

The complaint

F, a limited company, complains that Starling Bank Limited won't refund the money it lost when it was the victim of what it feels was a scam.

What happened

In early 2022, F was looking to get some renovation work done at a property it owns. It found a trader on an online directory for tradespeople, met with them and was given a quote for the work. And it then agreed for the trader to do the work and made a number of payments from its Starling account to the account details the trader gave it.

The trader started the work, and they and F agreed for some additional work to be done – which some of the payments F made were for. But F became suspicious when some of the supplies delivered to the property weren't as the trader described. F then discovered other issues with things the trader had said or done. And, after raising these issues with the trader, communication between them broke down and the trader never completed the agreed work.

F then reported the payments to Starling as a scam and asked it to refund the money it had lost. Starling investigated but said the trader had carried out some of the work, so it felt this was a civil dispute between F and the trader – rather than a scam. And it didn't agree to refund the payments F had made. F wasn't satisfied with Starling's response, so referred a complaint to our service.

I sent F and Starling a provisional decision on 12 January 2024, setting out why I wasn't intending to uphold this complaint. An extract from my provisional decision is set out below:

"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 the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Starling is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says that it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Starling should refund the money F lost under the CRM code, I need to consider whether it has been the victim of a scam – or, in other words, whether F was deceived about the purpose of the payments to the point where it and the trader intended different purposes for the payments and the trader set out from the beginning with the intent to defraud it.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

F said it originally found the trader through an online directory for tradespeople, where they had good recommendations. And from what I've seen, it appears the trader is still active on the directory where they have a significant number of positive reviews, overwhelmingly positive feedback and a very high rating. But I wouldn't expect someone who wasn't a legitimate supplier of goods and was operating a scam to be able to maintain this number of positive reviews and high rating.

The trader started the agreed work at the property and, from what F has told us, was working at the property on-and-off for just over a month. F has also said the trader completed the work that some of the payments it made were for, and completed around 50% of the agreed plumbing work. But I'd usually expect a scammer to do as little work as possible in order to get the maximum possible profit in the shortest period of time. So the trader here appears to have done more work than I'd expect from someone who never intended to complete the work.

The bank the payments were sent to has also told us that it hasn't received any other scam reports against this account. But scammers usually target a number of people at once, in order to make as much money as possible before the scam is uncovered. So I'd expect to see other scam reports to the same account around the same time if the trader was operating a scam.

F has said that the trader is not registered on the official UK list of qualified gas engineers, and so was not legally qualified to carry out some of the work they agreed to do at the property. And I recognise that the trader most likely knew they weren't qualified and so deceived F about their capability to do the work. But I still think their intention was to do the work that had been agreed and that the payments were being made for, even if they weren't qualified to do so. So I still think F and the traders intended purposes for the payments were the same – to carry out the work. And I don't think this deception by the builder meets the definition of a scam from the CRM code.

F has also mentioned that the trader introduced himself as the owner of a company it now knows they are not connected to, created other unnecessary jobs for themselves by manipulating or exaggerating other issues at the property, lied about the price and quality of some of the supplies they ordered for the work and acted threateningly when these issues were raised. But I've not seen clear evidence that the trader said they were connected to another company, and the report which says the other jobs were unnecessary was done by another trader who would benefit from being paid to remove or correct those jobs – so I don't think it is independent or proves the jobs were unnecessary.

And, in any event, even if all these things F has mentioned are correct I still don't think these actions by the trader meet the definition of a scam. They may suggest the trader was acting unprofessionally, but I don't think they mean that the trader didn't intend to complete the work when the payments were made.

I appreciate that the work at F's property was left unfinished and it has had to pay for another builder to finish the work. But I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely the trader here was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed. I don't think the trader set out from the beginning with the intent to defraud F, or that it has been the victim of a scam here.

So I don't think the payments F made to the trader are covered under the CRM code, or that Starling should be required to refund the money it lost.

I sympathise with the position F has found itself in, and I'm in no way saying it did anything wrong or that it doesn't have a legitimate grievance against the trader. But I can only look at Starling's responsibilities and, for the reasons I've explained above, I don't think it would be fair to hold Starling responsible for the money it lost."

I said I'd consider anything further F and Starling sent in following the provisional decision, provided it was received by the deadline given.

