DRN-5382552

The complaint

S, a limited company, complains that Starling Bank Limited ("Starling") won't refund money its director lost to a scam.

S is represented by its director - Mr P - and I have sometimes referred to him throughout this decision for ease.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In September 2020, S's director, Mr P, came across an opportunity to invest in a bond with an organisation I will refer to as K in this decision. On 11 September 2020, Mr P transferred £50,000 from S's business banking account to an intermediary I will refer to as N.

Mr P received two interest payments from K: one on 5 October 2020 for £207.96 and one on 4 January 2021 for £1,245.

K has now gone into liquidation and stopped communicating with Mr P. So Mr P reported the matter to Starling as a scam on 31 May 2023.

Starling investigated the claim and also got in touch with the beneficiary bank where the funds were sent. However, upon investigation Starling concluded that the claim could not be upheld as it considered the matter a private civil dispute.

Starling has declined to offer Mr P a refund of the payment that left S's business account. Mr P complained and the matter was referred to our service. One of our Investigators looked into things. He considered the case should be upheld.

Starling disagreed, it said:

The business appears legitimate and went into liquidation in August 2021. It is a regulated firm on the FCA (Financial Conduct Authority) register and has applied to cancel its authorisation. It therefore deemed this a civil dispute and does not believe this is inside the scope of the CRM (Contingent Reimbursement Model) Code.

I issued my provisional decision on 19 February 2025 explaining I was intending on reaching the same outcome as the investigator but expanded on my reasoning.

Mr P on behalf S accepted the decision. Starling did not reply.

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.

Starling did not respond to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Starling) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my final decision. However, I think it's unlikely that Starling would've provided any new evidence or information that would've changed the outcome of the case.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It's important to highlight that with cases like this I can't know for certain what has happened. So, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

In broad terms, the starting position in 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.

Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's (LSB) CRM Code for authorised push payment scams. The CRM Code was a voluntary code for reimbursement of authorised push payment scams which required firms to reimburse customers who have been the victims of APP scams - in all but a limited number of circumstances. Starling was a signatory to the CRM Code at the time the payments in question in this case were made.

Where a firm is a voluntary signatory of the LSB's CRM Code, I need to see whether it is a relevant consideration for my decision. And, where it is a relevant consideration, I must carefully consider the provisions of the LSB's code itself that the firm has agreed to and any guidance the LSB has provided on its application.

Is the payment to N covered under the provisions of the CRM Code?

Starling has highlighted that the payment Mr P made went to N – itself a regulated entity at the time the payment was made. So, the payment didn't go directly to K. Starling has only considered N when deeming this a civil dispute. I accept N was a legitimate and a regulated organisation that went into liquidation. But Starling doesn't appear to have considered the legitimacy of K itself - where the funds ended up.

It is K I am considering here. To be clear, the CRM Code does not require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Neither does it require that account to be controlled by a party which is complicit in the fraud. Instead, the relevant test is whether an APP scam has taken place. In this case, (for reasons I will come on to) I think the payment meets the definition of an APP scam under DS1(2)(a)(ii) in that Mr P transferred S's funds to another person (N) for what he believed was a legitimate purpose but was in fact fraudulent. Specifically, Mr P believed that he was making a payment as part of a legitimate scheme but, in fact, he was being defrauded.

If the CRM Code required that the first recipient of funds also be the party that benefits from the fraud, a great many claims would be excluded. I say this because many first-generation accounts are not controlled by the fraudster themselves. The use of money mules (complicit or innocent) is well-known and the CRM Code does not require the sending firm to make an assessment of whether the recipient account holder was complicit in the fraud or not. Instead, I need to consider whether the funds were effectively under the control of the fraudster at the point they arrived at N.

Given what is known of the relationship between N and K it's very likely the funds that credited N's account were passed to K within a few days (likely minus a small fee retained by N) and was carried out under a pre-existing agreement. More importantly, Mr P does not seem to have a customer relationship with N, the funds do not appear to credit an account in his name, and he had no significant interactions with it. I'm satisfied N was acting on behalf of K and not S (Mr P's company) and he had no reasonable way of preventing the onward transfer of funds to K.

It follows then that the money was both out of S's control at the point it arrived at N and effectively under the control of K. Consequently, the circumstances in this case are not significantly different from a typical scam scenario - where funds are transferred into an account, which is unlikely to be owned by the fraudster, but the recipient has agreed to pass funds on to an ultimate beneficiary.

That means that the payment Mr P made on behalf of S is capable of being covered by the provisions of the CRM Code. The Lending Standards Boards' consultation makes clear that certain multi-stage frauds are within the scope of the Code.

But, for the reasons I've already outlined, in this case there's no need to consider the payment from N to K (the onward transmission of funds) as the funds were effectively under the control of K once they reached N.

