DRN-6025708

The complaint

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

What happened

As all parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr O, director of A, was seeking to wind up A as a company in 2021. He located an Insolvency Practitioner which appeared suitable to help with this process (a Members Voluntary Liquidation).

In what follows I will refer to this Insolvency Practitioner as 'Mr A', who was the director of firms that I will refer to as 'Company S1' and 'Company S2', who were entities involved in this matter.

In total A sent two payments during what it believed was the liquidation process:

Date	Beneficiary	Amount
02 March 2021	Company S1	£1,455.06
25 March 2021	Company S2	£13,050.64
	Recovered funds	£50.67

Payment one was seemingly in respect of some administrative costs of setting up the insolvency. And it appears that payment one was used for the purposes Mr O had expected.

Payment two was then sent to an account held by Company S2. This larger payment represented a portion of the assets held by A. The intention behind this transfer was to hold A's assets in a designated client account while the liquidation process was carried out. Once the liquidation process had concluded, the liquidated assets would be transferred from the client account to Mr O.

The Insolvency Service later reported that in 2020 Mr A was reprimanded by one of the regulatory bodies. At that time, in September 2020, Mr A had been placed under a licence restriction which prohibited him from taking on any new insolvency appointments. Mr A failed with an appeal – with the appeal being rejected on 24 February 2021. The Insolvency Service has also reported that *"…It is understood that [Mr A] has absconded having misappropriated nearly £4 million in estate funds."*

Mr O's representative Q considered A had been the victim of a scam orchestrated by Mr A and reported the matter to Starling in July 2024. Q considered A should be reimbursed for its loss (£13,000) under the Lending Standards Board ('LSB') Contingent Reimbursement Model Code ('CRM Code'). This was a voluntary code that was in force at the time the payments were made and that Starling was a signatory of. The CRM Code required firms to reimburse customers who had been the victims of APP scams (including micro-enterprise customers such as A) in all but a limited number of circumstances. Q set out its reasons why Mr A had deceived Mr O (and A) and obtained the funds fraudulently.

Starling issued its final response in August 2024. It acknowledged that Mr A was once legitimate and did complete partial services with regards to the administrative work setting up the insolvency. And it considered the Institute of Chartered Accountants in England & Wales ('ICAEW') failed to monitor Mr A. So, Starling considered the matter amounted to a civil dispute between the parties – and that any recourse lay with the ICAEW. Starling also cited that the receiving account provider (the beneficiary bank where the funds had been sent to) also considered the matter was likely a civil dispute.

Unhappy with the response, Q referred A's complaint to our service. One of our Investigators looked into the matter and upheld A's complaint. In short, they considered Mr A was unable to take forward any new insolvency appointments and he had failed in his appeal – so likely knew he couldn't undertake the liquidation process for A. That, coupled with Mr A then absconding with approximately £4million of client funds, suggested to the Investigator that it was more likely than not that Mr A didn't use A's funds for the purpose in which they were intended – namely towards liquidation processes – and the funds were obtained fraudulently through dishonest deception. The Investigator therefore considered the CRM Code applied to the second payment A had made, and they did not think any exceptions to reimbursement applied.

They therefore recommended A be reimbursed its loss for the second payment (£13,050.64) less the recovered funds (£50.67), as well as 8% simple interest from 15 days after Q had submitted the fraud claim to Starling.

A accepted the findings, however Starling did not. In short, it reiterated the points it had set out within its final response letter and remained of the opinion it wasn't liable for the loss as it was a civil dispute and Mr O (and A) could seek formal recourse through the ICAEW.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

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.

Has A fallen victim to an APP scam?

In order to reach a decision, I've considered the definition of an APP scam under the CRM Code. Under DS1(2) an APP scam is defined as:

> *"…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."*

DS2(2)(b) explains that the CRM Code does not apply to:

> *"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"*

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes.

As there's no dispute that A's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, A must have transferred funds to Company S1 and S2 for what it believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether or not A's intended purposes for the payments were legitimate, whether or not the intended purposes of A and Company S1 and S2 were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of Mr A (as the director and controlling mind of Company S1 and S2).

A made a smaller payment for the administrative costs of setting up the insolvency – and this appears to have been undertaken. So, the purposes align here – and I'm not persuaded that payment meets the CRM Code's definition of an APP scam. Q on behalf of A accepts this also.

But I'm not persuaded that's the case for the second payment A made to Company S2. A made the payment to Company S2 with the purpose being to hold A's assets in a designated client account while the liquidation process was carried out – with those funds being returned. So, I'm satisfied that A believed it was for a legitimate purpose.

I've then considered whether there's convincing evidence to demonstrate that Mr A's purpose (of the payment received into Company S2) was fraudulent. That is, whether Mr A's purpose must have been to misappropriate A's funds or otherwise deprive it of its money, rather than to use it for the purpose believed by A.

The evidence strongly indicates Mr A intended to misappropriate A's funds as a result of dishonest deception on the part of Mr A.

In summary:

- Mr A had been prohibited from carrying out any new work as an Insolvency Practitioner ('IP'). According to information on the Insolvency Service website, the date of that prohibition was 3 September 2020. While Mr A appealed, his appeal was rejected on 24 February 2021.

