

The complaint

Mrs D complains that Starling Bank Limited hasn't reimbursed funds she lost to an investment scam.

What happened

In October 2022, Mrs D's husband's friend and colleague approached them about a property investment opportunity he was involved in with his neighbour who I'll call 'K'. Mrs D turned it down at that time, but in early 2023 they were approached again and as their situation had changed, they agreed to invest. They initially sent a small sum and received this back with the agreed returns seven weeks later. Mrs D then invested a larger sum in the opportunity and after being reassured things were going well, asked to reinvest her profits as well as sending additional funds.

In September 2023, Mrs D needed to access some funds from her investment and this is when things started to go wrong. Mrs D was able to access £20,000, though there was some difficulty in doing so. K then said he'd sent a further £20,000 but this never appeared in Mrs D's account despite his assurances it had been sent. Mrs D chased this money with her bank, but it was never located. Mrs D then realised she'd been scammed and reported the matter to the Police and Starling. K was subsequently jailed for fraud.

Starling didn't agree to refund Mrs D her funds and didn't uphold her subsequent complaint.

Mrs D came to our Service, but our Investigator also didn't uphold her complaint. So she asked for an Ombudsman to reconsider her case. I informally contacted Starling and set out why I was minded to uphold this complaint. Starling didn't agree with my reasoning as it said Mrs D didn't have a reasonable basis for belief in this investment. I also explained my thoughts to Mrs D and she accepted my outcome. So I'm now issuing a decision on this case.

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 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 or reasonable for the bank to reimburse the customer even though they authorised the payment. Of particular relevance here is the Contingent Reimbursement Model ("CRM") code (or "the Code"), so I've looked at whether Mrs D is due a reimbursement of the money she sent under this.

In this case, both parties accept Mrs D has fallen victim to a scam and that her payments meet the Code's required definition of an APP scam.

Under the provisions of the Code, both the bank and its customer have obligations. If it can be shown that the customer has met their requisite level of care, then they will receive a full reimbursement. If the customer hasn't done this, then it is for the firm to show that it has met its obligations under the Code. One of these obligations is the provision of an Effective Warning when the firm identifies an APP scam risk in a payment journey. The firm can apply an exception to reimbursement if their customer ignores an Effective Warning.

Starling has accepted there was a scam risk here and argued that it provided Mrs D with an Effective Warning, as it told her to be wary of someone guiding her through the questions. As K had told her not to share she was making the payment as an investment, it says this she should've realised this warning applied to her. The warning read:

Be wary of anyone guiding you through these questions Is someone telling you how to send this payment, which buttons to tap, or asking you to read this screen? If so, you're talking to a scammer - cancel this payment and call us.

Starling will never ask you to move money to keep it safe.

If you send money to a criminal, you could lose it all.

While I accept Mrs D had a conversation with K at an earlier time and he asked her not to share the payment was for the purpose of investing, I can't agree this is the same as someone telling her how to answer the questions in the way this warning suggests.

Under the Code, I can't agree what Starling displayed is an Effective Warning in this case, as it doesn't meet the criteria in SF1(2)(e). I can't agree this warning was *specific* enough that it would have the desired impact on Mrs D in her situation. This warning reads as if it relates to in the moment coaching, which wasn't happening here. And it also then seeks to cover 'Safe Account' scams, which didn't relate in any way to Mrs D's situation, decreasing the impact of the warning.

I've reviewed the other warnings Starling provided Mrs D with, but I'm not satisfied any of them constitute an Effective Warning in this case. So I don't consider Starling can apply this exception to reimbursement.

R2(1)c of the Code sets out the test that applies to the consumer around whether or not they ought to have believed in the legitimacy of the transaction, part of their requisite level of care. More specifically it asks whether they made the payment without a reasonable basis for belief that:

- (i) *the payee was the person the Customer was expecting to pay;*
- (ii) *the payment was for genuine goods or services; and/or*
- (iii) *the person or business with whom they transacted was legitimate.*

I've reviewed Mrs D's testimony and the evidence she has from this scam to establish if she had a reasonable basis for belief. It's accepted by both parties that Mrs D paid K and this was who she expected to pay. What's in dispute in this case is whether Mrs D reasonably ought to have believed K was offering a genuine investment and doing so legitimately. Based on the information we hold, I consider she did have enough information to believe this.

I haven't seen evidence K pretended to be regulated or that he was carrying out this opportunity as a legal entity – it seems he was 'honest' about doing this himself and including people he knew and trusted to build the portfolio beyond what he could personally afford. He explained he'd received contacts into this investment from a friend who had

previously invested this way and had unfortunately passed away during Covid.

K lived next door to a close friend and colleague of Mrs D's husband. She met with K in person more than once and did checks on him, including confirming he owned the house next door to their friend. When they met with K, he shared details of his accounts with them which showed payments in and out of his account which matched the business model he was proposing. And he had a document which listed the properties he was dealing with.

Mrs D's friend had already invested by the time they were introduced and had received the returns promised. He'd been investing for over four months when Mrs D first invested. This same person was so invested and persuaded by this venture that he was actively recruiting others into the investment, including his work colleagues. This created a trusted network around K, which gave further confidence to Mrs D that it was right to invest more money after her first payments. And persuaded her that this venture was legitimate.

Starling has raised that Mrs D wasn't honest with it when it questioned her about the payments she was making, as referenced above. At no stage did she tell it she was investing in property and had she done so, it says it could've done more to warn her about scams in this area.

I've considered whether Mrs D's answers to Starling's questions mean she ought to have had concerns about the legitimacy of the venture. But I don't consider they do. She's explained K asked her not to disclose that it was an investment as it would impact how he was taxed. I'm not suggesting what Mrs D was asked to do was right or ethical. But I don't consider this enough to say that she should've thought the reason she was personally making her payments wasn't legitimate.

I've considered the returns Mrs D was expecting and I accept these were high and she expected to receive them after a relatively short time. So I agree with Starling this should've made her wonder about whether the opportunity was genuine. But I've then also considered the evidence Mrs D held that it was – she saw K's statements which indicated he was investing funds in the way she expected and making money. And she knew first hand that others had received these returns. And, after her first investment, she'd also received these returns herself. So I'm not persuaded this was enough to prevent her having a reasonable basis for belief.

Ultimately, I'm persuaded that the information Mrs D held gave her a reasonable basis for belief she was genuinely investing in a legitimate opportunity. I accept that with hindsight it's possible to find some fault in what happened, but I haven't seen enough evidence in this case to say that Mrs D ought not to have had a reasonable basis for belief when she paid the funds. She fell victim to a sophisticated scam where K exploited the trust of his victims and the relationship they had with his neighbour – their friend and/or colleague. So I'm persuaded Mrs D is due reimbursement under the Code.

Putting things right

Starling Bank Limited needs to refund Mrs D all the payments she made to this investment, minus the credits received (see below), with 8% simple interest per year paid on the payments from the date Starling denied Mrs D's claim. This is as follows:

Amount paid to the investment

- £190,000 – the payments made to K from 23 April 2023 to 3 June 2023

Amount that can be deducted

- £5,000 – the “profit” received on the original investment into this opportunity
- £7,000 – received in July 2023
- £20,000 – received in September 2023
- £146.59 – the amount recovered from K’s account

So this means Mrs D should be paid £157,853.41 plus the interest set out above.

My final decision

For the reasons set out above, I uphold Mrs D’s complaint against Starling Bank Limited and require it to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 18 April 2025.

Amy Osborne
Ombudsman