

The complaint

Mr P complains that Starling Bank Limited did not refund a series of payments he lost to a scam.

What happened

Mr P received a phone call from an individual claiming to be from Starling who I'll call 'X'. X explained that Mr P's account details were being used to apply for loans, and that he needed to send funds to 'activation accounts' to kick out the scammers. Mr P had recently entered his account details in response to a text about a delivery, so felt this was plausible. And X was calling from a phone number that appeared to match Starling's.

Over the course of a month, Mr P transferred out around £31,000 across a number of his accounts and spoke to X nearly every day who helped facilitate this. He was told he would receive the funds back and the amounts he had to send were randomly generated. X told him how to circumvent Starling's security and told him to tell a cover story and fabricate evidence, which Mr P did. X told Mr P he would receive a refund of his funds but when this did not happen, he contacted Starling directly who said they had no record of contacting him. At that point, Mr P realised he had been the victim of a scam.

Starling contacted the receiving banks to try and recover Mr P's funds, however only £1.21 remained. Starling Bank is signed up to the Lending Standards Board's Contingent Reimbursement Model ("CRM") code, which gives additional protection to victims of authorised push payment ("APP") scams like Mr P. Only one of the receiving banks was also signed up to the voluntary code, and they reviewed the transactions received in line with the it. Having done so, the receiving bank accepted partial responsibility and refunded 50% of the transactions they received, totalling £2,392.53. However, Starling Bank did not agree that Mr P was due a refund from themselves under the CRM code.

Mr P referred the complaint to our service as he thought he should receive the remainder of the funds, and he felt someone within Starling had perpetrated the scam. Our Investigator looked into it and felt that Starling Bank was able to rely on the exceptions set out in the code. Namely that Mr P lacked a reasonable basis to believe X was legitimate. They also said Starling intervened in the payments as they were unusual, but Mr P lied and doctored evidence, so Starling was not given the opportunity to provide an effective warning related to the scam. Because of this, they did not think Starling were required to provide a refund under the CRM code.

Mr P disagreed with the findings. In summary he felt that Starling should have warned him about the possibility of impersonators and spoofed numbers, and that his lack of knowledge of financial services, as well as the fact he was away from home at the time, made him more vulnerable to the scam.

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.

Was Mr P vulnerable?

The CRM Code requires firms to assess whether a customer was vulnerable to the APP scam they fell victim to at the time it occurred. The relevant sections state:

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered."

Mr P has said he was vulnerable because he was in another country away from home at the time, and he did not have an in-depth knowledge of financial services making him more susceptible to the scam. I've considered this carefully.

While I appreciate being away from family and in another country can be difficult, I don't think this made Mr P any more or less likely to fall for this particular scam. He would still be able to communicate with family if he felt the need to discuss what was happening with them, especially as the scam occurred over an extended period of time.

I've taken on board Mr P's comments that he had limited knowledge of financial services and this made him less able to protect himself from the scam. On balance, while I accept a lack of experience of financial services and how they work can make it easier for an individual to be persuaded by a scam, I don't think this would have had much of an effect in this case. The individual persuaded Mr P that his account was at risk due to a link he clicked on previously and by calling from a number similar to Starling's own telephone number, and this is how the scam was set in motion. On balance, I don't think a more in depth knowledge of financial services would have necessarily have made it easier for Mr P to protect himself from the scam in the circumstance.

With this in mind, I don't think Mr P could be considered vulnerable under the relevant section of the CRM code.

CRM considerations

Mr P has not provided any evidence of his communications with the scammer or the phone number he was contacted from. So, it is difficult for me to say with certainty that he has been the victim of an APP scam in the circumstances. But I do acknowledge that the payments in question appear to be suspicious and fit the general pattern of scam payments. To be fair to Mr P, I have assessed his case as if a scam occurred.

The starting point under the relevant regulations and the terms of Mr P's account is that he is responsible for transactions he's carried out himself. However, Starling are signatories to the CRM Code and, taking into account regulators' rules and guidance, codes of practice and what I consider to have been good industry practice at the time, should have been on the lookout for unusual and out of character transactions to protect its customers from (among other things) financial harm from fraud.

I've first considered whether Starling should refund Mr P under the provisions of the CRM Code. They seek to rely on one of the exceptions to reimbursement, that Mr P made the payments without a reasonable basis for believing that X was legitimate. And they've said they met their requirements under the code.

Did Mr P have a reasonable basis of belief that X was legitimate?

Starling has said that Mr P did not have a reasonable basis for believing that X was legitimate, which is an exception for reimbursement under the CRM Code. I've carefully considered this, and I agree that this exception can be applied. I'll explain why in more detail.

