DRN-5882775

The complaint

N, a limited company, complains that Starling Bank Limited has not refunded money it lost through what it now believes was a scam. N is represented by Q, which brings the complaint on its behalf.

What happened

N was seeking to wind up as a company in late 2020. It instructed an insolvency practitioner (which I'll refer to as S) to help with this process – a Members Voluntary Liquidation (MVL).

N sent a payment of £16,370 on 4 April 2021 to an account belonging to S as part of the MVL process.

This payment represented N's assets. And it was sent to S with the agreement that it could hold N's assets in a client account whilst the liquidation process was carried out. Once that process had concluded the liquidated assets would then be transferred from their client account back to the director of N's personal account.

By October 2021, S entered into administration. The liquidation process had not been carried out and N's assets were never distributed as expected.

Mr AD was the director of S and was acting in his capacity to carry out the liquidation process for N. But the Insolvency Service later reported that in 2020, Mr AD was reprimanded by one of the regulatory bodies and was subject to licence restrictions that had been imposed from 3 September 2020. That meant Mr AD was prohibited from taking on any new insolvency appointments. The Insolvency Service reported that *"It is understood that [Mr AD] has absconded having misappropriated nearly £4 million in estate funds".*

In relation to N's funds, £370.02 was able to be recovered from the accounts of S but no other funds could be located which hadn't already been removed. As such, N has been left facing a new loss of £15,999.98 – from the lump sum it paid to what was meant to be a designated client account in the belief those funds would be held in the client account pending the liquidation.

This was reported to Starling as an Authorised Push Payment Scam (APP Scam) but no response was provided, before Q brought N's complaint to this service.

Our investigator upheld the complaint. She said Starling was a signatory to the Lending Standards Boards' Contingent Reimbursement Model Code (CRM Code) which was in place at the time of the payment. She was satisfied the payment met the CRM Codes definition of a scam. And given Starling's absence of a response to the original complaint raised and this service, she wasn't satisfied the bank had established any reasons within the code that reimbursement shouldn't otherwise be provided to N.

Starling responded to our investigator's findings explaining they considered this to be a civil matter and that there were other means of recourse for N which should be utilised first. Starling also said it is of the opinion that the warnings provided to N are effective, and in line

with their obligations under the CRM Code. It went on further to explain it's not their duty to verify whether a payee has the correct qualifications or registration. That onus lays with N.

As agreement couldn't 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.

Having done so, I'm minded to reach the same overall conclusion as our investigator and for largely the same reasons.

When considering what is fair and reasonable, I'm required to take into account: the 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 as a consequence 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.

Where a payment was made as the result of an APP Scam, then the CRM Code can provide additional protection to customers (including micro-enterprise customers such as N). But Starling argues that the CRM Code should not apply to the payment made by N. Specifically, it considers this a civil matter and they consider N's claim falls within this category.

I have therefore considered whether I agree that Starling has fairly reached that conclusion, taking into account the terms of the CRM Code that Starling had voluntarily agreed to adhere to.

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

In regards to this complaint, the CRM Code defines an APP scam as one where a customer has "transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."

So in order to find whether N's payment is covered by the CRM Code, I've therefore considered whether or not N's intended purpose for the payment was legitimate, whether or not the intended purposes of N and S were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of S.

Whilst I acknowledge Starling consider this a civil matter between N and S, I am not persuaded it is likely that that S was trading legitimately at the time of N's payment.

The relevant facts as I see it are as follows:

- Mr AD had been prohibited from carrying out any new work as an Insolvency Practitioner. According to information on the Insolvency Service website, the date of that prohibition was 3 September 2020. While Mr AD appealed, his appeal was rejected on 24 February 2021.
- N entered into agreement with Mr AD on behalf of S to act as its liquidator in March 2021.

- Therefore, the prohibition of Mr AD had been made prior to N engaging S's services. Yet in the signed agreements between N and S, it's stated that Mr AD has provided a written statement that he is qualified to act as an insolvency practitioner and will act in N's liquidation.
- It seems unlikely that Mr AD was unaware he was prohibited from acting as an insolvency practitioner. I find he most likely knew he was not able to act in the liquidation of N.
- N's funds were transferred to S, on the premise that these would be held as client funds while the liquidation process was conducted by Mr AD.
- Companies House shows that S was under the control of Mr AD.
- Mr AD is understood to have absconded with a significant sum of client funds, prior to carrying out the liquidation of N.
- N's money would have most likely formed part of those funds given the liquidator can find no trace of the bulk of S's money now. Although £370.02 was able to be recovered.

I accept I cannot know for certain what Mr AD's intentions were at the time when he took on N's liquidation.

Where there exists uncertainty, as there is here, I must make my findings on a balance of probabilities. The starting presumption here is that the transaction was legitimate. In considering the balance of probabilities, I will need to see convincing evidence to persuade me that it is more likely than not it was in reality an APP scam.

