

The complaint

Miss R complains that Starling Bank Limited didn't do enough to prevent her losing money to what she says was a scam.

Miss R has used a representative to bring her complaint. But for ease of reading, I'll mostly just refer to Miss R herself where I also mean the representative.

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 December 2021 Miss R made a transfer for just over £51,000 and in January 2022 she made a debit card payment for £800. She says both payments went to 'S' and were intended as an investment.

S later went into administration and Miss R alleged she'd been a victim of a scam in relation to these payments. She says she did receive around £19,000 back from S in January 2023, but this still leaves her with a significant loss.

Miss R complained to Starling who declined to provide a refund for the disputed payments. The matter was referred to our service and one of our Investigators didn't recommend the complaint should be upheld. In a broad summary he wasn't persuaded that he could fairly say S were operating a scam.

Miss R disagrees and has asked for an Ombudsman to review her complaint.

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.

Having done so, I've reached the same outcome as our Investigator and for largely the same reasons. I know this will be disappointing for Miss R, so I'll explain why.

Firstly, Miss R has made some very detailed submissions in support of her complaint. I've read and considered all that she's sent in, but I don't intend to respond in similar detail. So if I don't comment on a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

In broad terms, the starting position at law is that a business is expected to process payments and withdrawals that a customer authorises them to make, in accordance with the Payment Services Regulations 2017 (PSRs) and the terms and conditions of the account.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't take their customer's

authorisation at 'face value' – or that they should look at the wider circumstances surrounding a transaction before making the payment.

So even where a payment is 'authorised' by the customer, there will still be occasions when it's fair and reasonable to expect the business to reimburse the customer. In this particular case, the Lending Standards Board's Contingent Reimbursement Model (CRM Code), which Starling are a signatory to, is a relevant consideration.

The CRM Code is a scheme through which victims of authorised push payment fraud, can sometimes receive redress from the banks involved. But the CRM code only applies to specific and defined circumstances. Notably, card payments are excluded. So, I'll come on to address Miss R's debit card payment separately below. But I do need to decide whether the 'push payment' Miss R made to S for around £51,000 in December 2021 is covered by the CRM Code.

The CRM Code defines its own scope and states at DS2(2) that *"This Code does not apply to... 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."*

Starling has said they consider Miss R's situation to be a genuine investment that didn't work out and not a scam. So they say the CRM Code doesn't apply on that basis. I don't think Starling have acted unreasonably in reaching that conclusion, and due to this I can't fairly direct them to provide reimbursement under the CRM Code or any other rules or obligations. I'll explain why.

Part of the CRM Code definition of an Authorised Push Payment Scam (APP Scam) includes where *"The Customer transferred funds to another person for what they believed were legitimate purposes but which in fact were fraudulent."*

Having carefully considered all the information provided by both sides, I can't fairly require Starling to provide redress under the CRM Code (or any of their other obligations). This is primarily because I'm not persuaded that S were, more likely than not, operating a scam.

What was the purpose of the payments?

In the circumstances here, Miss R believed she was purchasing art as an investment in exchange for her payments.

So part of my consideration must be whether there is sufficient evidence to support that S' intention when taking the payments was meaningfully different to what Miss R thought at the time. Miss R has explained in some detail why she thinks it was. This includes a judgement handed down in relation to the freezing of accounts linked to the alleged scam and affidavits from relevant parties. I'll cover the main arguments made below.

Misrepresentation

I acknowledge that there is strong evidence to support that S' investment scheme was misrepresented to investors. In particular that S gave the impression they were acting as a broker rather than a retailer of art and that they would manage the portfolios and provide advice on what to buy and sell, as well as when to resell.

In the hearing referred to above, the judge also made several references to the possibility of S having intended to defraud customers. However, it was made explicitly clear by the judge that this was something that was going to be considered in a trial and was not within the remit of the hearing in question. The hearing was solely in relation to the freezing orders.

So whilst there is a potential claim for misrepresentation and a breach of fiduciary duty, I find that both parties were still of broadly the same understanding for the reasons of the payments for the purposes of the application of the CRM Code. That being the purchase of art (and that the customers portfolio would be managed).

Inflated values of artwork

The judge acknowledged that brochures and information given to investors indicated the company only made profit via a 2% fee on sale and a 5% profit on any resale. Reference was also made to the fact that there wasn't clear communication with the investors, specifically that S were purchasing art at wholesale prices and selling it on with a significant markup which on average was nearly 500%. There was also the point raised of the potential for S to have not acted honestly in failing to disclose their own interest and the profits they were making.

