

The complaint

R complains that Starling Bank Limited ('Starling') hasn't refunded the money it believes it lost to an authorised push payment ('APP') scam.

One of R's directors, whom I'll refer to as 'Mr G', referred the complaint to this service on behalf of R.

What happened

The circumstances of the complaint are well-known to both parties. So, I don't intend to set these out in detail here. However, I'll provide a brief summary of what's happened.

In May 2022, R appointed a new director, whom I'll refer to as 'Mr E'. Mr E also purchased shares in R. Mr E agreed to deposit £20,000 into R's account. However, Mr E only sent £15,000 to R.

In October 2022, Mr E told Mr G that R needed to protect its intellectual property by purchasing trademarks in various regions around the world. Between 1 August 2022 and 4 October 2023, R made 11 payments to Mr E, totalling £34,329.80. R was led to believe that these payments would fund the application and registration of the various trademarks Mr E said he was applying for on behalf of R.

On 8 October 2023, R also paid a director's loan to Mr E of £2,000. However, Mr E hasn't repaid any of the funds to R.

The 12 payments were made to three separate accounts in Mr E's personal name.

Around August 2024, Mr G was contacted by another company about applying for trademarks for R. It transpired that Mr E hadn't registered, or seemingly applied for, any trademarks on R's behalf, despite R paying him over £34,000 to do so.

Mr G asked Mr E for evidence that R's funds had been used to apply for and register trademarks for R. However, Mr E didn't provide any supporting evidence. As a result, in October 2024, R terminated Mr E's directorship and, believing R had fallen victim to a scam, Mr G asked Starling to reimburse R's loss.

Starling considered R's scam claim but decided not to make a refund. Starling said the situation was a civil dispute between R and Mr E and not a scam. That meant Starling considered it wasn't responsible for R's loss. R raised a complaint, but Starling maintained its decision not to refund the disputed payments.

Unhappy with Starling's response, R referred its complaint to this service. Initially, the complaint wasn't upheld. One of our Investigators didn't think Starling was acting incorrectly or unfairly by deeming the situation to be a civil dispute between R and Mr E.

However, the complaint was subsequently reviewed by a second Investigator, who, after reviewing some new evidence, did think R had, most likely, been scammed. That Investigator recommended Starling reimburse R's loss, plus interest.

Starling didn't agree with our Investigator. It said it wasn't fair to hold it responsible for R's loss when it didn't think it would've been able to prevent the disputed payments being made and because some of the evidence relied on to suggest Mr E scammed R wasn't available when R first raised a claim with Starling.

As an informal agreement couldn't be reached, the complaint has 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.

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 have been good industry practice at the time.

In broad terms, the starting position at law is that a firm, like Starling, is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

It's not in dispute that R made the disputed payments to Mr E. So, the payments were authorised and under the Payment Services Regulations, the starting position here is that R is responsible for the payments (and the subsequent loss). However, that's not the end of the story.

At the time of R's payments to Mr E, Starling was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code, which required firms to reimburse customers who'd been the victims of APP scams in all but a limited number of circumstances.

For the CRM Code to apply to R's circumstances, I need to be reasonably satisfied that it's more likely than not that R's payments to Mr E were made for a fraudulent purpose – i.e., R was the victim of an APP scam, and the funds were criminally obtained by Mr E.

The relevant question I must ask in this case is whether R transferred funds to another person for what it believed were legitimate purposes, but which were in fact fraudulent. The threshold for establishing fraud is a high one and to fairly uphold R's complaint I need to be satisfied that it is more likely – and not just equally as likely – that R was the victim of fraud.

In our second Investigator's view, they provided a very detailed explanation for why they felt Mr E had, most likely, scammed R. And, after considering all the arguments and evidence, I'm also persuaded R has, more likely than not, fallen victim to an APP scam. I don't intend to repeat what our Investigator said in similar detail. However, I've listed below what I consider to be the key pieces of information when reaching the outcome that I have:

- when Mr E requested funds to apply for trademarks, he said it was extremely urgent and that R was at risk if it didn't act quickly. Despite this, Mr E never applied for any trademarks, despite receiving over £34,000 for this purpose;
- the other company that Mr G spoke to confirmed that the process Mr E had set out for registering trademarks globally didn't make sense and the costs involved had been significantly inflated;
- having reviewed Mr E's bank statements for two of the accounts that R paid (one receiving bank refused to supply these), there is no suggestion that R's funds have been used for the purpose of applying for and registering trademarks. Instead, the funds have been used solely for personal expenditure;
- Mr E said that the trademark applications needed to be paid for via his own company. Despite this, Mr E asked R to pay three separate personal accounts in his name. From Mr E's bank statements that I've seen, there's nothing to suggest the funds were subsequently moved on to another company in Mr E's control; and
- Mr E never provided evidence of the trademark applications, despite this being requested several times by Mr G.

