DRN-3581444

The complaint

A company which I'll refer to as C, complains that Starling Bank Limited won't refund the money the company lost after they made a payment to a fraudster.

What happened

The background to the complaint is well known to both parties and so I won't repeat it at length here.

Briefly, in early 2021, the company's director was called by someone pretending to be from British Telecom (BT). She was told that BT had detected some unusual internet activities on her account. She was asked to download a software and carry out certain checks. Eventually the caller persuaded the director that her personal and company's bank accounts were compromised.

The director explains that at one point she became suspicious and questioned the caller. The caller became very aggressive and revealed that he was not calling from BT. He threatened that if the director refused to co-operate and carry out his instructions, he will clear all the funds from her bank accounts, including the company's accounts. He even demonstrated on her personal account that he could do so (though it later transpired that this was a trick that was orchestrated to convince her that he had the ability to do this).

The director felt that she had no option but to carry out the caller's instructions and made some transfers from her personal account and from another account of the company. However, this complaint isn't about them. As I understand it, her banks in those instances have since refunded the money.

The director was then instructed by the fraudster to keep her laptop on overnight. She says that when she tried to sever the connection and shutdown the laptop, he called her back and issued further threats should she try to disconnect.

The following morning, the fraudster called her again. He was again very aggressive. He accused the director of trying to hide that C had an account with Starling bank but he knew all about it. He then told her to transfer £25,000 from that account, which she did.

It is unclear what happened next but the following day the director reported to Starling bank, and also to her other banks, Action Fraud and the police.

Starling contacted the recipient's bank but unfortunately nothing could be recovered. Starling told C that it couldn't reimburse the sum under the Contingent Reimbursement Model (CRM) code as, strictly speaking, this wasn't a scam. This is because by the time the director transferred the £25,000, the caller had already made her aware of his true intentions.

The director did not agree. She said that the police advised her that what happened here was an illegal activity as she had been under coercive control. So, she strongly feels that the bank should reimburse the sum.

One of our investigators considered the complaint and concluded that it should be upheld. They said, in summary:

- In this case, it would be considered that C authorised the payment, even though she was threatened to make the transaction.
- However, the bank is expected to have measures in place to detect any unusual activity on the account and intervene appropriately when it occurs. This includes looking out for payments which might indicate that a customer is at risk of financial harm. In this instance there was enough going on around the account activity that warranted intervention by the bank before the payment was processed.
- If that had happened, and had the bank called the director to verify the payment, it is more likely than not that the director would have either revealed what was happening or she would have been unable to maintain a plausible 'cover story' to disguise the real purpose of the payment. This in turn would have led the bank to take additional steps thereby eventually preventing the loss to C.
- But the bank missed this opportunity to prevent the loss to its customer. Therefore, it is fair that it reimburses C the sum lost, together with interest at 8% simple p.a.

Starling did not agree. In summary, the bank reiterated that the director went ahead and made the payment despite knowing what was happening. It said that the director ought to have called their bank(s) but she failed to do so. It said that the director acted in a grossly negligent manner. Therefore, the bank shouldn't be required to reimburse the loss. The bank was also of the view that even if it had intervened and called the director, she would not have told the truth to the bank and would still have made the payment, as she was listening to the fraudster at that time.

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.

I agree with the investigator that the payment was authorised by C, though it was under a unique set of circumstances.

So, the starting position is that the bank isn't liable for the transaction that was authorised by its customer. But this isn't the end of the story. For example, Starling has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes identifying vulnerable consumers who may be particularly susceptible to scams and looking out for payments which might indicate the consumer is at risk of financial harm.

Taking these things into account, I think the bank should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customer was at risk of fraud. Ultimately, it is a matter for Starling as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate. But where it is alleged that it didn't do enough to prevent a loss, I will look into the circumstances of the case and decide, based on what I have seen, whether in that case the bank could have fairly and reasonably done more.