Having considered the available evidence, and applying a balance of probabilities, I believe it is most likely this was dishonest deception intended to result in N's funds being misappropriated by Mr AD, the person principally in control of S.

That dishonest deception was about the purpose for which N's payment was procured. In particular, I am not persuaded that Mr AD acting through S, which he controlled, intended to carry out the liquidation of N when its instruction was taken. Mr AD acting through S could never have done that.

I find Mr AD knew he could not do so. That leads me to believe the underlying purpose behind this transaction was never to return the money as N had been led to believe – rather, it was fraudulent.

The evidence convinces me that the intent of Mr AD acting through S, was that he would obtain significant sums from companies such as N, which he would later misappropriate.

It follows that while N made the payment to S for what it believed to be legitimate purposes, S's purpose was in reality not what N had believed. Instead it was fraudulent – the misappropriation of N's money by the person controlling S. I think it is reasonable to consider that S's intentions were essentially those of Mr AD, given that Mr AD controlled S.

And so I am satisfied the payment made by A of £16,370 met the CRM Code's definition of an APP Scam and not a private civil dispute. It follows that the payment is therefore covered by the provisions of the CRM Code.

Is N entitled to a refund under the CRM code?

I have gone on to consider whether, had Starling assessed N's claim against the CRM Code as I find it should, the bank would have been liable under the code's provisions to reimburse N.

There are provisions within the CRM Code which permit a firm not to reimburse (or not to fully reimburse) a customer for APP Scam payments where the firm is able to establish that certain exceptions can be applied.

I have considered whether any of those exceptions can correctly be applied to N's payment under the provisions of the CRM Code.

Having reviewed the circumstances here, and considered the requirements of those exceptions, I am not satisfied that Starling has demonstrated that any should apply. While I will not cover each of the various relevant exceptions to reimbursement under the CRM Code, I do not consider any have been established based on the available evidence.

In particular I'm not persuaded Starling could seek to rely on the exception requiring that the payer held a reasonable basis for believing what they did at the time a payment was made. As far as the director of N was concerned, S appeared legitimate at the time, and the information around Mr AD to suggest otherwise were not reported until after the payment. The agreements entered into confirming Mr AD would be acting as N's liquidator are documents it expected to sign. Furthermore, correspondence up to that point all seemed genuine too.

In response to our investigator, Starling explained that it's of the opinion the warnings provided to customers are effective and in line with their obligations under the CRM Code. Though it hasn't provided any details of the actual warning N would've been presented with at the time of the payment. In light of this, I can't fairly say N ignored an effective warning. And in any event, even if the warning had been effective, based on what was known about S at the time of the payment, I don't think it would have been unreasonable for N to make the payment despite a warning.

I've also thought about whether N ignored its own procedures for the approval of payments or that those procedures would have been effective in preventing the APP scam. Considering it was in the process of winding down, and looking to liquidate its assets I'm not persuaded there would be anything in a payment approval process that would likely uncover this.

Overall, as I don't think Starling has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund N's outstanding loss.

I have also considered the possibility of recovery that could result in N being in a position of double recovery. It does not appear there is any other possible way for N to recover its funds, such as through the ICAEW, or through any insurance policy that Mr AD may have had in place – as Starling have suggested. That's because it's been confirmed that Mr AD's insurer invalidated a policy because Mr AD didn't have an insolvency licence in place when acting.

I am also mindful how unlikely this is in light of S's liquidators having published reports on Companies House indicating there is little to no prospect of any funds being paid out. That said, I don't consider this should prevent Starling from reimbursing N under the CRM Code now (nor would it have at the time the matter was first reported to Starling). However, I consider it is fair and reasonable that Starling can choose if it wishes to obtain an undertaking from N to entitle it to any money recoverable elsewhere, whether such recovery was due to N directly, or to another party on behalf of N.

In other words, Starling may require N to enter into an undertaking to assign to the bank

any rights to any monies N (or another party on N's behalf) might elsewhere be entitled to recover in respect of this loss. If Starling asks N to provide such an undertaking, payment of the reimbursement awarded may be dependent upon provision of that undertaking. Starling may treat N's formal acceptance of the terms of my final decision as being sufficient for this purpose. Alternately, Starling would need to meet any costs in drawing up an undertaking of this type.

Had N not been deprived of these funds it seems likely to me that the liquidation process could have been concluded and the monies distributed as expected under that process. I do not know what use those funds would have been put to, but I think it would be fair for interest to be added to the settlement at the rate of 8% simple per year to reflect the time N has been deprived of the use of those funds.

Putting things right

I find that Starling ought to have reimbursed N's outstanding losses under the terms of the CRM Code. As such Starling Bank Limited should now:

- Refund the outstanding loss (the sum of £15,999.98); and,
- Add interest to this figure at the rate of 8% simple per year, calculated from 15 business days after the date the bank first received N's claim (in July 2024), to the date of settlement

My final decision

For the reasons given above, my final decision is that I uphold this complaint. Starling Bank Limited should put things right for N in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 11 December 2025.

Mark O'Connor
Ombudsman