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.

Starling didn't respond to the provisional decision by the deadline given. F responded, disagreeing with the decision and making a number of points which I will address below.

I want to assure F that I have read and considered everything it sent us. I may not comment on every point it made, as I have focused my findings on the issues I think are most relevant to the outcome of this complaint, but I have considered everything it sent us in coming to this decision.

F argued that the circumstances here did meet the definition of a scam, and so the payments it made should be covered under the CRM code.

It said the first part of the definition, where a customer intended to transfer funds to another person but was instead deceived into transferring the funds to a different person, should apply here as the trader introduced himself as the owner of a company it now knows he is not connected to. It says it believed it was contracting with the company and was misled.

But, as I said in my provisional decision, I don't think there is clear evidence that the trader said they were connected to the company. I appreciate F says the trader told it this, and showed it reviews for and photos of work done by the company. But the only documentary evidence is a hand-written note which shows the initials and surname of the trader and his account details. And while the initials and surname are similar to the company F says it was told the trader was connected with, the note doesn't show the full name of the company. So I don't think this shows the trader said they were connected to the company.

And, even if the trader did say they were connected to this company, I don't think this means these circumstances meet the definition of a scam. The online directory where F found the trader shows them as an individual, rather than a company. It was the individual trader who met F, and who F appears to have understood would be carrying out the work. So I don't think the evidence suggests F thought it was contracting with a company, rather than the individual trader. And the payments were made to the individual trader. So even if the trader did say they were connected to a company they weren't connected to, I think F intended to

transfer funds to the trader and did transfer the funds to them. So I don't think this meets that first part of the definition of a scam.

F also said the second part of the definition, where a customer transferred funds for what they believed were legitimate purposes but were in fact fraudulent, should apply here.

It said the works it paid for were illegal as the trader was not registered on the official UK list of qualified gas engineers, so it feels the purpose of the payments was fraudulent. And, as I said in my provisional decision, I recognise that the trader most likely knew they weren't qualified and so deceived F about their capability to do the work. But I still think their intention was to do the work that had been agreed and that the payments were being made for, even if they weren't qualified to do so.

I say this because the trader appears to have done more work than I'd expect from someone who never intended to complete the work. It appears they are still active on the online directory where they have a significant number of positive reviews, overwhelmingly positive feedback and a very high rating. And the bank the payments were sent to has told us it hasn't received any other scam reports against this account. And I think this all suggests the trader was attempting to operate as a legitimate tradesperson at the time and so intended to carry out the agreed work.

I therefore think F and the traders intended purposes for the payments were the same – to carry out the work. And so, even though the trader appears to have deceived F about their capability to do the work, I don't think this deception meets the definition of a scam from the CRM code.

F also argued that the trader misled it about the need for additional heating pumps and tanks, and then lied about the cost and quality of those supplies. It provided a report from another tradesperson to support this and said it was surprised I had questioned this tradesperson's report and supported the behaviour of the trader. So I should clarify that I was not and am not supporting or defending the behaviour of the trader here, but I must establish the relevance and reliability of any evidence I am presented with. I mentioned that the report was not independent, as this does affect how much it should be relied on. And, in any event, tradespeople can have legitimate disagreements about the necessity of work without one of them operating a scam, and work that isn't strictly necessary can still provide some benefit to the customer. So I don't think one tradesperson saying water pumps are necessary and another saying they are not – or work being done that was not strictly necessary – meets the definition of a scam from the CRM code.

F also mentioned that the work the trader did required changes and recertification, and that it struggled to find another tradesperson to certify the work – which caused delays, inconvenience and extra costs. And, as I said in the provisional decision, I sympathise with the position it found itself in and I'm in no way saying it did anything wrong or that it doesn't have a legitimate grievance against the trader here. But for the reasons I've explained, I don't think it would be fair to hold Starling responsible for the money it lost.

Having considered the points F made, I still feel the conclusions I set out in the provisional decision were correct. I still don't think the payments F made to the trader are covered under the CRM code, or that Starling should be required to refund the money it lost.

I appreciate that my decision will come as a disappointment to F, but I hope my explanations can help it understand the reasons why I came to this decision.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 28 March 2024.

Alan Millward
Ombudsman