

## The complaint

Mr B complains Starling Bank Limited won't refund the money he says he lost to a scam.

## What happened

Mr B says he was introduced to C via a deal sourcing company (F). He saw an advert for property development investments they were offering and responded. In brief, C were claiming to offer investments in specific property units on the understanding they would be refurbished and rented out for social housing through councils and housing authorities who they held contracts with.

After speaking to representatives from F and C, completing research and reviewing C's documentation, Mr B decided to invest in one unit. He sent C a payment of £13,500 for this in August 2024. He was expecting monthly returns from November 2024. But these weren't paid – and Mr B then found he couldn't get in touch with C.

Mr B contacted Starling to report that he had been scammed. But it said the matter was instead a civil dispute. He then complained to Starling about its decision via a professional representative, arguing it should refund him under the terms of the Contingent Reimbursement Model (CRM) code. It then said it wouldn't refund Mr B due to an ongoing police investigation into C. However, it paid him £100 compensation for service issues.

Unhappy with this response, Mr B referred his complaint to our service. Our investigator upheld it. They were persuaded there was enough evidence to demonstrate Mr B's payment to C met the CRM code's definition of an Authorised Push Payment (APP) scam without waiting on the outcome of the police investigation – and that Mr B was entitled to a full refund under the code. They said Starling should also pay him interest to compensate him for its delay refunding him (alongside the £100 compensation it had already offered).

Mr B accepted the investigator's findings but Starling appealed. In summary, it said the payment reason Mr B selected – "paying a bill, event, taxes or for a service" was inaccurate and hampered its ability to provide a relevant scam warning. It also said he failed to complete proportionate due diligence such as seeking independent financial advice.

I then issued my provisional decision explaining why I was minded to uphold the complaint and direct Starling to refund the disputed payment with interest:

*Mr B authorised the payments he is now disputing. The starting position in law is that he is liable for them. But Starling was signatory to the CRM code at the time of these payments – under which firms are generally expected to refund victims of APP scams. But private civil disputes, such as where a consumer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the consumer is otherwise dissatisfied with the supplier aren't covered.*

*Firms generally have 15 days to respond to claims under the CRM code. Starling initially declined Mr B's claim on the basis of the matter being a civil dispute rather than a scam. But when he complained, it then seems it effectively attempted to apply 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.*

*However, this provision relates to delaying a decision under the CRM code - whereas Starling had already declined Mr B's scam claim. So, I don't think it can retrospectively use this as a reason to delay giving an answer.*

*Furthermore, while there is an ongoing police investigation into C, it's not clear to me how or why the outcome of this would reasonably inform Starling's decision. The specific details of the investigation haven't been shared with our service. It's not clear whether any proceedings will concern charges that will have a significant bearing on the issues relevant to this complaint.*

*As Starling is aware, any criminal proceedings that may take place in connection with C will be based on the criminal burden of proof – whereas our service makes decisions on the balance of probabilities. And we don't know how long the investigation will take; it could be months or years.*

*I'd point out that our service must consider complaints quickly and with minimum formality. I don't think it would be appropriate to delay giving an answer on this complaint, for an undefined period of time, unless doing so is likely to significantly help me decide this issue.*

*What I need to decide here is whether, on balance, Mr B was scammed by C. In looking at the information we already know about C and Mr B's dealings with them, I'm not persuaded the outcome of the police investigation is likely to have a bearing on this decision; I'm satisfied there is already enough to show the payment in question meets the CRM code's definition of an APP scam:*

*“Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.”*

*I consider it clear Mr B intended to pay C for what he believed was a legitimate purpose (for a property development investment). So, I've gone on to consider whether C's intended purpose was broadly aligned with Mr B at the time the payment was made – and, if not, whether this was the result of a dishonest deception by C. For the following reasons, I'm persuaded C fraudulently deceived Mr B into making this payment.*

*C held accounts which show around £6,000,000 being spent in a way that appears consistent with property development. But it also received around £20,200,000 from investors. Given C's standard unit price of £13,500, that means it would need to have entered around 1,500 property agreements. But the outgoing payments aren't consistent with C paying for rent, refurbishments and furnishings for this many agreements.*

