

## **The complaint**

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

## **What happened**

Mr V was contacted on a messaging service by a recruiter, who offered him the opportunity to work from home rating mobile phone applications ("apps"). He checked the company, who I'll call 'F' for the purposes of this decision, who appeared to be a legitimate app related company based overseas, so he signed up. Mr V was instructed to set up a wallet on a cryptocurrency exchange platform, and purchase cryptocurrency to send to F, in order to rate the apps. He would then receive commission once a certain bundle of apps had been rated. He made the following payments:

- 28/11/2022: £446
- 28/11/2022: £53.87
- 28/11/2022: £99.55
- 30/11/2022: £159.97
- 30/11/2022: £1,261.69
- 3/12/2022: £3,591
- 4/12/2022: £5,623.20
- 4/12/2022: £932.80

When Mr V was asked for more money, he realised he had been the victim of a scam and he had lost his funds. He raised a claim with Starling Bank, who explained that the payments were not covered by the Contingent Reimbursement Model ("CRM") Code, which provides additional protection for victims of authorised push payment ("APP") scams. So, they did not uphold his complaint.

Mr V referred his complaint to our service and our Investigator looked into it. While they accepted the payments were not covered by the CRM Code, they still felt the payments were unusual enough to have warranted further intervention by Starling Bank. While they accepted Starling Bank did ask some questions prior to the payments being processed, they didn't agree these went far enough. But they also felt Mr V should bear some responsibility for the scam occurring, as he didn't do enough to be certain he was working for a genuine company. So, they recommended a refund of 50% of the transactions.

Starling Bank felt the initial four payments were of a low value so should not reasonably have flagged as suspicious, however they accepted the fifth payment of £1,261.69 could have been seen as unusual so agreed to a refund from that point onwards. With a deduction of 50% for Mr V's contributory negligence. Our Investigator agreed this was a fair outcome, however Mr V asked for the case to be reviewed by an ombudsman.

Because 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.

Having done so, I agree with the recommended redress as set out by Starling Bank, I'll explain why in more detail.

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 be good industry practice at the time.

Firstly, I'm satisfied that Mr V has been the victim of a scam here, one that cruelly preys on individuals in need of a job or additional income. I think he was deceived into handing over his money with no intention of him receiving a pay out from the scam. As has already been explained, these transactions do not fall under the CRM Code, so Mr V's case does not fall under the same level of protection as one under the CRM would.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr V authorised the payments in question, as he believed they were part of a legitimate job. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Starling Bank was obliged to follow Mr V's instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out 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 V's account safe.

Starling Bank has offered to reimburse Mr V from the fifth payment onwards. On balance, I think this is a fair offer and in line with what I would have recommended in the circumstances. The initial four payments are lower in value, and I would not reasonably have expected these to flag as unusual. I note some questions were asked around the payment of £159.97, but as this was of such a low value, I think the questions asked were proportionate to the risk level involved. So I agree that Starling Bank should refund Mr V from the fifth payment onwards.

I've finally considered whether Mr V should reasonably bear some responsibility for the losses as a result of any negligence in his actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether he has acted as a reasonable person would to protect himself against the loss he suffered. The test is objective but needs to take account of the relevant circumstances.

Mr V was contacted via a popular messaging service by an individual using a private number. He was told his details had been obtained from a recruitment list but was given no further information about this. I think this is an unusual way to be contacted about a job opportunity and Mr V acknowledged during the chat that he would normally expect to be

contacted on a recruitment site or by e-mail. So, I think he also realised that something may not be right.

Mr V did not go through a recruitment process or receive any documentation about his employment. While he looked up F as a company and they did exist, albeit overseas, the legitimate company is not related to reviewing apps for reimbursement. Finally, it is difficult for me to agree that it is reasonable for Mr V to expect to pay in cryptocurrency in order to receive commission from a genuine job opportunity.

With this in mind, I agree with the reduction recommended of 50% of redress, to account for Mr V's contribution to the scam occurring.

Starling Bank initially attempted to recover Mr V's funds from the beneficiary accounts. However, as these payments went to genuine individuals to purchase genuine cryptocurrency, they were not eligible for recovery.

### **Putting things right**

I now direct Starling Bank to refund Mr V 50% of the final four transactions, totalling £5,704.35.

It should also add 8% simple interest from the date of the transactions to the date of settlement.

If Starling Bank considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold Mr V's complaint in part and direct Starling Bank Limited to pay the redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 25 March 2024.

Rebecca Norris  
**Ombudsman**