

The complaint

Miss M is unhappy that Starling Bank Limited won't reimburse her after she fell victim to a scam.

What happened

Miss M was introduced to an investment opportunity by someone she considered a close friend. This friend said they had made significant profits by investing through a trading platform run by someone they knew, I'll call this platform S. A few months later, when Miss M had some money available, she expressed an interest in investing too.

Miss M was then contacted by an individual working for S who took her through an application process. This included an application form and a detailed contract Miss M had to sign which was then countersigned by the individual who had started S, Mr B. Miss M was also given details of an account to pay her investment to.

Miss M authorised a payment of £10,000 to this account from her Starling account in November 2021, and over the next few months she received regular reports from employees of S showing how her investment was doing. In early 2022 Miss M had more funds available and decided to make a further investment in S.

Miss M's friend told her that any new investment would need to be made to a different account, still linked to S but under a different name. The explanation given for this was that S was making efforts to become regulated by the Financial Conduct Authority, and that any funds held in the old account belonging to S would be migrated across at some stage.

Miss M agreed to invest a further £10,371, and completed a new application form as well as identity checks, Miss M also signed a new contract. She then made the payment to this new account on 25 April 2022. This payment was stopped by Starling, but after it asked Miss M a series of questions via its chat function regarding what the payment was for and where it was going, Starling released the payment.

A couple of weeks later, Miss M received an email from Mr B saying that her friend had scammed her. Miss M contacted her friend, who said he had discovered that S was in fact a Ponzi scheme rather than a legitimate investment. After discovering that others also appeared to have fallen victim to this scam, Miss M ultimately reported what had happened to the police, and to Starling.

Starling looked into things but said it was unable to complete a full investigation until the outcome of the police investigation was known, so it declined to refund Miss M's loss at that stage. Miss M was unhappy with this, so she referred her complaint to our service.

In its submissions to us Starling reiterated that it did not feel it could fully assess Miss M's claim until the outcome of the police investigation was known. But it nonetheless confirmed that it felt it had given Miss M effective warnings (as defined by the Lending Standards Board's Contingent Reimbursement Model "CRM" Code).

One of our Investigators looked into Miss M's concerns. They were satisfied Miss M had been the victim of a scam and that, as per the CRM Code, she was entitled to a refund of her loss. This is because they considered she had a reasonable basis for believing the investment was legitimate, and they did not consider that Miss M had ignored any effective warnings provided by Starling.

Starling disagreed with the Investigator's view. It maintained that the warnings it gave were suitably impactful. Starling also argued that Miss M would have proceeded with the payments regardless of any warnings, given the trust she had in her friend. Starling also reiterated that it did not consider it was reasonable for it to take any action regarding Miss M's claim until the outcome of the police investigation was known. It said this was to avoid the possibility of Miss M being compensated by Starling and then also by the courts, and that there was a possibility the police would determine that no scam had taken place here.

As no agreement could be reached, the complaint has been passed to me to consider and come to 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.

In doing so, 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.

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, where the customer made a payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

The CRM code is of particular significance here. It requires its signatories to reimburse customers who are victims of scams like this one, unless some limited exceptions apply, and Starling is a signatory of the Code.

Starling has referred to R3(1)(c) of the CRM Code as a justification for pausing investigation into the case. That section of the Code says:

"If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision."

Starling has said there are two issues at play here. Firstly, it has suggested that it is possible the police investigation may determine that S was not a scam. My determination of this complaint can't convict anyone of a criminal offence – that is the role of the criminal courts. I have to decide only whether it is fair and reasonable for Starling not to have upheld Miss M's claim for reimbursement of her losses. The courts' rules of evidence don't apply to my investigation of complaints. When considering the evidence supplied by Miss M, the evidential standard applicable is the balance of probabilities. However, given the serious nature of the allegations involved, there must be convincing evidence to lead me to find it more likely than not that Miss M was the victim of a scam rather than a failed investment.

And with what I have seen I am satisfied that this most likely was a scam. We as a service have seen a great deal of information regarding how S operated. Amongst other things, it is worth noting that statements for the beneficiary accounts do not support that legitimate investment activity was being carried out by S. In addition, S (and its linked companies) was not authorised by the FCA to carry out trading, so was clearly operating illegitimately. Along with the weight of testimony we have seen from other consumers who invested in S, I am satisfied that it is more likely S was not acting legitimately, it follows that I'm satisfied Miss M was the victim of a scam.

Starling has also expressed concern that any court action regarding S's actions may lead to Miss M being compensated twice for the same loss, by Starling and by the courts. I don't know how likely it is that any funds will be recovered as part of those proceedings. But I agree that, if Starling has already paid a refund, it would not be reasonable for those recovered funds to be returned to Miss M. However, since Starling can ask her to undertake to transfer to it any rights she may have to recovery elsewhere, I'm not persuaded that this is a reasonable barrier to it reimbursing her in line with the Code's provisions.

Having established that the payment is covered by the CRM Code, I've gone on to consider whether any of the relevant exceptions to reimbursement were applicable. The Code allows a firm to not reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made; or
- The customer made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate.

Starling says that one or more of the relevant exceptions are applicable in this case.

I'm satisfied that the first exception listed above isn't applicable here. I understand Miss M did see a warning when she set up each new payee she was making a payment to. But this warning was generic and required her to follow a link for any detailed information about scams, so I don't think this could be considered an effective warning under the CRM Code.

When Miss M made each payment to the scam, she was then questioned by Starling regarding what the payments were for, and was provided with some warnings relating to investment scams. Specifically, she was told to always research a company, to be wary of returns that sound too good to be true, and that financial advisers and financial firms should be regulated by the FCA. But these warnings did nothing to bring to life what Miss M should be looking for when researching an investment, or the consequences of falling victim to an investment scam might be – as required by the Code – and did not detail any other ways to verify an investment. In her online chats with Starling Miss M was also shown various warnings that did not apply to her circumstances, around impersonations scams and around her being coached on how to answer questions.

So given that I'm satisfied Miss M was not shown an effective warning, I can't fairly say that Miss M failed to take appropriate action in response to it and so this exception doesn't apply.

I'm also satisfied that Miss M made these payments with a reasonable basis for believing that the business with which she transacted was legitimate. She'd relied on a recommendation from a close friend who she had known for around 15 years. And given the paperwork she received regarding her investment she had no real reason to question whether S was legitimate. And bearing in mind the level of her trust of her friend, I'm not persuaded that there were any clear and unambiguous red flags that ought to have put Miss M on notice that she might be about to fall victim to a scam. As a result, I'm persuaded that Starling should reimburse her under the Code.

So, in summary, I don't consider that Starling can reasonably rely on the exceptions it has detailed. It follows that I consider Starling should refund the payments made as part of this scam as per the CRM Code.

Putting things right

To resolve this complaint Starling should:

- Refund the payments made as a result of this scam; and
- Pay 8% interest on that amount from the date the claim was declined to the date of settlement.

My final decision

I uphold this complaint. Starling Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 1 August 2024.

Sophie Mitchell
Ombudsman