Numerous arguments were made by the parties involved on this point. But ultimately the judge concluded that "...*the issue of value was one for trial.*" And on a broader point, to a certain extent the value of a piece of art is subjective and less easily ascertained in what is a comparatively illiquid market. There was a variety of art, from both well established and newer artists and each would've had their own opinions as to the value of their work which as I've said isn't subject to a strictly objective test.

Further to this, the judge was also presented with evidence which showed artwork was purchased from artists and companies. It was also submitted that it wasn't unusual for there to be a significant mark up by art retailers (although perhaps not to the extent of S).

Overall, I don't find the value of the art sufficient to evidence a scam took place in relation to Miss R. And as mentioned above, the value being allegedly unreasonably inflated is something that was due to be discussed at trial.

Secondary market for the art

The judge further referenced that there was no real secondary art market and that this was contrary to what investors were told. S didn't appear to resell art at auction or by other means. Rather, the company seems to have bought back prints itself at an increased price in response to investors pushing for a sale.

There was therefore no genuine increase in market value. None of this was disclosed to the investors, but rather the company used the buy backs to seek to persuade investors to buy more prints. Investors were also encouraged to increase the size of their portfolio with the company to improve their chances of selling prints at a profit

It is accepted that the judge's comments and the evidence presented raise questions about the way the company was operating, as well as support a potential claim for misrepresentation. However, the judge made it clear that the merits of any fraudulent activity taking place was not within the remit of the hearing and was something that had to be considered in a trial.

I have also considered the judge's findings that there is a good arguable case for fraud. However, I'm not persuaded the judge's comments mean it is more likely than not that

Miss R has been scammed. I say this because the judgement makes clear the threshold for a 'good arguable' case is low – lower than 50%. The judgment says:

“6. The test which has to be satisfied to establish a good arguable case on the merits was laid down by Mustill J in Ninemia Maritime Corp V Trave Schiffahrtsgesellschaft GmbH (“The Niedersachsen”) [1983] 2 Lloyd’s rep 600 605, as:

“... one which is more than barely capable of serious argument, but not necessarily on which the judge considers would have better than 50 per cent chance of success.”

8. Given that the test sets a relatively low threshold on the merits...”

Given the applicable low test, I'm not persuaded the judge finding there is a 'good arguable case on the merits' equates to it being more likely than not Miss R has been scammed. Indeed, throughout the judgment the judge refers to such matters as needing to be decided at trial. That is very far from any argument that the judgment 'confirms that the true purpose was fraudulent and that there was an intent to defraud' – which is Miss R's argument – which it does not.

I've considered the further points Miss R has made in response to the above findings. Much of this focusses on the language used in the judgement. Reference was also made to the relative knowledge and information available to the judge and our service and the seniority of the judge. But the key fact remains that the judge was explicit that findings as to the alleged fraudulent activity or valuations of art were matters for a future trial. So none of the further submissions have impacted my thoughts as to the outcome of this complaint.

Police involvement

I accept there is a police investigation. And I agree that is a concerning factor. But as I'm yet to see evidence that this has concluded and it might find that there is no case to answer, I don't think this is sufficient (either on its own or in combination with other evidence) to conclude that a scam has taken place.

Summary of the alleged scam

Further to the above, I can see that S were incorporated in 2015 and had been operating for a number of years prior to Miss R's payments. And I've also taken account of the fact that Miss R received a significant sum back from S in January 2023 (£19,000). I accept that sometimes a scammer might release funds to further convince a victim that an opportunity is genuine. But this is not commonly such a significant amount. If it had been S' intention to defraud Miss R from the start, I don't think it's likely they would have returned so much money.

I've also listened to a call recording Miss R has provided of her speaking to S. In this S explained that their advice was not to sell her art due to the market conditions at the time – they highlighted that the original intention was to hold it for three to five years. It seems that this call must have been prior to Miss R receiving the £19,000 from them as that was discussed on the same call. The caller from S seems professional and trying to keep Miss R happy as a customer. The caller also doesn't appear to be trying to entice Miss R to make further payments, which lessens the likelihood that this payment was in furtherance of continuing a scam. It seems more likely than not that this was a genuine payment made in the course of a business relationship. So whilst this call (or indeed no individual piece of evidence) is conclusive on its own, it doesn't support the argument that S' intention was to defraud Miss R.

Our service makes its findings on the balance of probabilities as to what is more likely than not to have happened. And on that basis taking all the evidence and arguments into consideration, I'm not currently persuaded that S intended to defraud Miss R when accepting the payments from her.

