

The complaint

A company, which I'll refer to as M, complains that Starling Bank Limited won't reimburse it after it lost money to an investment – that it now considers to have been a scam.

Miss O, who is the director of M, brings the complaint on M's behalf via a professional representative. For ease of reading, I'll refer to all submissions as being made by Miss O directly throughout this decision.

What happened

Miss O has explained that she came across an art investment opportunity, which I'll refer to as 'S' on a social media platform in 2021 which took her interest.

Miss O explains she conducted research online, and found nothing untoward, so after speaking with S by phone, agreed to invest.

Miss O made several payments via different bank accounts to S, the payment from her Starling account being for £10,200. However she then received notification that S had gone into liquidation, following which Miss O has been unable to get in touch with the individuals who were handling her investment.

Having researched S further, Miss O has concerns about whether information she's previously been provided with when investing – such as the value of her artwork – is accurate – or whether the prints even exist and are genuine. She's also found that a piece of artwork that was supposedly sold on her behalf is still listed on her portfolio, raising further questions about whether these listings are legitimate.

Believing she had fallen victim to a scam, Miss O got in touch with her bank, Starling, to raise a claim. Starling considered Miss O's complaint but didn't uphold it. It said that it appears Miss O is still able to retrieve her artwork should she wish, and it therefore considers this is a civil dispute, rather than an authorised push payment (APP) scam. It did however award £100 for the time taken to investigate and communicate with Miss O.

Miss O remained unhappy and referred her complaint to our service. An investigator considered the complaint but didn't uphold it. To summarise, he concluded that this was a civil dispute between Miss O and S, rather than a scam. Miss O disagreed, so 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.

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 Board's 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 CRM Code where they have been the victim of an APP scam – as defined within the CRM Code. So if I am not persuaded that there was a scam then I will not have a basis to uphold the complaint.

The relevant definition of a scam in accordance with 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, it doesn't cover a genuine investment or a genuine business that subsequently failed.

Therefore, in order to determine whether Miss O has been the victim of a scam as defined in the CRM Code I need to consider whether the purpose she intended for the payment was legitimate, whether the purposes she and S intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of S.

I understand that the payment Miss O made was to purchase two fine art prints, as part of her investment portfolio. When S went into liquidation, Miss O was contacted by the warehouse at which her prints was stored, providing her with a listing of prints held, which included the two purchased via her Starling account. The warehouse provided Miss O with options for continuing to store these pieces, or arranging shipment to her.

I understand Miss O has raised concerns that the value of the prints is significantly less than what she paid, leading her to believe this was a scam investment from the outset. However, ultimately I have to account for the fact that Miss O made the payment to S on the understanding that it would purchase art on her behalf for her portfolio, and it appears that this is what happened, with the artwork agreed upon also aligning. Additionally, while there have been allegations made that prints' values are significantly less than investors paid, this remains a matter to be discussed at trial. There were contracts in place with the artists whose prints were sold who haven't disputed the value of the art quoted, as well as evidence of contracts with other firms to provide services such as printing and storage – so a number of elements to the business that *would* align with expected business activity for such a firm. The nature of the industry invested in also means that mark ups on print values aren't unusual, although arguably not to the extent generally seen here. However, all things considered, as Miss O's and S' purpose for her making the payment therefore broadly aligned, I don't consider the evidence *currently* supports a conclusion that this payment was the result of a scam.

I understand Miss O has referenced the proceedings of a recent court case concerning S as further evidence that S was most likely a scam.

However, the case considered in court related to the position of a freezing order that was in place over the company's assets, rather than whether S procured payments for fraudulent purposes. In order for a freezing order to be put in place, the possibility of fraud had to only be arguable, not more than likely on the balance of probabilities. And while the judge did

make multiple references to the possibility that S may have had the intention to defraud customers, they were also very clear that this was not within the remit of the court case taking place and that this would need to be considered in a trial.

Legal proceedings may uncover new evidence or change the basis on which this case

has been considered up until now. However, I have to decide the case on the facts and information currently available to me. Based on the evidence currently available, I'm not able to conclude there is sufficiently persuasive evidence that shows Starling was wrong in saying this was a civil dispute and therefore not covered by the CRM Code.

If new material information does come to light, at a later date, then a new complaint can be made to Starling. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute.

My final decision

My final decision is that I don't uphold M's complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 18 March 2025.

Kirsty Upton
Ombudsman