

The complaint

Mr M complains about Starling Bank Limited.

He says that he has fallen victim to a scam, and Starling won't reimburse him for the funds he lost.

What happened

Mr M was introduced to an investment with 'C' – a company offering investment in social housing - by a property agent he has known for many years. His friend had also invested in C and had been receiving returns on their investment. Before investing, Mr M checked C on Companies House, its website and social media platforms, and also spoke with other investors. He also says that the contract and paperwork he received from C prior to investing which appeared professional and he was satisfied that he had found a genuine investment opportunity.

In April 2024, Mr M made a payment of £13,500 and received £2,400 – but no other payments were made to him, meaning his loss is £11,100.

Mr M now says that C was a scam, and asked Starling to refund him under the provisions of the Contingent Reimbursement Model Code (CRM Code).

Starling looked into his complaint but put Mr M's complaint on hold while the police were investigating C.

Unhappy with the delay, Mr M brought his complaint to this Service. Our Investigator looked into things and thought that Mr M's complaint should be upheld in full.

Starling disagreed, in summary it said:

- The investigator hadn't taken into account the warning it provided at the time the payment was made, and Mr M hadn't checked the Financial Conduct Authority's (FCA's) website to check that C was regulated
- It expected Mr M to seek independent financial advice. This was a high-risk investment and Mr M should have completed more checks.
- The payment Mr M made was not out of character from his typical account usage.

As no agreement was reached, the complaint has been passed to me to make 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 deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards;

codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position in law is that Starling is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's). But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still ongoing.

Firms generally have 15 business days to respond to claims under the CRM Code. In this case, Starling has effectively applied R3(1)(c) of the CRM Code which says,

"If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations and/or related court cases. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which – as explained above – is the balance of probabilities).

In order to determine I's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that Mr M was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr M first raised this claim with Starling on 18 November 2024 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr M an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm also aware the above processes might result in some recoveries for C's investors; in order to avoid the risk of double recovery, I think Starling would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr M under those processes in respect of this investment before paying anything I might award to it on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of police investigations for me fairly to reach a decision on whether Starling should reimburse Mr M under the provisions of the CRM Code.

Has Mr M been the victim of an APP scam as defined by the CRM Code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam, except in limited circumstances. But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have considered whether the claim Mr M has brought falls within the scope of the CRM Code, which defines an APP scam as:

...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.*

To decide whether Mr M is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr M thought this purpose was legitimate.
- The purpose the recipient (C) had in mind at the time of the payments, and whether this broadly aligned with what Mr M understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

I haven't seen anything to suggest Mr M didn't consider he was investing I's funds for a legitimate purpose.

So, I've gone on to consider what purpose C had in mind and whether it was in line with what Mr M thought.

Like our investigator, and based on the evidence available, I'm satisfied it's more likely than not Mr M's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that the payment Mr M made meet the definition of an APP scam and is covered by the CRM Code.

I have seen confidential information that I'm unable to share for data protection reasons which shows that around £600,000 was spent in a way that appears consistent with property development. But C also received around £20,200,000 from investors. Given a unit price of £13,500, C would need to have entered into around 1,500 property agreements. The evidence isn't consistent with C paying for refurbishments, furnishings and rent for this number of properties.

Importantly, C told investors it had contracts with local authorities which would be required to fulfil its agreements. But I have seen no evidence of incoming payments from local authorities or housing providers. And several local authorities have confirmed that they didn't have a working relationship with C. One also said that an invoice used by C to demonstrate such a relationship was fake.

Around £440,000 that C received could be legitimate income, but, as I have said above, none of this came from local authorities or social housing providers. But around £2,500,000

was paid to investors. These funds clearly didn't come from income received from the investments – strongly indicating C was operating a Ponzi scheme.

This service has the addresses of properties investors thought their investment was purchasing in around 100 cases. Around half of those addresses were in buildings where the owners have confirmed that they didn't have a relationship with C. In other cases, properties remained derelict after the investment was made or were under construction when they were supposedly generating an income. And some units were sold to different investors.

Returning to C's accounts, around a third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing. There were cash withdrawals, payments to individuals operating C, payments to jewellers and relating to obtaining cars, amongst other things.

An individual named as a director of C was removed by Companies House after it was discovered that the individual's identity had been stolen and they had been added to the record without their consent.

As I have said above, there is an ongoing police investigation into C.

In its response to the investigator's view, Starling hasn't raised any points about the conclusion that it's more likely than not that C was operating a scam, or the evidence the investigator relied on.

Overall, the evidence leads me to conclude that most funds weren't used for the intended purpose and any funds that were more likely than not used to encourage further investment as part of an overall scam.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. As regards the police's investigations, there is no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Does an exception to reimbursement apply?

The CRM Code says that Mr M is entitled to a full refund unless Starling can establish that an exception to reimbursement applies.

The CRM Code says that a bank may choose not to reimburse a customer if it can establish that:

- The customer made 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
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

For the reasons given by the investigator, I'm satisfied that Mr M had a reasonable basis for believing C offered a genuine investment opportunity. Mr M received genuine looking paperwork and a contract setting out the agreement reached. C's website looked genuine

and there were no reviews at the time to suggest the investment wasn't legitimate. C was also registered on Companies House and had an office in London.

Starling has said that Mr M should have consulted an independent advisor. This was only a recommendation given to Mr M by Starling at the time the payment was made. In any event, I can't fairly conclude that Mr M didn't have a reasonable basis for belief because he didn't seek independent financial advice – and individuals are not required to seek advice to make their own financial decisions – it is also not an exception to reimbursement under the CRM Code.

I also don't think that Mr M ignored an effective warning – the payment flow questions presented to him by Starling were very generalised and didn't give clear advice about the actions Mr M needs to take to address the risk or the consequences of proceeding with the payment. And while I accept that Starling did advise Mr M to check the FCA register (and Mr M said that he had – which would have shown that C wasn't authorised) this in itself doesn't demonstrate that Starling provided him with an effective warning.

And as I'm not satisfied Starling provided an effective warning, it follows that I can't say Mr M ignored such a warning.

Given that I'm not satisfied that Starling can rely on an exception to reimbursement, Mr M is entitled to be reimbursed in full under the provisions of the CRM Code.

Putting things right

I uphold this complaint and require Starling Bank Limited to:

- Reimburse £11,100; and
- Pay interest on the above amount at the rate of 8% simple per year (less any lawfully deductible tax) from the date it declined his claim or 15 days after the claim was first made, whichever is earlier.

It is possible Mr M may recover some further funds in the future. 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 another process in respect of this £11,100 investment before paying the award. If Starling Bank Limited elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr M for his consideration and agreement.

My final decision

I uphold this complaint. Starling Bank Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 January 2025.

Claire Pugh
Ombudsman