

## The complaint

Mr W complains that Starling Bank Limited did not refund the £10,000 he lost to a scam

## What happened

All parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here.

In summary, Mr W invested £10,000 in a company he was introduced to by an old friend. Despite being promised returns, he never received any funds back and he was eventually unable to contact the individuals connected to the investment again. Starling Bank felt this was a civil dispute so did not look into it further.

Mr W brought the complaint to our service and our Investigator did not agree it was a civil dispute. As a result, they reviewed the transaction under the Lending Standards Board Contingent Reimbursement Model ("CRM") Code and they initially upheld the complaint in part. However, following Starling Bank's response and additional comments, the Investigator felt Starling Bank had met their obligations under the code so they did not uphold the complaint.

As Mr W disagreed, the complaint was passed to me for a decision. I issued a provisional decision in which I explained I intended to partially uphold the complaint based on what I'd seen so far. My provisional decision read as follows:

*The starting point in law is that Mr W is responsible for any payments he's authorised himself. However, the CRM Code requires a firm to reimburse victims of APP scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply.*

*Was Mr W the victim of a scam?*

*I've firstly considered whether the payment is covered under the CRM Code, as Starling Bank has said this should be treated as a civil dispute. While I appreciate Mr W has signed a contract with the 'investment firm', it is a common tactic for a scammer to provide false documents in order to try and provide weight to a scam and entice the victim to hand over their money. I've reviewed the bank statements for the beneficiary bank account, and I'm satisfied that the scammer deceived Mr W and took his funds with no intention of investing them on his behalf. So, I'm satisfied this meets the definition of a scam under the CRM Code.*

*Was Mr W vulnerable at the time?*

*Mr W has said that he was vulnerable at the time of the scam, as he was caring for his sick mother and was looking for additional income to renovate his house. I've considered whether Mr W's circumstances impacted his capacity to protect himself against this specific scam. On balance, I don't think it did.*

*While I appreciate Mr W was looking for opportunities to make more money, from what I've seen so far, I don't think he was being pressured by the scammers to invest quickly. With this in mind, and the fact he was not looking to receive any returns for at least six months anyway, I don't think his personal circumstances and his need for additional income at the time meant he was more vulnerable to this particular scam.*

*Did Mr W meet his obligations?*

*Starling Bank has said that Mr W did not have a reasonable basis for believing that he was paying for legitimate services, 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 W was introduced to the investment by someone he trusted who said they had received returns, and he visited the office which added a layer of legitimacy to the scam. So I can understand why he initially felt this was a legitimate investment. However, there were some aspects of the scam which I think, as a whole, should reasonably have made Mr W cautious about continuing and ultimately meant he did not have a reasonable basis to believe he was dealing with a legitimate investment firm.*

*Mr W signed an agreement; however, this was a loan agreement which stated he would be paid with returns received on his investment. It is unusual for an investment to be put in the context of the consumer lending the firm funds to use as part of the investment. So I think this should reasonably have made Mr W ask additional questions around the investment and how it worked. Despite this, Mr W was not given an explanation as to how his funds would be invested by the firm.*

*In addition, Mr W was promised a return of 100% of his investment within six months, with no explanation as to how this would be achieved. This kind of return is significant and should have been seen as too good to be true in the circumstances. This, along with the loan agreement, should reasonably have given Mr W cause for concern about the firm he was dealing with.*

*When Mr W made the payment, Starling Bank contacted him via the in-app chat. In this, Starling Bank said if anyone is explaining what buttons to click or asking you to read the text on this screen aloud, they are a fraudster. Mr W has confirmed he was being told what responses to give in that conversation. So, I also think this should have been a warning to Mr W that the individual he was dealing with was not legitimate.*

*Finally, Mr W made the payment to an individual, instead of an account in the name of the firm he was dealing with. And the name of the payee was not that of the individual he had been dealing with. Considering all of this as a whole, I think Mr W should reasonably have had concerns about the legitimacy of the company he was dealing with, who he was paying and the fact the returns he had been promised were too good to be true. So, I think it is reasonable for Starling Bank to apply the exception as set out in the CRM Code.*

*Did Starling Bank meet their obligations?*

*Starling Bank also had an obligation to provide an effective warning where it identified a scam risk during the payment journey. The payment of £10,000 was out of character when compared to Mr W's genuine account activity. It was a high value payment, and the account was not often used in the months leading up to the it. So, I think Starling Bank should reasonably have provided an effective warning to Mr W.*

*I can see that the payment was flagged for additional questions, and Mr W was guided by the scammer in his answers. He therefore said he was paying friends and family who were in trouble, but that he had met them before and he got the details for the payment over the phone. Because of this, Starling Bank provided a general warning that was related to safe account scams and not an investment scam, which Mr W had fallen victim to.*

