

The complaint

A company, which I'll refer to as I, complains that Starling Bank Limited ('Starling') won't reimburse the funds it lost when it fell victim to a scam.

Mr L, who is a director of I, brings the complaint on I's behalf.

What happened

Mr L says that in April 2024 he was approached about an investment opportunity with a company I'll call 'C' in this decision. He was told funds would be used for a rent-to-rent property arrangement where money would be used to refurbish and pay deposits on rental units that would be occupied by social housing tenants.

In April 2024 Mr L agreed to invest £13,000 of I's funds which would return 20% annual interest for three years, and made payments of £10 and £12,990 to C. Capital would be paid back monthly after a 90-day grace period.

Mr L says that I received four payments of £600 between July and October 2024 but nothing more. C updated investors and said that it was having banking issues and was going through an institutional buyout.

Mr L's company also reached an agreement with C to build an app. A contract was signed on 23 May 2024 which set out that I would receive a deposit of £10,000 and £12,500 on completion of the app. The £10,000 was paid on 24 May 2024 but I did not receive the balance. Mr L has provided the contract and other evidence.

Through a professional representative, Mr L raised complaint with Starling in November 2024. He said that Starling failed to recognise an unusual and out of character payment and should reimburse I under the provisions of the Contingent Reimbursement Model Code ('CRM Code').

Starling told Mr L it had placed I's claim on hold while the police were investigating C.

Mr L, acting on behalf of I, was unhappy with Starling's response and brought a complaint to this service.

The investigator who considered this complaint recommended that it be upheld in full. He provided a summary of the information obtained from receiving accounts and noted that the majority of funds hadn't been used for the intended purpose.

Starling didn't agree with the investigator's findings and asked for a final decision. In summary, it said:

- The investigator hadn't taken into account the warnings it provided at the time the payment was made. Mr L was provided with a fraud warning when he set up a new payee and was directed to its additional review process. Starling also noted that it provided Mr L with links to further information about investment scams.
- It expects Mr L, acting on behalf of his company, to seek independent financial advice. This was a high-risk investment and Mr L should have completed more checks.

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.

I should make it clear at this point that I am not considering C's failure to pay I the final figure set out in their contract. This is a civil matter between the parties. I have mentioned it only to explain why there was a £10,000 credit to I's account shortly after the investment was made.

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 I/Mr L 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 L, on behalf of I, first raised this claim with Starling on 13 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 L on behalf of I 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 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 I 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 I under the provisions of the CRM Code.

Has I 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 L has brought on behalf of I 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 I is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mr L 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 L, acting for his business, 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 L 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 L thought.

Like the investigator, and based on the evidence available, I'm satisfied it's more likely than not I's funds weren't used for the intended purpose and that C obtained the funds through dishonest deception. So, I'm satisfied that the payments Mr L made from I's account meet the definition of an APP scam and are 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 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 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 I am 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 L, acting on behalf of I, had a reasonable basis for believing C offered a genuine investment opportunity. Mr L received a genuine looking brochure that said C was registered with the Property Redress Scheme and signed 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 which Mr L visited.

Starling has said that Mr L should have consulted an independent advisor. This was only a recommendation given to Mr L by Starling at the time the £12,990 payment was made. In any event, I can't fairly conclude that Mr L didn't have a reasonable basis for belief because he didn't seek independent financial advice.

I'm also not satisfied that Mr L ignored an effective warning. Starling says that when adding a new payee (in respect of the £10 payment) Mr L was provided with a warning, and that he was directed down a payment flow and asked a series of questions in respect of the larger payment.

Given the value of the first payment, I wouldn't expect Starling to identify a scam risk when it was made. So under the CRM Code, this should be reimbursed in full. In any event, the new payee warning Mr L was shown was very generalised and simply told Mr L to verify who he was sending money to and that he may not be able to get his money back.

Turning to Starling's payment flow questions, Mr L was honest about the reason for his payment and referred to a social housing investment and to C. The only investment related warning he was given was as follows:

"Make sure you research a company before you invest in them by checking independent reviews from other people.

If the returns sound too good to be true, it's probably a scam.

We also recommend speaking to an FCA-regulated financial advisor before making a private investment."

I don't think this warning meets the definition of an effective warning in the CRM Code. It doesn't give clear advice about the actions Mr L needs to take to address the risk or the consequences of proceeding with the payment.

Starling has also referred to advice provided if Mr L followed a link when the new payee warning was given. This warning wasn't given during the relevant payment journey though.

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

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

Redress

As there is an ongoing investigation by the police, it's possible I 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 under other processes in respect of this £10,600 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 Mr L acting on behalf of I for his consideration and agreement.

Overall, I'm satisfied that I was the victim of an APP scam as set out in the CRM Code and should be reimbursed as set out below.

My final decision

I uphold this complaint and require Starling Bank Limited to:

- Reimburse £10,600; and
- Pay interest on the above amount at the rate of 8% simple per year from the date it declined his claim or 15 days after the claim was first made, whichever is earlier.

It is possible Mr L/I 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 £10,600 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 L for his consideration and agreement.

If Starling Bank Limited is legally required to deduct tax from the interest award it should send Mr L a tax deduction certificate so he can reclaim it from HMRC if appropriate.

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

Jay Hadfield
Ombudsman