Having considered what had happened, I agree with the investigator that the bank ought to have intervened prior to the £25,000 payment going out. This was an unusual and a very large sum out of the account. The payment considerably reduced the available account balance – which might have been an indicator that account was at risk of fraud.

In addition, about 20 minutes prior to this payment, an attempt was made to set up a new payee and that payment was blocked by Starling due to a mismatch in the account name. Immediately another new payee was set up with a different name to make this payment. It could well be that the payer made an error when setting up the new payee which they rectified but it could also be an indicator that account was at risk of fraud when taken together with the fact that an unusually large sum was being transferred out.

Further, all of this happened on an account that was only opened few days before. And in those few days the account received three large payments. Then this large outgoing payment happened. It is the case that the incoming and outgoing payments were all made by the director, but the bank wouldn't have known that for certain. This series of activities of large incoming and outgoing payments soon after an account was newly opened could also be an indicator that account was at risk of fraud.

Based on the circumstances of the transaction, I am persuaded there was enough going on that the bank ought to have been concerned that C might have been at risk of being scammed and should have intervened. I think the bank should have made further enquiries with C about the purpose of the £25,000 payment before allowing it to be made.

It is difficult to know for certain what exactly would have happened had the bank called the director. I note the bank's argument that even if it had intervened and called the director, she would not have told the truth to the bank and would still have made the payment, as she was listening to the fraudster at that time.

Had the bank called at the time, I am unsure whether the director would have told the truth, for fear of any repercussion. But I consider it more likely that she would have struggled to provide a coherent story had the bank asked all the right questions concerning the payment.

I say this because firstly - unlike what usually happens - in this case the director knew the true situation. Secondly it is sometimes the case that scammers 'coach' the payer beforehand as to how they should respond to any questions from their bank. But in this instance, it appears from what the director told us that there was no such prior 'coaching' other than being told that she should put 'Marketing' in the reference section. As such there was no 'cover story' for her to tell too. Added to this, the director was under severe stress at the time. Taken all of these into account, I think it is more likely that the director would have struggled to come up with a coherent story or stood up to scrutiny.

Further, the payment reference was 'Marketing' (as if the payment was towards some marketing activity of the company). However, as stated by the investigator, a quick check at the Companies House's records would have shown the bank that the nature of business of the payee was purportedly 'Construction of domestic buildings'. I doubt whether the director was even aware of what was stated in the Companies House's records and so I am unsure how she would have explained making a payment for marketing to a construction company.

I understand what Starling says and I appreciate it is difficult to know for certain what would have happened had it called the director. But in the circumstances, I consider it more likely that the director would have struggled to give a credible response.

The bank told us that in such circumstances where it wouldn't be happy with the response provided, it would reject the payment and refer it for further review, and no payment would be released without completing the review. Given what I said, I consider that is what would have more likely happened here.

Had there been a payment block at that time and the account was subjected to a further review, I consider it more likely that the true position would have come to light. I also think that the fraudsters would have 'moved on' as there would have been little prospect of receiving money from the account. Also, the delay would more likely have broken the 'spell', leading to the director taking actions which she did later.

Therefore, as Starling missed an opportunity here to help prevent the loss to C, I consider it fair that it compensates C for the loss.

The bank has said that C should be held liable because the director acted in a grossly negligent manner. It says that she went ahead and made the payment despite knowing what was happening, instead of calling the bank.

For gross negligence to apply, the director would need to have shown a very significant degree of carelessness. That is not what happened here. As already mentioned, this is a unique situation. I have considered the director's testimony. I have also listened to the calls she made to the bank the day after. It seems to me that she was under considerable pressure when she made the payment. She was under threat and in my view she was clearly in a vulnerable position, and at that point had no alternative but to follow the instructions of the fraudster or face the risk of losing all her money (or so she thought). So, I am unable to conclude that she acted grossly negligently in the circumstances.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of it, Starling Bank Limited should reimburse £25,000 to C (less any sum recovered and already returned), together with interest at 8% simple p.a. Interest should be paid from the date of the transaction to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 3 January 2023.

Raj Varadarajan
Ombudsman