DRN-5847956

The complaint

Miss A complains Starling Bank Limited won't reimburse £5,000 she lost to what she believes was an elaborate investment scam.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

Around December 2022, Miss A was introduced, by a business mentor (who I'll refer to as 'Ms J') she'd been working with, to an investment opportunity with a company I'll refer to as 'V'. V was promoted as an Alternative Investment Fund ('AIF'), trading in foreign exchange. Miss A said she had an online meeting with Ms J to discuss the opportunity and ask questions. She also watched online presentations delivered by V's directors. She was told that the investment was being offered via a regulated UK broker; V was regulated by the Luxembourg Commission de Surveillance du Secteur Financier ('CSSF'); and it was also awaiting Financial Conduct Authority ('FCA') approval. Miss A was persuaded it was a legitimate opportunity and decided to invest.

On 20 December 2022, Miss A made a £5,000 Faster Payment from her Starling account to one of V's directors.

In March 2023 Miss A became aware of warnings published by the FCA and CSSF, confirming that V had not been registered or regulated as it had told investors. Miss A heard from other investors that V was likely operating a scam.

Miss A contacted Starling for help recovering her lost funds. Starling acknowledged Miss A's fraud claim but explained it was unable to reach a decision as there was an ongoing FCA investigation. Miss A later complained to Starling about the lack of progress and updates on her case. Starling accepted that it had not kept Miss A sufficiently updated, and so paid her £75 compensation, but it explained it was still not able to provide her with an answer on whether it would reimburse her loss.

Unhappy with Starling's response, Miss A referred her complaint to the Financial Ombudsman. Our Investigator upheld the complaint. She was persuaded, on balance, the available evidence demonstrated that V was operating a scam and Miss A had a reasonable basis for believing the investment to be legitimate, as such Starling was required to reimburse her in full under the terms of the Contingent Reimbursement Model ('CRM') Code, plus 8% simple interest.

Miss A accepted our Investigator's opinion. Starling disagreed. It considered Miss A had failed to carry out adequate checks before deciding to invest. It noted, for example, that had Miss A checked the FCA register for V or its directors she would have discovered they were not registered. It said she would also have been presented with a warning advising her that the firm may not be safe to deal with; the FCA doesn't regulate the product or service; or the individual or firm is no longer (or not yet) authorised. Ultimately it considered Miss A had

entered into a high risk, unregulated, investment where returns were not guaranteed and payments were made at Miss A's own risk.

Our Investigator explained that investors had been told V was in the process of being regulated by the FCA, and so the lack of registration would not necessarily have been a cause for concern. And ultimately, this was a sophisticated scam.

As there has been no agreement, the complaint has now been passed to me to decide.

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'm upholding this complaint for largely the same reasons as our Investigator. I'll explain why.

When considering what is 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 relevant time.

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 2017 (PSRs) and the terms and conditions of the customer's account. However, where the customer made the payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the provider to reimburse the customer even though they authorised the payment.

The CRM Code

Starling was a signatory to the voluntary CRM Code, which required it, and other signatory firms, to reimburse customers who had been the victims of authorised push payment ('APP') scams in all but a limited number of circumstances. The CRM Code defines an APP scam as:

> *"…a transfer of funds…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 explicitly excludes "*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."* This would include a failed investment.

To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

Can Starling delay making a decision under the CRM Code?

The CRM Code says firms should decide whether to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be delayed. If the case is subject to investigation by a statutory body and the outcome of that investigation might

reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

While Starling has not explicitly referred to R3(1)(c), given it originally sought to delay reaching an outcome on Miss A's claim I think it likely it was seeking to rely on it. But whether R3(1)(c) applies or not, this does not impact Miss A's right to refer her complaint to the Financial Ombudsman. Nor does it impact the Financial Ombudsman's ability to provide an outcome if we consider we have sufficient evidence to reach a fair and reasonable outcome.

Is it appropriate to determine Miss A's complaint now?

