

## The complaint

Mr A is unhappy after Starling Bank Limited decided not to refund him after he was the victim of a scam.

The complaint is being brought by a professional representative, claims management company (CMC) that I'll refer to as R.

The individuals who credited Mr A's account, funding all the payments as part of this scam have been added to the complaint. As a result, Mr E, Mr M and Mr Y have all been added as complainants to this complaint. But I will continue to refer to Mr A as the complainant as he was the one who interacted with M and made the payments from his Starling account.

## What happened

Mr A invested money into a company that I'll refer to as M. M had connections to other companies too, but for the sake of clarity I'll refer only to M in this decision.

This service is broadly aware of the scam Mr A fell victim to. He was far from the only person to be drawn into the scam and, sadly, this service has seen numerous complaints from different victims. We know investors were promised attractive returns and later on there was a genuine looking app which could be downloaded to monitor investments. The scheme continued for some time, with some 'investors' actually receiving some money back, as might be expected of a Ponzi/pyramid scheme.

Mr A believed he was investing on the basis his money would be used to purchase telecoms equipment at a discount, to then be sold on at a profit. Mr A didn't know at the time, but he was caught up in a Ponzi or pyramid scheme.

Mr A says he was introduced to M and the investment opportunity by a friend, who showed him returns and graphs reflecting investment performance. As well seeing his friend receive credits into his bank account, as a result of his investments with M. Mr A checked M's profiles on eBay and could see there were no concerns.

Mr A had been investing with M for a number of months, using another bank account, by the time he made payments from his Starling account. He made payments totalling £42,000, in October and November 2020. He received returns in November 2020 and January 2021, but says when he went to withdraw again, he was unable to do so.

Mr A said the investments were described as 'halal' and that the person behind M was a well-respected member of a mosque. So there appear to have been elements of the scam designed to appeal to the cultural and religious beliefs of some victims.

Mr A realised he'd fallen victim to a scam when he couldn't retrieve any funds from his account held with M. He eventually realised he'd been caught up in a Ponzi scheme. Mr A's losses from his Starling account total £38,735. He contacted Starling to tell it he'd been scammed.

Starling looked into the matter and declined Mr A's claim for reimbursement, having considered it under the principles of the CRM Code. It said as it was a Ponzi/Pyramid scheme it was not covered by the CRM code.

One of our investigators looked into things and said:

- Mr A's complaint is covered by the CRM.
- Mr A had a reasonable basis of belief that this was a genuine investment opportunity, and he was introduced to it by someone who had received returns.
- There was a sophisticated website which allowed investors to track their returns.
- Mr A carried out some research and saw positive reviews online.
- Mr A had to follow Know your Customer (KYC) checks which made it seem legitimate.

The investigator recommended a full refund of Mr A's losses. With 8% interest paid from the date Starling declined the claim under the CRM code to the date of settlement.

Mr A accepted the recommendations, but Starling didn't. In summary it said:

- Mr A did not have a reasonable basis of belief – he did not carry out any of his own checks on the organisation he was investing in.
- The company, Mr A sent funds to wasn't an investment company, and was not FCA registered. The company was a communications business that traded on an auction website.
- Mr A was told he would be a percentage owner of the business by investing. But this ought to have been registered on Companies House.
- It's unusual for a communications business to have an investment portal.

As the complaint couldn't be resolved it was passed to me.

I reviewed the complaint and in doing so provisionally concluded that the matter was covered by the CRM code. And that Mr A had been the victim of an APP scam and Starling didn't meet its standards under the CRM code. Starling agreed to this point.

I was also in contact with R, requesting additional information to support the claims that Mr A was making about trusting a friend. He said the friend had received returns, and this was Mr A's a basis (amongst other things) for believing the investment was legitimate.

Many of the statements that R submitted in the complaint form as reasons why the investment was convincing have turned out to be generic and not applicable to Mr A's individual circumstances. What remains are the following points that R believes make a strong case that Mr A had a reasonable basis of belief when making these payments

- He was recommended the investment by a friend who received returns – his bank statements have been provided as evidence of the returns he received from M.
- The scam ran through a tight knit community, and it was well known that people had been investing and receiving returns since 2018. And so Mr A had no reason to doubt the testimony of all these people.
- He checked the entry on Companies House and asked an accountant to verify M was legitimate.
- He checked M's auction selling website.

I've considered these points above and during the course of my correspondence with R have made the following comments.

At the time Mr A decided to invest, he says he checked M's entry on Companies house. Its not clear what checks he made by doing this. There's very little information available about

the company and its profit or loss so it's not clear what it was about those entries which made it appear as a legitimate business or investment opportunity to Mr A.