Finally, I've thought about whether it's fair for the CRM Code to apply in such circumstances. It's not clear if Starling thinks that Mr P should complain directly to N and the fact it was FCA authorised (it entered liquidation in August 2021) is in itself enough to disapply the CRM Code. But, for the reasons I've already set out, the involvement of a genuine (or unwitting) intermediary does not exclude the possibility of the CRM Code applying. Neither do I think it is unfair for the Code to apply.

It's not clear whether Starling accepts; it is liable (at least to consider the complaint under the Code) had the payment been made directly to K. But I think it's fair to say, I think, that the involvement of N was essentially incidental. So, while I'm somewhat sympathetic to Starling that it, rather than another financial business, will be solely responsible for S's loss, given that Starling is a signatory to the CRM Code, I don't find that Starling being responsible creates an unfair outcome. Neither can I direct Mr P on behalf of S to pursue the matter solely with N which is, in any case, now in liquidation.

Is it appropriate to determine S's complaint now?

I ultimately have to decide whether it is fair and reasonable for Starling not to have upheld S's claim for reimbursement of its losses.

I am mindful that there are ongoing external investigations. There may be circumstances and cases where it is appropriate to wait for the outcome of such external investigations and/or related court cases. But that isn't necessarily so in every case, as it will often be possible to reach conclusions on the main issues on the basis of evidence already available.

The Lending Standards Board has said that the CRM Code does not require proof beyond reasonable doubt that a scam has taken place before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached. So in order to determine S's complaint I have to ask myself whether I can be satisfied, on the balance of probabilities, that the available evidence indicates that it is more likely than not that Mr P was the victim of a scam rather than a failed investment.

I've reminded myself that Parliament has given ombudsmen the job of determining complaints quickly and with minimum formality. In view of this, I think that it would not be appropriate to wait to decide S's complaint unless there is a reasonable basis to suggest that the outcome of the insolvency investigation may have a material impact on my decision over and above the evidence that is already available.

Starling hasn't raised concerns that the administration outcome regarding K's actions may lead to S being compensated twice for the same loss, i.e. by Starling and by the liquidators. But for completeness, I don't know how likely it is that any funds will be recovered as part of those proceedings.

That said; I agree that, if Starling has already paid a refund, it would not be fair or reasonable for those recovered funds to be returned to S as well. And I would also expect Mr P on behalf of S to divulge to Starling anything he received in connection with K at any point now or in the future. 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 the administrative process before paying the award. So I'm not persuaded that this is a reasonable barrier to it reimbursing S in line with the CRM Code's provisions.

So, I don't think it's fair or necessary to wait for the administration process to complete. All in all, I don't think it's fair for Starling to delay making a decision on whether to reimburse S any further.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the investigation for me to reach a fair and reasonable decision. There doesn't need to be 'conclusive' evidence – as I said at the start I reach my decision on the balance of probabilities. And with that in mind, I don't think it would be fair to wait for that investigation to complete before making a decision on whether to reimburse S.

Has Mr P on behalf of S been the victim of a scam, as defined in the CRM code?

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of a scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code:

> *"Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

If I, fairly and reasonably, make a balance of probabilities conclusion that it does, then the provisions of the CRM Code apply. In that event, unless Starling is able to show that the consumer is not entitled to reimbursement due to any the CRM's Code exceptions at R2(1) and the vulnerability considerations are not relevant, then the consumer is likely to be entitled to reimbursement.

Starling was signed up to the voluntary CRM Code which was in place at the time of the transactions, which provides additional 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).

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 wouldn't apply to a genuine investment that subsequently failed.

And the CRM Code only applies if the definition of an APP scam, as set out in it (and as I have set above), is met.

I've considered the first part of the definition, and having done so I'm satisfied that Mr P paid the account he was intending to send the funds to. And I do not think there was any deception involved when it comes to who he thought he was paying. So, I do not think the first part of the definition set out above affects Mr P's transaction.

I've gone on to consider if Mr P's intended purpose for the payment was legitimate, whether the intended purposes he and the company (K) he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of K.

From what I've seen and what Mr P has told us, I'm satisfied Mr P made the payment with the intention of providing an investment to K that would be passed on to other small to medium sized businesses in the UK property finance industry. This was by way of short-term bridging loans to companies involved in property development. Mr P understood he would receive regular returns and profit by the end of the investment term. And I haven't seen anything to suggest that Mr P didn't think this was legitimate.

I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

The Insolvency Service has said it hasn't found any evidence of bridging loans being provided by K - which was exactly what K told investors it would be doing. This statement was made in May 2023, when The Insolvency Service said that its investigation was ongoing. Even after extensive investigations, the position hasn't changed. It also had concerns over the trading of K and said it was acting as a Ponzi scheme. It hasn't found any evidence that K conducted any investments.

I'm aware of reviews on a third-party website which show feedback purportedly left by K's borrowers. But I'm not persuaded the evidence shows that the verification process for that site was robust enough to prevent manipulation by a company like K, which may have sought to use it to build false credibility. It's also significant that, despite extensive investigation by the Insolvency Service, no evidence of a single loan has been found. Its investigation includes the period in which S's bond was still active. So, it seems unlikely that those reviews were left by genuine borrowers.

