

## **The complaint**

Mr and Mrs O complain that Starling Bank Limited ('Starling') won't reimburse the money they paid to a builder.

## **What happened**

Mr and Mrs O say that they looked on reputable sites to find a builder to complete an extension at their property. An individual I will refer to as T, who was the director of a company I'll call R, contacted them and provided an estimate. Mr and Mrs O decided to go ahead, and T provided them with a contract and started the agreed work. Over the period from 3 August 2022 to 25 November 2022 Mr and Mrs O made five payments totalling £59,995 to T. The total cost of the build was over £69,000.

Mr and Mrs O say that in January 2023 T said he could order a kitchen for Mr and Mrs O through a trade supplier. Outside of the contract they agreed that T would order the kitchen on Mr and Mrs O's behalf. They made two payments totalling £19,000 on 18 and 30 January for the kitchen.

On 10 May 2023 Mr O contacted Starling and said T advised the kitchen had been ordered so he'd made the payments. But soon after the second payment T stopped communicating with him and after three months of waiting and call avoidance, he had decided to continue the build with a different company. He contacted the trade supplier and discovered that the kitchen order had been placed but was cancelled as payment wasn't made.

Starling said Mr and Mrs O had a civil dispute with R. It noted that Mr and Mrs O had made five payments to R and had received a partial service.

In June 2023 Mr O contacted Starling again to raise a fraud dispute in respect of all payments made to R. He said he had evidence to show that T set up businesses to commit fraud that he later dissolved, and that T had no intention of completing the work at his property. Mr O went on to say that he and Mrs O had posted on social media and that others in a similar position had reached out to them.

Starling said Mr and Mrs O have a civil dispute with the builder. Unhappy with Starling's response, Mr and Mrs O brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said Mr and Mrs O have a civil dispute with the builder that meant that the provisions of the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'), that might have otherwise required Starling to refund them, weren't relevant.

Mr and Mrs O didn't agree with the investigator's findings and asked for a final decision, so their complaint has been passed to me to consider. They said that other people had been scammed by T and that the police were investigating. In respect of the kitchen, Mr and Mrs O said they have evidence which shows that T said he had ordered the kitchen and required payment from them, which was a deliberate act of deception designed to extract money from them. Finally, Mr and Mrs O referred to the fact that T had opened and closed 20 businesses in the last six years.

## 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.

I'm sorry to hear that Mr and Mrs O have lost a lot of money, but that doesn't mean Starling is responsible or that it now needs to refund them. In law, Mr and Mrs O are responsible for payments they have authorised, and Starling has no obligation to protect them from a bad bargain or a potential civil dispute.

The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...where:*

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

*"This Code does not apply to:*

- b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established there is fraudulent intent at the time the payment is made.

Here it's clear that work was completed but the extension wasn't finished. The photos provided show a significant amount of work had been done, meaning it is difficult to conclude T didn't intend to do the work. Mr and Mrs O also made payments over a period of over three months, which indicates they were happy that certain stages of the build had been completed. All payments were to a registered company.

Mr and Mrs O say that after they paid the funds which were meant to go to a kitchen supplier T stopped communicating with them and further work wasn't completed. But I have seen an email T sent to Mr O on 10 May 2023 that says, *"You have cancelled your Build for some reason you claim we are in breach of contract. I can assure you we are not and I'm happy to see you in court."* I have also seen an email from April 2023 in which T said the build couldn't continue until Mr and Mrs O's gas meter was moved, and a further email dated 27 April 2023 in which Mr O says he cancelled the build but not the kitchen order. So, the available evidence indicates that it's more likely than not that work ceased following a breakdown in the relationship between Mr and Mrs O, and T – rather than because of an intention to defraud them.

Ultimately it appears that T ran into financial difficulties and went into voluntary liquidation in early August 2023. Businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided but such scenarios aren't covered by the CRM Code.

I turn now to cover some additional points in respect of the £19,000 Mr and Mrs O paid for the kitchen. To decide whether Mr and Mrs O's circumstances meet the APP definition in the

CRM Code I need to consider the purpose Mr and Mrs O had in mind at the time of the payments, the purpose T had in mind and if it was broadly in line with Mr and Mrs O's purpose. If there is a significant difference, I need to be satisfied that was as a result of fraudulent deception. There is no documentation or other evidence to confirm what was agreed between Mr and Mrs O and T so it's not clear what either party considered the purpose to be.

Mr and Mrs O say that messages they have provided prove that T told them the kitchen had been paid for, so they needed to pay R. Mr and Mrs O haven't provided all the messages exchanged though. Instead, I have two screenshots with very limited information. One undated message refers to T transferring £19,000 but doesn't indicate what for. The other (from T) says, "*I know you said this week for the rest of the money. It would be appreciated as we transferred it...*". There is no indication of what the funds were for, and I note that the message goes on to discuss steel so could relate to the build. But even if T said the kitchen had been paid for and Mr and Mrs O needed to transfer funds, their payments may have been put towards the overall building project.

Overall, this evidence doesn't persuade me Mr and Mrs O's funds were used for a different purpose or that fraudulent deception was involved.

I note that the police are investigating but that at present there is no evidence from any third-party organisation to suggest T took Mr and Mrs O's funds for any other purpose than to complete the agreed building work. I don't know what crime the police are investigating so even if there is a conviction of some kind this doesn't mean the definition of an APP scam in the CRM Code would be met. If material new evidence comes to light at a later date Mr and Mrs O can ask Starling to reconsider their fraud claim.

Whilst Mr and Mrs O say others have been scammed by T, the evidence they have provided indicates that customers of R are unhappy they lost money when R went into liquidation. In any event, I am concerned with the individual circumstances of this complaint.

It is for Mr and Mrs O to demonstrate that the T was acting fraudulently and not for Starling to prove this wasn't the case. Based on the available evidence, I don't consider Mr and Mrs O have done so.

Overall, whilst I recognise this decision will be very disappointing to Mr and Mrs O, I'm satisfied they have a civil dispute with the T/R. This means that Starling is not liable to refund them.

### **My final decision**

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 15 April 2025.

Jay Hadfield  
**Ombudsman**