he checked the person who introduced him to the trading company and the broker he was told the company was working with were regulated by the FCA – which they were. He says he asked for paperwork for the investment and was sent the marketing material, an FAQ document, a detailed explanation of the setup and regulatory processes the company said it was going through, and a video recording explaining the investment in detail.

Mr H also says he checked the profiles of the individuals running the company on a social media platform and looked for information about them and the trading company online, but there were no warnings or anything to suggest the company wasn't legitimate at the time. And he tried to contact the CSSF, but was told it couldn't discuss a pending application. So I think Mr H at least tried to check that the trading company was legitimate, and carried out the research he could to confirm this.

Mr H also says he was told the trading company was initially a small partnership between the individuals running it, but had grown very quickly due to the success it had and so was now in the process of becoming a limited company. He was told this is why the company did not yet have a business bank account in its own name, and so the payments he made would need to go to a personal account in the name of one of the individuals running it. And while I don't think this explanation for the payments being made to a personal account is entirely plausible, I do think it's reasonable that it will have given Mr H some reassurance about the account he was sending the money to.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening and what he was told that could have caused Mr H some concern, such as the way he was asked to make the payments and the very high returns he was told he was earning. But, based on what I've seen, I don't think it was unreasonable that, at the time, he either didn't pick up on these things or wasn't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say that Mr H acted unreasonably when making the payments, or that Starling has established that he made the payments without a reasonable basis for belief that the investment was genuine.

Summary

Overall, for the reasons I've explained above, I think it is fair for our service to assess Mr H's complaint based on the evidence that is currently available. And having done so, I think the payments Mr H made here are covered by the CRM code and Starling hasn't established

that any of the exclusions to reimbursement apply. So I think it is fair and reasonable for Starling to fully refund Mr H under the CRM code.

Redress

As there is an ongoing investigation into the trading company by the FCA, it's possible Mr H may recover some further funds in the future, through that process. In order to avoid the risk of double recovery, Starling is entitled to take, if it wishes, an assignment of the rights to all future distributions under that process in respect of this £18,000 investment before paying the award.

If Starling elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr H for his consideration and agreement.

As Mr H has been deprived of access to his money for some time, I think it would also be fair for Starling to pay him interest on this refund. But as much of the information and evidence I've relied on to come to this decision wasn't available to Starling when it was first assessing Mr H's claim, I don't think it would be fair to require it to pay interest from the date it initially responded to his claim. Instead, I think it would be fair to require Starling to pay interest from the date of our investigator's opinion of 22 November 2024 – as I think this is a fair approximation for when the information and evidence to fairly assess Mr H's claim was available.

My final decision

For the reasons set out above, I uphold this complaint and require Starling Bank Limited to:

- Refund Mr H the payments he made as a result of this scam – totalling £18,000
- Pay Mr H 8% simple interest on this refund, from the date of our investigator's opinion of 22 November 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 July 2025.

Alan Millward
Ombudsman