- A entered into agreements with Mr A to act as its liquidator on 22 February 2021. These documents are signed by Mr A.

- Therefore, the prohibition had been made prior to Mr O engaging Mr A's services. Yet in the written documentation given to Mr O, Mr A states that he is qualified to act as an IP and will act in A's liquidation.

- It seems unlikely that Mr A was unaware he was prohibited from acting as an IP. I find he most likely knew he was not able to act in the liquidation of A.

- A's funds were transferred to Company S2, on the premise that these would be held as client funds while the liquidation process was conducted by Mr A.

- Mr A is understood to have absconded with a significant sum of client funds (approximately £4 million), prior to carrying out the liquidation of A.

- A's money would have most likely formed part of those funds given the current liquidator of Company S1 and S2 can find no trace of A's money now with only £50.67 recovered from the beneficiary account.

Taking into account all of the above, I'm satisfied, on the balance of probabilities, that the money that was intended for and sent to Mr A/Company S2 was not used for Mr O/A's intended purpose. The evidence strongly indicates that this isn't a civil dispute with a *legitimate* supplier, but a scam orchestrated by Mr A, when he was aware he was prohibited from acting as an IP and took client funds illegitimately, later to abscond with those client funds.

So, as I'm satisfied A has most likely been the victim of an APP scam, I've considered whether it should be reimbursed under the CRM Code.

Is A entitled to reimbursement under the CRM Code?

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

- A made the payment without a reasonable basis for believing that they were for genuine goods or services; and/or Mr A/Company S2 was legitimate.

- A 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 have had a *'material effect on preventing the APP scam'* – as set out in the CRM Code – 'Standards for Firms'.

I will keep my findings here brief. I think it's quite clear that Mr O wouldn't have known that Mr A was acting illegally and would abscond with his funds – and considered he was a using the services of a legally verified IP. So, I think it's fair to say that he held a reasonable basis of belief when making the second payment. I don't think he would have known that Mr A was prohibited from undertaking any further IP work.

I have also considered whether Starling can rely on the exception to reimbursement that A ignored what the CRM Code deems to be an 'Effective Warning'. However, I am mindful the CRM Code explains that a firm, in assessing whether an exception to reimbursement applies such as ignoring an effective warning, has to take into account whether it would have had a *'material effect on preventing the APP scam'*. For the reasons I've touched on already above, Mr O (and A) had no reason to believe that Mr A wasn't anything but a genuine IP. So, I think it is fair to say that any warning provided wouldn't have had a material effect on preventing the scam, such was the belief that it was a legitimate payment for a legitimate purpose. So, I do not think an exception to reimbursement can be applied for this reason in any event.

With the above in mind, I don't think Starling has established that any of the exceptions to reimbursement under the CRM Code apply here. It follows that it should re-imburse A's losses for payment two in full.

It does not appear that there is any other possible way for A to recover the funds, such as through the ICAEW, or through any insurance policy that Mr A may have had in place – as it has been confirmed that Mr A's insurer invalidated a policy because Mr A didn't have an insolvency licence in place when acting. That said, I'm mindful there is the possibility that some funds are recovered later on down the line potentially through Mr A being located and charged via a police investigation. Should this happen then it would not be fair or equitable to put A in a position of double recovery.

In saying that I don't consider this possibility should prevent Starling from reimbursing A under the CRM Code now. However, I consider it is fair and reasonable that Starling can choose, if it wishes, to obtain an undertaking from A to entitle it to any money recoverable elsewhere, whether such recovery was due to A directly, or to another party on behalf of A.

In other words, Starling may require A to enter into an undertaking to assign to the bank any rights to any monies A (or another party on A's behalf) might elsewhere be entitled to recover in respect of this loss. If Starling asks A to provide such an undertaking, payment of the reimbursement awarded may be dependent upon provision of that undertaking. Starling may treat A'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.

Summary

Overall, I am satisfied, based on the evidence available, that A was more likely than not the victim of an APP scam when payment two was made. And A's fraud claim for that payment is therefore covered by the provisions of the CRM Code. I'm also satisfied no exceptions to reimbursement under the CRM Code apply. So, it follows that I'm satisfied Starling should reimburse the loss A incurred for that payment (less any recovered funds). And Starling is entitled to take, if it so wishes, an assignment of the rights to all future distributions to A under any relevant processes whereby potential compensation or recovered funds may be returned to A. With regard to additional compensatory interest (at 8% simple), I consider that it ought to be applied from 15 days after Q submitted A's fraud claim to Starling – as this is the timeframe the CRM Code sets out that a firm has to provide its answer to a fraud claim. And the additional compensatory interest should be paid until the date of settlement.

Putting things right

I uphold this complaint. Starling Bank Limited should pay A:

- £13,050.64 minus the recovered funds (£50.67); and
- 8% simple interest on that amount from 15 days after Q submitted the fraud claim to Starling until the date of settlement.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Starling Bank Limited to reimburse A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 5 February 2026.

Matthew Horner
Ombudsman