Mr P was called on a phone number that was very similar to Starling's, only the end digit was different. And I therefore think it was reasonable that Mr P initially thought he was speaking with a genuine member of staff at Starling. However, I think there were a number of red flags that should reasonably have indicated to Mr P that X was not legitimate.

Firstly, despite being told that his Starling account was at risk, he was advised to transfer his funds from other third-party accounts into his Starling account before being transferred out. I think it should reasonably have been a warning to Mr P when he was advised to move funds *into* an at-risk account.

While X initially phoned from a number similar to Starling's, he then switched to a different number. I do understand that Mr P was already convinced X was genuine at that point, but I think this is an additional factor to X's illegitimacy that Mr P could have noticed.

Mr P was told to ignore warnings and to provide cover stories to multiple banks, including Starling. Even taking into account Mr P's lack of financial knowledge, I think it should have been a strong warning to him that something was not right when X asked him to lie. Especially as X was supposedly calling from the Starling fraud team. It therefore doesn't follow that a member of Starling staff would ask Mr P to lie to other Starling staff and fabricate evidence in order to ensure funds were transferred out of his account.

Having carefully considered everything available to me, I don't think Mr P did had a reasonable basis to believe X was legitimate or a member of staff at Starling and I don't think he met his obligations under the code.

Did Starling meet their obligations under the code?

Starling also had an obligation to provide an effective warning where it identified a scam risk during the payment journey. I can see that the payments in question were generally under £3,000 and on balance, I don't think the value of them alone was an indication to Starling that there was a scam risk.

However, over time a pattern of spending did begin to emerge and the frequency of the payments began to match the pattern of a scam. And at that point, Starling intervened and asked Mr P some additional questions about the payments before processing them. Mr P was guided by the scammer in his answers. He therefore said he was paying friends and family who were due to visit him abroad for a family gathering so they could purchase plane tickets. He therefore said he had met the individuals he was paying before and it appears he fabricated a text conversation between him and a payee about the plane tickets.

Eventually, Starling was satisfied with the reasons and evidence provided by Mr P and they released the funds. On balance, I do think Starling Bank met its obligations under the CRM Code in this instance. It correctly identified a scam risk, and intervened in the payment. Based on Mr P's answers, it released the funds and gave general scam warnings to the earlier payments. Unfortunately, Starling was unable to identify the correct risk as Mr P was not truthful in his answer to them, so they were deprived of the opportunity to provide an effective warning in the circumstances, including a warning about spoofed numbers and the possibility of impersonators.

As I think Mr P did not meet his obligations under the Code, and I think Starling Bank met theirs, it follows that Mr P is not eligible for reimbursement under the rules of the CRM Code.

APP considerations

But that is not the end of Starling's responsibilities. I also have to consider other 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.

While Starling was obliged to follow Mr P's instruction and process the payments he authorised, there is also a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Starling Bank did enough to try to keep Mr P's account safe.

As previously set out, I do think a pattern of spending began to emerge which fit the general pattern of scam payments. With this in mind, I think it was reasonable that Starling intervened and asked additional questions before processing the payments. I can see they asked Mr P for evidence of the flight tickets he said the money was for, but Mr P explained these had not yet been purchased and most of the discussions were over the phone. When Starling did not accept this and wanted some form of evidence of a conversation to corroborate his version of events, Mr P was able to produce a text exchange between himself and a family member. It is more likely this was fabricated by Mr P to try and circumvent Starling's fraud security.

Starling accepted this and, on balance, I think this was reasonable in the circumstances. Mr P had consistently said the purpose of the payments was for purchasing flights and he had provided evidence, albeit more likely fabricated, to back this up. As Starling had no other reasons to suspect Mr P was not being truthful, I think it was reasonable they released the payments and unblocked his account. And I therefore don't think they missed an opportunity to reveal the scam

Recovery of funds

One of the beneficiary banks was signed up to the voluntary CRM code and assessed the payments that came into the account held by them. Having done so, they accepted some responsibility for the scam being successful and paid 50% of what was sent to them to Mr P, via Starling. This totalled £2,392.53. This is separate to the investigation against Starling so I won't be commenting on this further.

Once Mr P made Starling aware of the scam, they contacted the beneficiary banks to try and recover the funds. Unfortunately, some time had passed since the last payment and generally speaking scammers tend to remove funds from an account as soon as they receive them. With this in mind, I can understand why only £1.21 was remaining in the beneficiary accounts and I don't think any more could reasonably have been recovered in the circumstances.

My final decision

I do not uphold Mr P's complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 17 May 2024.

Rebecca Norris
Ombudsman