Mr A says he checked the auction website that M was selling the on. But again, he's just said it appeared legitimate and it's not clear what it was about those checks which made it seem like goods investment opportunity to warrant a £42,000 investment.

Mr A says he asked an accountant to verify M was legitimate and when I've asked for details about this, none have been provided.

Mr A's representatives provided a "tracker" which shows "profit" being made on each investment. Mr A has said that most investors were encourage to "compound their profit" and so didn't withdraw from the investment. The tracker itself is a spreadsheet and so I'm not persuaded that if this is what Mr A saw prior to investing that it is a reasonable basis for believing that investors were in fact receiving returns.

But Mr A said that a friend recommended the investment and has now provided some detail about who this was friend was and his account statements. Those statements show that the friend had been investing since at least July 2019 and between then and the time that Mr A invested, he'd received returns of over £45,000. I've also seen some evidence which supports that Mr A knew this friend for a number of years prior to this investment.

Following this information, I set out an informal provision decision to both parties. All parties now agree that Mr A's claim is covered by the CRM code and that Starling did not meet the "firms standards" under the code and is therefore liable to refund 50% of the losses. As all parties accept this point, I don't intend to comment on this element of the CRM code or Starlings actions further.

What remains in dispute, is whether Mr A had a reasonable basis of belief when making these payments. Following the information from Mr A's friend I was persuaded that a personal recommendation from him, plus the community aspect and the appearance of a genuine website and sales platform would have given Mr A, a reasonable basis for believing this was a legitimate investment opportunity. I set this out informally to Starling, but it didn't agree. It said given the amount Mr A invested he didn't do enough he didn't see an example of a great returns, no research, no security, no official documentation, no risks outlined meant it was all too good to be true.

As Starling didn't agree I have now reached a final decision on the matter.

### **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.

As I've set out in the background. All parties agree that Mr A's complaint is covered by the CRM code.

Starling made no comment about whether it met or failed to adhere to the firms' standards under the CRM code. Starling has continued to accept at least 50% liability during its communications with me and the investigator, previously. So, given this acceptance of liability I don't need to consider the firms standards under the CRM code further.

That leaves me to decide whether it is fair for Starling to apply the exception to full reimbursement. Which at R2(1) says

*c) In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that:*

- *(i) the payee was the person the Customer was expecting to pay;*
- *(ii) the payment was for genuine goods or services; and/or*
- *(iii) the person or business with whom they transacted was legitimate.*

In considering the above, I need review the actions Mr A took, to satisfy himself that M, and the investment opportunity was legitimate, and whether those actions mean he held a reasonable basis for belief.

It remains true that the information and evidence provided by R, whether at earlier stages in the complaint, or following my more recent enquiries, has remained generic and not necessarily related to Mr A directly. There is a lot that's been described about how the scam operated generally, and some of the broadly known features about how people were drawn in.

I have, however, now seen more specific evidence about the personal recommendation that Mr A received from a friend, who he'd known for a number of years. And who had received returns totalling £45,000 by the time Mr A decided to invest. Whilst that is less than half of the friends' overall investment (that I've seen), it doesn't seem unreasonable that the friend was expecting to continue to receive returns. And those returns are a significant sum, so I'm satisfied they would have reasonably persuaded Mr A that this was a viable and legitimate investment opportunity.

Starling says that Mr A failed to carry out enough checks on the company. But Mr A said that he did look at the telecoms company online and saw they were registered on Companies House, and had working auction and sales accounts, with positive reviews. He didn't consult the FCA website, but then he wouldn't have found anything about the telecoms company on the FCA website. By the time Mr A invested with funds from his Starling account he'd been receiving regular returns from investment payments made from another account, which is a common tactic used by scammers (particularly in Ponzi schemes) in order to entice their victims to invest larger sums. But it would have given Mr A the reassurance that he was investing in a legitimate opportunity as everything appeared as though he was making a return on his investment, and that he was able to make some withdrawals.

So, I'm not persuaded Starling has been able to establish that Mr A lacked a reasonable basis for believing the payments were genuine, and I don't consider he failed to meet his requisite level of care under the Code. Therefore, I conclude that Starling should have reimbursed in full Mr A under the provisions of the CRM Code.

### **Putting things right**

I direct Starling Bank Limited to:

- Refund Mr A, Mr H, Mr M and Mr Y the losses from Mr A's account totaling £38,735.
- Pay 8% simple interest from the date of the payments to the date of settlement.

### **My final decision**

I uphold Mr A's complaint against Starling Bank Limited and direct it to settle the complaint as I've specified above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A, Mr H, Mr M and Mr Y to accept or reject my decision before 12 August 2024.

Sophia Smith  
**Ombudsman**