*C claimed to hold contracts with local authorities – as they would need to have done to fulfil the investor agreements. But their beneficiary statements show no incoming payments from local authorities or housing providers.*

*Additionally, several local authorities have confirmed they didn't have a working relationship with C – with one confirming an invoice C used to supposedly demonstrate their working relationship was forged. A director of C was also removed from Companies House due to their identity being stolen; they had no connection to C. This speaks to a dishonest deception by C.*

*Our service has seen evidence that at least six different units were sold to multiple investors. This comes from complainants providing the individual property addresses they thought their investment was purchasing across around 100 complaints. This information also shows around half of those addresses were in buildings where the owners have confirmed they didn't have a relationship with C.*

*We've also seen instances where the properties remained derelict after the investment was made or remained under construction when they were supposedly generating an income. All of this makes it seem unlikely C intended to use Mr B's payment for a genuine property development investment.*

*Turning back to C's accounts, we can see around a third of the investment capital wasn't used for the purpose of securing and developing properties to be used for social housing – ranging from cash withdrawals, to payments to individuals involved in operating C, to paying jewellers, restaurants and more. There are further substantial withdrawals and payments which the purpose for is unknown.*

*Around £440,000 C received could be legitimate income, although none of this came from local authorities or social housing providers. But in comparison around £2,500,000 was paid to investors. It's therefore clear this didn't come from genuine income – strongly indicating C were operating a Ponzi scheme.*

*Overall, there is little to suggest any transactions are consistent with C completing property development for the benefit of investors, and much more to suggest C wasn't using investors' funds for the intended purpose. Even if any of the funds C received were used for property development, it seems likely this was done with the intention of encouraging further investment as part of an overall scam. For these reasons, I'm satisfied Mr B's payment to C meets the CRM code's definition of an APP scam – and it's unlikely the outcome of the police investigation will impact this.*

*The starting position under the code is that a firm should refund victims of APP scams – as I've determined Mr B was. However, there are some exceptions under the rules which, if applicable, firms can rely on to decline reimbursement.*

*Of relevance here is that firms can choose not to reimburse a customer if they ignored an effective warning. Or if they made the payment(s) without having a reasonable basis for believing that the payee was the person they were expecting to pay; the payment was for genuine goods or services; or the person or business with whom they transacted was legitimate. There are further exceptions within the CRM code, but they aren't relevant here.*

*I agree with the investigator's arguments about why Mr B had a reasonable basis for belief when he made these payments. C were properly registered on Companies House and provided professional-looking documentation and marketing. Mr B also found C via F, who appear to be operating legitimately. He's told us he also completed research and spoke to representatives from F and C before deciding to proceed.*

*While Starling has suggested Mr B could have completed further due diligence, there weren't obvious public concerns about C at the time. So, it's not clear what material impact this would have had on preventing the scam – which is something firms are expected to consider when seeking to apply an exception. I have also considered whether Mr B ought to have considered the returns information to be realistic. But in the overall context of this sophisticated scam, I don't think it's unreasonable that he believed C were offering a legitimate investment.*

*However, the investigator hasn't addressed Starling's argument about whether it can choose not to reimburse Mr B due to him selecting what it deems to be an inaccurate payment reason. It did still show a broad warning, which told him to "always verify who you are sending money to". Here, Mr B knew he was sending funds to C.*

*I therefore don't think an effective warning was given, bearing in mind the criteria set by the CRM code. That means Starling can't decline to reimburse Mr B on the grounds he ignored an effective warning.*

*Thinking more widely about what is fair here, I'm also conscious the payment reason Starling says Mr B selected – paying for a bill, event taxes or for services – is a broad one. I don't think it's likely Mr B was attempting to mislead Starling about what he was doing. Starling also hasn't shown that, if Mr B had selected what it considers a more relevant payment reason, this would have resulted in it displaying an effective warning.*

*As much as anything, in the circumstances of this scam, it's difficult to think what would have met the criteria. For example – one criterion for a warning being deemed effective under the CRM code is that it must be impactful, meaning it must reduce the likelihood of the scam succeeding. Given the sophistication of this scam and the lack of adverse information about C at the time of Mr B's payment, it's unclear what Starling could have warned Mr B of that might have prevented him falling victim to the scam.*