I understand that an FCA investigation into V is still on-going. So, I have considered whether it would be appropriate to delay my decision to await the outcome of the ongoing investigation – in the interests of fairness.

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 based on evidence already available. And it may be that investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Miss A's complaint, I must ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that she 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 Miss A first complained to Starling in January 2024, and referred her complaint in March 2025, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Miss A an answer for an unspecified length of time would be appropriate unless truly justified.

So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware the above processes involved with the FCA investigation might result in some recoveries for V's investors. To avoid the risk of double recovery, I think Starling could take, if it wishes, an assignment of the rights to all future distributions to Miss A under those processes in respect of her £5,000 investment before paying anything I might award to her in respect of this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait until the outcome of the ongoing FCA investigation for me to fairly reach a decision on whether Starling should reimburse Miss A under the provisions of the CRM Code.

Has Miss A been the victim of an APP scam, as defined in the CRM Code?

Considering the definition set out above, I must decide whether the evidence supports that Miss A transferred funds to V (or persons associated with V) for what she believed were legitimate purposes, but which were in fact fraudulent (DS1(2)(a)(ii)).

It's evident that V had some features that gave the appearance it was operating legitimately. There are identifiable individuals associated with V who held in-person and online events to

promote the investment – which Miss A saw recordings of when deciding to invest. And many people who lost money, including Miss A, had been introduced to the scheme through personal recommendations, often by people who could evidence withdrawing significant 'profits' from the scheme. Investors were also given access to a trading platform where they could see their funds being deposited and the profits they'd made.

There is also evidence that some of the money that was received personally by the founding individuals at V did end up with a legitimate forex platform (which wasn't FCA regulated but was part of a group of companies – one of which was FCA regulated). It also appears that some funds sent to V's bank account were converted into cryptocurrency and sent to the forex platform.

However, from evidence gathered from other complaints considered by the Financial Ombudsman Service, I've found the following facts to be persuasive evidence that V was operating a scam:

- We are now aware that V's claims of being regulated, or at least in the process of being regulated, with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with an FCA authorised trading exchange and that it was regulated.
- Approximately half of the funds sent to the two founding individuals of V was potentially used for the intended purpose of forex trading. Whereas investors were assured all funds would be immediately moved to an FCA regulated trading account to be used in forex trading. But this didn't happen.
- Of the investors' funds that were sent to V's business account these were either sent to a crypto exchange platform or paid to other investors as withdrawals. Investors were led to believe they were investing with a regulated entity and that their funds would be deposited in a regulated trading account. It wasn't advertised to investors that their funds would be moved/invested into unregulated crypto. Furthermore, approximately 20% of the funds moved to the crypto exchange platform weren't subsequently forwarded to the forex trading account.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via forex trading.
- The returns from the forex platform are significantly less than the returns paid to investors, suggesting returns were funded using other investors' money and not investment profits.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was sent to V was not used for its intended purpose. The evidence suggests that Miss A wasn't involved in a failed investment but a scam. As such, I consider the CRM Code applies.

Is Miss A entitled to a refund under the CRM Code?

Under the CRM Code, the starting principle is that a Firm should reimburse a customer who has been the victim of an APP scam, like Miss A. But a Firm may choose not to reimburse a customer if it can establish that one or more of the exceptions to reimbursement apply (R2(1)).

While Starling has argued that this was a failed investment and not a scam, it has also said Miss A should have conducted a higher level of due diligence before making the payment. It

has also provided evidence that it provided Miss A with a scam warning at the time of her payment. As such, I think the potentially relevant exceptions in this case are R2(1)(a) *"the Customer ignored Effective Warnings"* and R2(1)(c) *"the Customer made the payment without 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"*

Did Miss A ignore an Effective Warning or make the payment without a reasonable basis for belief?