*On balance, I do think Starling Bank met its obligations under the CRM Code in this instance. It correctly identified a scam risk, and provided a warning based on those risks. Unfortunately, the specific risk it identified was incorrect, but this was not due to errors on Starling Bank's side. Instead, this was in reaction to information provided by Mr W.*

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

#### *APP consideration*

*But that is not the end of Starling Bank'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 Bank was obliged to follow Mr W's instruction and process the payment he authorised of £10,000, 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 W's account safe.*

*As I previously set out, I think the payment in question was unusual and out of character when compared to Mr W's genuine activity on the account. So, I do think it warranted intervention by Starling Bank. What this looks like will depend on the level of risk the payment poses. As this was a high-value payment to a new payee, on an account that had hardly been used in the months prior, I think a more detailed intervention was needed.*

*I can see Starling Bank did ask some questions via the in-app chat, but on balance I don't think these were detailed enough to satisfy themselves that Mr W was not at risk of financial harm. They did not find out the specific purpose of the payment or dig deeper as to who the payment was specifically going to. Mr W has said he was told to say the payment was for a friend or family member, but he's made no mention of a more detailed cover story if he was asked further questions around this. As Mr W had signed a loan agreement, was paying an individual instead of the investment firm and had been promised unrealistic returns, I think some more probing questions could reasonably have revealed something was not right and the scam could have revealed. With this in mind, based on what I've seen so far, I think Starling Bank should reimburse Mr W.*

#### *Should there be a reduction in the redress?*

*I've finally considered whether or not Mr W should reasonably bear some responsibility for the loss 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.*

*Based on what I've seen so far, I think it is reasonable to reduce the redress by 50% to account for Mr W's contribution to the loss. I've already gone over some of the reasons why I think there should be a reduction earlier in this decision so I'll briefly summarise them again. I think Mr W could have seen providing a loan to an investment firm as unusual, that the returns explained were too good to be true and he could reasonably have questioned paying an individual rather than the firm. For these reasons, I do think Mr W has contributed to the loss and I think a reduction of 50% is reasonable.*

*Could Starling Bank have recovered the funds*

*I can see Starling Bank did attempt to recover the funds from the beneficiary bank once they were aware of the scam. Unfortunately, considering the length of time between the transactions occurring and the scam being discovered, none were remaining by the time Starling Bank were aware. So, I think they did what they could to try and recover the funds.*

Mr W responded and agreed with the provisional findings.

Starling Bank responded and again queried whether this was a complaint that could be considered under the CRM Code, as they still felt it could be a civil dispute. And they reiterated that as Mr W had not been truthful when answering questions about the payment prior to it being processed, it's likely he would have done the same had they telephoned him to ask further questions.

### **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've considered Starling Bank's additional comments carefully and having done so they do not change my initial findings. I'll explain why in more detail.

As explained in my provisional decision, I am satisfied that Mr W has been the victim of a scam as defined in the CRM Code. I have considered everything Starling Bank has raised and having done so, these comments have not changed my mind. I note that the individual Mr W paid is the director of other companies, however a number of these have been struck off either compulsorily or voluntarily and on balance I don't think this alone is persuasive evidence this is a civil dispute. In addition, a number of the active companies have only very recently been created.

From reviewing the beneficiary bank account statements, I can see Mr W's funds were not utilised as intended and I think the scammer deceived him into parting with his funds with no intention of providing him a service or giving him returns. So I am satisfied that in this particular case, Mr W has been the victim of a scam and the payment can be considered under the CRM Code.

Starling Bank have reiterated that Mr W not answering truthfully impacted their ability to uncover the scam. However, as set out in my provisional decision, I don't think the level of intervention Starling Bank applied was proportionate to the risk the payment posed. It was a high value payment to a new payee on an account that was barely used in the months prior, so I think the activity was unusual enough to warrant a detailed intervention and not the simple questions put forward by Starling Bank.

As I mentioned in my provisional decision, Mr W has said he was told to mark the payment as 'friends and family' but has not mentioned a more detailed cover story than that. So I think more detailed and probing questions from Starling Bank about the purpose of the payment

specifically, who precisely he was paying and why, would most likely have revealed the scam. Especially considering the circumstances of the scam as outline in my provisional decision. With all of this in mind, I am still of the opinion that Starling Bank did not carry out a proportionate intervention prior to the payment being processed and if they had, the scam most likely would have been revealed. So I uphold this complaint in part.

### **Putting things right**

Starling Bank Limited should refund the £10,000 payment and apply a 50% reduction to the reimbursement to account for Mr W's contributory negligence to the scam.

They should also apply 8% simple interest from the date of the payment 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 W how much it's taken off. It should also give him 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 this complaint in part and recommend Starling Bank Limited pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 April 2024.

Rebecca Norris  
**Ombudsman**