I'm also aware that legal action against S has more recently concluded by means of a confidential settlement agreement. And the information I do have is that the agreement was reached on a 'non-admission of liability basis'. I don't think I can fairly say that a settlement being reached, on such a basis, is sufficient to persuade me (when taken in conjunction with all the other available evidence and arguments) that S intended to defraud Miss R. There can be a variety of reasons for a settlement being reached, not least a desire to minimise costs.

I've also taken account of the fact that there is evidence to support that S had contracts with artists, including one in particular who appears to have had had an exclusive deal for them to sell their work. There is also evidence to support that S had further contracts with printers and storage facilities for the art. And as I've mentioned above, it doesn't seem to be in dispute that there was real art in existence, the nature of the alleged scam primarily surrounds the value of the same. And whilst none of these factors are conclusive in their own right, they don't support the argument that there was no genuine business taking place and that S' intention was to scam its customers (and Miss R in particular) from the start.

I know Miss R disputes this, but the available evidence has been considered holistically in reaching this outcome. This includes the information provided from the liquidators, something I know she doesn't think enough weight has been given to (especially affidavits generated by the court case). I acknowledge the relevant industry experience of some of the opinions shared (which include an experienced liquidator and an insolvency lawyer). She's highlighted their opinions that S was (on balance) operating a scam. The liquidator's information does raise the question of some potentially dubious business practices, but it doesn't persuade me that S' intention when taking the payments was to defraud Miss R. And key to some of those submissions is the amount paid for art compared to its true value. But as I've set out above, art valuation is subjective and something the judge had concluded should be decided at a trial.

Further to this, part of the liquidator's initial affidavit includes a section that sets out the arguments S may make to counter the allegations against them. I accept the conclusions reached overall are despite the content of that section (which was presumably to provide balance). But this does support that there at least could be legitimate reasons or explanations for some or all of the issues raised. And overall I'm more persuaded by the balance of the other evidence I've referred to including that art was in existence, the contracts referenced and arrangements for storage of the same.

If in the future, further evidence demonstrates that the investment scheme was fundamentally different in purpose and does meet the CRM Code's definition of an APP scam, then Miss R can ask Starling and us to reconsider her complaint. But as things stand, I can't require Starling to refund Miss R under the CRM Code.

Are there any other reasons why Starling should provide reimbursement?

I've considered whether Starling should provide reimbursement for any reasons outside of the CRM Code. Starling should do all they can to try to prevent fraud and scams and to protect their customers from the same.

Given my finding above, there is no basis upon which Starling should intervene in authorised payments (unless there is a fraud or scam to protect against). But in the circumstances here, even if I were to accept that S were operating a scam (something I am explicitly not finding in line with the above), I don't think any reasonable level of questioning or warnings at the time would've prevented Miss R from going ahead with her payments. Despite the information that has since come to light there was nothing at the time to suggest a potential problem with S. The same applies to any intervention that might reasonably have been expected in relation to her debit card payment.

Debit card payment and recovery

As I've mentioned above, Miss R says she also made a debit card payment to S. There is some suggestion from Starling that this payment may not have gone to S. And I've not been provided with the statements to show this conclusively. But even if this payment did go directly to S, given the account history that I've seen, I don't think a payment of £800 was sufficiently unusual or suspicious to mean it would be reasonable to have expected Starling to have done more before processing that payment. Whilst Starling should look out for suspicious payments, there still needs to be an element of proportionality to interventions in this regard.

The only possible avenue for recovery of the debit card payment would've been the chargeback scheme. The chargeback scheme is run by the card issuers under their relevant rules. And in this case, there is a time limit to bring a dispute of 120 days. As this had been exceeded by the time Miss R reported the alleged scam to Starling, there wasn't any reasonable prospect of a chargeback succeeding. So, I can't fairly criticise Starling for not having done more in this regard.

In relation to Miss R's push payment, there is no requirement for Starling to attempt to recover payments in relation to a dispute rather than a scam. But in any case, once informed, Starling initially reported Miss R's allegation to the recipient bank and there was a delay of around nine days when they did so. But the evidence I'm aware of on the linked complaint about the recipient bank show that her funds were spent from the account long before Miss R had even made the allegation to Starling. So, in the circumstances of this complaint, I'm not persuaded the delay (or anything else Starling did or didn't do) impacted whether a recovery could be made.

Conclusion

Overall, I'm not persuaded the available evidence at this time supports that it's more likely than not that Miss R was scammed by S (in line with the CRM Code definition). I don't think Starling reasonably should've prevented the payments being made or otherwise could have done more to try to recover her funds.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 13 October 2025.

Richard Annandale
Ombudsman