Starling has demonstrated that before processing Miss A's payment to V's director, it stopped it and asked her some questions about the payment. Miss A explained that she was making the payment as part of an investment, which had been recommended by a family member or friend. As part of this intervention, Starling presented Miss A with the following warning:

"Warning Always research a company and check reviews from other people. If the Investment returns sound too good to be true – this could be a scam. All Financial Advisors and Financial Institutions should be FCA registered. You can check the FCA register here https://register.fca.org.uk/s/"

I don't consider this warning to be sufficiently impactful or specific to be considered *"Effective"* under the CRM Code. For example, it doesn't bring to life in any meaningful way the risks associated with investment scams. It also doesn't provide any guidance on what sort of return would be considered *"too good to be true".* As such, I don't think Starling could say Miss A ignored an Effective Warning.

So, I've gone on to consider whether Miss A had a reasonable basis to believe V was legitimate and was providing a genuine investment product.

In doing so, I have given careful consideration to how Miss A was introduced to V, alongside the overall sophistication of this scam, which I've touched on above.

Miss A has demonstrated that she was introduced to V by Ms J, someone she'd been working with for some time. Miss A had previously signed up to Ms J's business mentoring course and found it to be beneficial. Ms J told Miss A that she'd been looking for alternative sources of income and had found V to be a good investment. Ms J showed Miss A the investment dashboard, how it worked and the profits she'd made.

In the circumstances, given their established relationship, I don't think it's unreasonable that Miss A trusted the advice/ recommendation Ms J gave her and I think it is understandable that she placed weight on what she was seeing and hearing about V from Ms J. So, I can understand why she would have considered it was a genuine investment opportunity that was being presented to her. I don't think it was unreasonable for her to do so.

While I appreciate that neither V nor its directors were registered with the FCA, Miss A had already been told this was the case. She had been told that V was regulated by the CSSF and was going through the process of approval with the FCA. While we now know this to be false, I don't think it was unreasonable that Miss A believed this at the time.

I accept some of the claims made by Ms J about the returns V could generate seem unlikely. Ms J suggested Miss A could make between 6 – 14% return a month, although she did not guarantee this return rate. But importantly, I must weigh this up alongside what Miss A had been told, and shown, by Ms J; as well as her own research which confirmed what she'd been told. For example, Miss A said she looked up V's directors and found information that confirmed they were experienced traders. I think the sophisticated aspects of the scam, particularly with the introduction from a trusted friend outweighs the concerns that she perhaps ought to have had about the returns being claimed.

I must also take into account that there was no information available at the time that would have called into question the legitimacy of the investment. Further, I'm mindful that an FCA investigation is ongoing, and Starling does not consider there is sufficient evidence available to determine that V was operating a scam. In this scenario, I think it would be unreasonable to conclude that Miss A didn't have a reasonable basis for believing the investment was legitimate at the time she made the payment.

With this in mind, I don't think Starling has established that any of the exceptions to reimbursement under the CRM Code apply here. Nor do I think it could fairly rely on such an exception in these circumstances. It follows that it should refund the money Miss A lost in full.

Could Starling have otherwise prevented Miss A's loss?

Outside the provisions of the CRM Code, I consider it unlikely that any further proportionate intervention by Starling at the time of the payment would have positively impacted Miss A's decision-making. As discussed, this was a sophisticated scam that would appeared legitimate at the time. I'm also aware there was nothing in the public domain at the time about V from which Starling or Miss A could have reasonably inferred that a scam was taking place. In the circumstances, I don't think either party would have likely uncovered sufficient cause for concern about V such that Miss A would have chosen not to proceed.

Putting things right

As I'm satisfied the evidence supports Miss A fell victim to an APP scam and no exception to reimbursement applies, in order to put things right Starling must:

- refund Miss A the £5,000 payment made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded (less any tax lawfully deducted), calculated from 14 August 2025 (the date our investigator issued their view) to the date of settlement.

As an investigation into V is ongoing, it's possible Miss A may recover some further funds 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 that may arise from that investigation in respect of this £5,000 investment before paying the award. If Starling elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Miss A for consideration and agreement.

My final decision

For the reasons set out above, I uphold this complaint and direct Starling Bank Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 18 December 2025.

Lisa De Noronha
Ombudsman