The Insolvency Service and the insolvency practitioner involved in the liquidation process, have both confirmed the directors of K continue to fail to co-operate with the Insolvency Service's investigation into the company. The directors have also failed to attend court for a private examination. They have said this is frustrating the liquidation process. I accept that on its own this isn't evidence of an intention to defraud, but I've considered it alongside the other available evidence.

According to Companies House, K's principal activities are listed as 'buying and selling of own real estate and other-letting and operating of own or leased real estate', which is different to how it purported to be using investors' money.
Other concerns are that Mr P says K became uncontactable -which is unusual with a genuine organisation.
K may not have been subject to a criminal investigation, but I am conscious that any criminal proceedings would require a higher standard of proof (beyond reasonable doubt) than I am required to apply (which - as explained above - is the balance of probabilities).

Whilst there has never been a warning about K posted on the FCA warnings list, that doesn't, in my view, outweigh all the other evidence supporting the claim that this was a scam.

Overall, there is a lack of any evidence that K was operating as a genuine and legitimate company. Most consumers invested a large amount of money and received very small monthly returns for a short period before this stopped – typical of how a Ponzi scheme operates.

Ultimately, I've not been provided with any evidence to show that the business *was* operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, and on balance, I am satisfied this was a scam.

And so, I think the circumstances here meet the definition of a scam as set out under the CRM Code.

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

Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr P. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having 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

A third circumstance is where the customer is a micro-enterprise, it did not follow its own internal procedures for approval of payments, and those procedures would have been effective in preventing the APP scam.

There are further exceptions within the CRM Code, but they do not apply in this case.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

I am also mindful that when Mr P made the payment, Starling should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Although Starling has not established that any of those exceptions apply, for completeness I find that none apply in this case. I have explained why below:

Did Mr P have a reasonable basis for belief?

I have considered not just whether Mr P believed he was sending money for an investment, but whether it was reasonable for him to do so.

Mr P told us he had been contacted by K. This was after he'd left his details on a website. I don't think the indicative rates of return suggested that the investment was too good to be true. Mr P says K had a professional looking website and he received professional looking documents such as an agreement and invoice for the investment. And registered on Companies House, it appears the company had been operating for several years. It is only now with a significant amount of investigation that the events surrounding K have come to light. There was nothing in the public domain at the time about K that Mr P could've reasonably inferred from that a scam was taking place.

This means Starling can't rely on this exemption to reimbursement.

Did Mr P ignore an effective warning?

Starling submitted that it provided the following warning when Mr P set up a new payee for the transaction:

Could this payee be part of a scam? If in doubt just stop here and visit our website to learn about avoiding fraud.

It is very general in nature and it's difficult to see how it would resonate with Mr P or the specific circumstances of the transaction in question. A link with further information would not have had the necessary impact needed to be an effective warning. While I accept that Starling has attempted some steps to prevent harm from fraud, the warning it provided was too generic to have the necessary impact and so I don't find the warning to be effective. And so, I can't say Mr P ignored an effective warning.

Did Mr P on behalf of S follow its own internal procedures for approval of payment?

S is a microenterprise with one employee – its director Mr P. It had only just recently started operating at the time of the transaction. Mr P has confirmed that S had no internal written procedures, but the process Mr P explained he followed, when setting up the payee, is that he checked the bank details to those that had he had been provided with. And he says the message from the bank appeared to confirm the details matched what he had entered. I'm not persuaded here there was a failure in S's internal processes, or that it should have picked up on the payment being made in relation to a scam.

And so, I don't think Starling has or can establish that any of the exceptions to reimbursement under the CRM Code apply here, and so it should refund the money S lost in full.

Did Starling do enough to recover the funds?

Considering my conclusions above, it is not necessary in this case to consider if the bank exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness, the scam payment was made on 11 September 2020 and the scam wasn't reported until 31 May 2023. I can see Starling contacted the receiving bank immediately, but no funds have been recovered. So, I don't think Starling could have done anything further.

Putting things right

Mr P says S received two interest payments from K: one on 5 October 2020 for £207.96 and one on 4 January 2021 for £1,245). I think it would be fair for any returns to be deducted from the amount Starling has to refund S.

I also don't think any action I would've expected Starling to take would have prevented Mr P making these payments, as I don't think any of the information, I would've reasonably expected it to have uncovered at the time of the payments would've uncovered the scam or caused it significant concern.

In order to put things right for S, Starling Bank Limited should:

Refund S the payment made as a result of this scam (£50,000), less the any payments S received (£1,452.96) so £48,547.04 in total.

Pay S 8% interest on that refund, from the date it declined the claim until the date of settlement.

As K is now under the control of administrators, it's possible S may recover some further funds in the future. In order to avoid the risk of double recovery Starling Bank Limited is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

My final decision

My final decision is that I uphold this complaint and I require Starling Bank Limited to put things right for S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 7 April 2025.

Kathryn Milne
Ombudsman