*I therefore think that Starling should refund Mr B's payment to C, as I'm not persuaded it has shown any exceptions to reimbursement apply under the CRM code.*

*Starling has already paid Mr B £100 compensation for any trouble and upset caused by its handling of his claim and complaint. The investigator explained they weren't persuaded the impact of any such failings on Mr B warranted further compensation – and Mr B accepted the investigator's outcome. In the circumstances I don't think further compensation is due.*

I invited both parties to provide any further comments or evidence. Mr B confirmed he accepted my provisional decision. Starling asked that I take into account that Mr B was asked about the purpose of the payment and answered "Paying a bill, event, taxes or for a service". It says it was unable to provide a relevant warning because of this. Whereas if he had answered that he was paying for an investment, it would have provided a more effective warning – prompting him to check the FCA register and to discuss the investment with a financial advisor. And if he had checked the FCA register, he would have been informed that C might not be safe to deal with.

### **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've decided to uphold it. That is largely for the reasons given in my provisional findings, which are set out above and forms part of my final decision. So, I've focussed here on responding to the points Starling raised in my response to my provisional decision.

Starling's response doesn't dispute that C were a scam, or my conclusions about why Mr B had a reasonable basis for belief. Instead, it argues that the way Mr B answered its question about the payment purpose deprived it of the opportunity to deliver a more effective warning. The relevance of this being that the CRM code generally allows firms to decline to refund consumers in full if they ignored an effective warning by failing to take appropriate action in response.

I consider it clear that the actual warning Mr B was shown didn't warn him of factors relevant to the scam, meaning he didn't fail to take appropriate action in response that would likely have prevented it. I've also explained that, while Mr B didn't select that he was paying for an investment, he selected an option covering paying for a bill or service. In the context of him paying C in line with an invoice he had received, I don't consider the option selected unreasonable or indicative of dishonesty.

However, even if Mr B had selected that he was paying for an investment, I don't think Starling has demonstrated it would have shown an effective warning that should reasonably have led Mr B to take action likely to prevent the scam. While it says its warning would have mentioned checking the FCA register and getting independent advice, it hasn't provided the full version of this to show if it met all the criteria set by the CRM code to be deemed effective (such as being clear, understandable and impactful).

As I covered in my provisional decision, given the nature of this scam, I also consider it unlikely Starling could have warned Mr B in a way that was likely to have prevented the scam from succeeding. C had been paying returns to investors, was running a sophisticated and professional-seeming operation, and there weren't public concerns about them at the time of Mr B's payment. I therefore can't see what Starling could reasonably have warned him about that would have made it clear they were actually a scam.

Starling says its warning would have prompted Mr B to check the FCA register and discuss the investment with a financial advisor. However, I can't see how clearly Mr B was prompted to do this. In any event, I don't think C's absence from the FCA register would have made it clear they were a scam. It's not clear the type of investment they were offering (involving the provision of social housing) would have required regulation. The information Starling has said Mr B would have seen if he checked the FCA register also didn't say any company not on the register would be a scam; it set out several potential reasons why a firm might not be listed, including that the FCA may not regulate the product or service they offered.

Overall, having carefully considered Starling's pushback to my provisional decision, I'm still not persuaded it has shown it can fairly decline to refund Mr B under the terms of the CRM code (or for other reasons). I'm therefore persuaded it should refund his loss to the scam.

### **Putting things right**

To put things right, Starling Bank Limited should refund Mr B's payment to C (less any sums already recovered or returned to him from this scam).

Starling Bank Limited should pay 8% simple interest per year on this amount, running from the date it initially declined to refund him to the date of settlement. This is to compensate him for the loss of use of these funds from the point at which it should have refunded him.

If Starling Bank Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

In order 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 in relation to the scam payment we're upholding that arise, such as from the police investigation and criminal proceedings, before paying the award.

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint about Starling Bank Limited and direct it to put things right in the way I've set out above.

Rachel Loughlin  
**Ombudsman**