DRN-4517130

Complaint

J, a limited company, is unhappy that Starling Bank Limited didn't reimburse it after it fell victim to an investment scam. This complaint is brought on behalf of J by Mr T, its sole director. For simplicity's sake, I've generally referred to Mr T throughout the text of this decision.

Background

In late 2020, Mr T was persuaded to invest his money in an investment scheme. He was introduced to a platform which claimed to be a facilitator for investment opportunities. He was told he could expect an annual return of around 7% on his investment. He says that he carried out a range of checks to make sure that the opportunity was a legitimate one. He was also reassured by the fact that many other people he knew had invested their money through the same platform and had seemingly earned good returns. Unfortunately, Mr T wasn't paying a legitimate intermediary, but a scammer. He made one payment of £50,000 from his Starling account in November 2020.

Once he realised he'd fallen victim to a scam, he contacted Starling. It didn't agree to refund the £50,000 loss. Mr T was unhappy with that response and so he referred his complaint to this service. It was allocated to an Investigator. The Investigator was initially minded to uphold the complaint. However, Starling pointed out that this payment was significantly over his daily transfer limit. In order to make it, he needed to contact the bank first. Starling pointed out that it asked him what the purpose of the payment was. He described it as a *"business marketing expense"* and said *"it is a payment to advertise my business via Facebook ads, ad cost and expert cost."*

The Investigator asked why Mr T had given a misleading payment reason to Starling at the time. He replied:

> *"I spoke to [the investment] team on the phone. They told me not to mention that it was for an investment and to put some sort of reference that is payment for something, hence why I have listed it as business expense. They said it was better not to mention it…*

Our Investigator questioned whether he had any concern about whether a legitimate company would want him to mislead his bank. He said that he'd had this conversation with a personal friend who happened to work as the operations manager for the company at the time. He said:

> *She is the friend who I trusted initially and got me interested in this whole [investment scheme]. She is also the one who told me "Better not to mention investment" when asked by Starling. At the time this did not raise any red flags for me as [she] was a friend I trusted, and she vouched that [the investment] was indeed legit.*
>
> *[…]*
>
> *Also [the director of the company] said he wants to keep his company on the low,*

therefore he doesn't want banks to find out now. But once he's FCA regulated he doesn't mind people telling their banks."

On reflection, the Investigator decided against upholding the complaint. She considered it under the terms of the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. She thought that Mr T didn't have a reasonable basis for believing that the company he was transacting with was legitimate. In her view, a legitimate company wouldn't have asked Mr T to mislead the bank.

She also thought Starling had done what was expected of it under the Code – it didn't provide Mr T with an "effective warning", but given that Mr T had given misleading information to the bank during the payment process, she didn't think Starling would've had any grounds for thinking Mr T was falling victim to an investment scam.

Mr T disagreed with the Investigator's opinion. The response was lengthy, but it reiterated the detailed checks he had carried out. It also highlighted that Mr T had spoken with friends who had invested and he could see that they'd made returns. This strengthened his conviction that this was a legitimate investment opportunity.

The response also argued that it was Mr T's personal friend who had told him that it would be better to not tell his bank that he was transferring the funds for investment purposes and that, once the platform was authorised by the Financial Conduct Authority, it would be ok to share more details. Mr T's representatives didn't think it was fair to argue that he lacked a reasonable basis of belief because of a message he received from a friend on a social messaging platform.

As Mr T disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, that isn't the end of the story. Starling is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Ms M fell victim to, in all but a limited number of circumstances.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- *the customer made the payment without a reasonable basis for believing that … the person or business with whom they transacted was legitimate.*

- *the customer ignored an effective warning in relation to the payment being made;*

There are further exceptions within the CRM code, but they don't apply here

Reasonable basis of belief

I recognise that there were several factors here that support the argument that Mr T was

reasonable in believing this investment to be legitimate. In particular, I think the fact that he knew other people socially who had benefited from the same investment would've been a source of significant reassurance for him. However, I am concerned by the fact that he knowingly misled the bank to make sure the payment went through and did so at the scammer's request. On the face of it, I think the reasonable person wouldn't expect a legitimate firm to operate in this way and that being asked to mislead the bank would be a clear indication that the investment wasn't above board.

It's been argued that any concern he might have had about this was lessened by the fact that it was a trusted friend who told him to not disclose that he was making an investment. I have concerns about Mr T's testimony on this point. He initially told us that he spoke to *"the team on the phone."* It was only when this was questioned that he said that the team was, in fact, a friend of his who worked for the scammers. It seems strange to me to refer to having a conversation with *"the team"* when you're actually speaking with a trusted friend. I'd also add that Mr T (via his representatives) has since claimed that this information was communicated via a WhatsApp message.

In addition, even if the source of the message (i.e. a personal friend who you trusted) meant you wouldn't have those concerns, Mr T also told us that the director of the fraudulent operation had said "*he wants to keep his company on the low, therefore he doesn't want banks to find out now."* In other words, the person running the operation wanted to keep his activities secret. That ought to have been a significant cause for concern and its impact wasn't weakened by the fact that a trusted friend was the source of the message.

I think Mr T ought to have recognised the risk that this investment opportunity wasn't what it seemed and gone ahead only with great caution. Overall, I'm satisfied that he made this payment without a reasonable basis for believing the business he transacted with to be legitimate.

I've also considered whether Starling did everything that was expected of it under the Code. The Code says that, where a firm identifies an APP scam risk in connection with a payment, it should provide its customer with effective warnings. However, while this payment was large enough to warrant some kind of intervention on Starling's part, the fact that Mr T didn't tell it that he was making the payment for investment purposes meant it could neither properly assess the risk, nor provide him with a warning that was tailored to investment scams.

Overall, I'm persuaded that Starling was entitled to not reimburse J under the CRM Code. I don't say any of this to downplay or diminish the fact that Mr T has fallen victim to a cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it's correctly assessed his claim here.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 4 April 2024.

James Kimmitt
Ombudsman