Based on the above information, I'm persuaded that Mr E never intended to apply for trademarks on R's behalf. Instead, I think it's more likely than not that Mr E intended to use R's funds for his own personal gain and that the funds were criminally obtained.

The final disputed payment was a director's loan, so Mr E could use the funds to meet his living expenses. Given Mr E hasn't repaid any of the director's loan and, in my opinion, had already stolen over £34,000 from R by the time he asked for the director's loan, I think it's highly unlikely that he was intending to repay the loan at the time it was paid to him.

Mr E may have been intending to use the funds for living expenses as he claimed. However, the purpose of the payment was a loan that Mr E was supposed to repay. I don't think he had any intention of repaying the loan and so I'm satisfied that this payment was received by Mr E for a fraudulent purpose and the APP scam definition within the CRM Code applies to that payment as well.

Under the CRM Code, there are exceptions to reimbursement. However, as Starling didn't think R had been scammed, it didn't assess whether any of those exceptions to reimbursement applied in R's circumstances before declining the scam claim. So, I've thought about whether any of the exceptions to reimbursement apply in these circumstances.

There are generally two exceptions to reimbursement under the CRM Code, which are that:

- R made the payments without a reasonable basis for believing that Mr E was legitimate; and/or
- R ignored what the CRM Code deems to be an “*Effective Warning*”.

And, importantly, when assessing whether it can establish these things, Starling must consider whether they would've had a “*material effect on preventing the APP scam*”.

Did R have a reasonable basis for believing Mr E was legitimate?

Mr E was introduced to R by a former employee of R, who had known Mr E since childhood. Mr E was appointed as a director of R and also invested £15,000 into the business. His role was to provide ad hoc legal services to R.

Mr E held a position of trust within R and, given his professional expertise in the legal sector and the fact Mr E had invested £15,000 into the business and was a shareholder, I don't think it was unreasonable for R to have believed that Mr E was requesting the payments for a genuine reason and that was for the benefit of the business.

I don't think Mr E gave R any reason to believe that he might be scamming R. So, I'm satisfied R had a reasonable basis for believing the payments were being made for a genuine reason.

Did R ignore an “Effective Warning”?

Starling hasn't argued that it gave R effective warnings when the payments were made. However, it has provided evidence of a “*New Payee*” warning that it gave when R added the three beneficiary accounts that Mr E asked the payments to be made to.

The “*New Payee*” warning recommended R verify who it was sending money to as the payment could be part of a scam. However, there's been no suggestion made that Mr E wasn't the intended beneficiary of the funds or that the funds weren't sent to Mr E. The warning gave no other specific information about scams.

So, I don't think the warning was impactful and therefore it doesn't satisfy the CRM Code definition of an “*Effective Warning*”. As a result, I don't think Starling can refuse reimbursement on the grounds that R ignored an “*Effective Warning*” as set out in the CRM Code.

Other considerations

I appreciate that Starling says it couldn't have prevented the disputed payments being made, such as R's belief that Mr E was asking for funds for a legitimate purpose. I agree that Starling couldn't have prevented the scam. However, that's not the test here, nor is it a valid reason for Starling to refuse reimbursement under the CRM Code.

I also accept that some evidence has been provided that wasn't available to Starling at the time the scam was reported, such as bank statements for two of Mr E's personal bank accounts. However, R did provide Starling with sufficient evidence, when the situation was first reported, to show Mr E didn't use the funds for the intended purpose, demonstrating an APP scam had taken place. As a result, I'm satisfied that Starling could and should have reimbursed R when the claim was first assessed.

Putting things right

To resolve the complaint, Starling should:

- refund R's loss, totaling £36,329.80; and
- pay interest, at 8% simple per annum, from 9 May 2025 (the date the claim was declined) until the date of settlement.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 16 March 2026.

Liam Davies
Ombudsman