

The complaint

Mr B complains that Starling Bank Limited won't refund money he lost when he was the victim of a scam.

Mr B is being represented by his father, but for ease, I'll refer to Mr B throughout this decision.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In December 2023 Mr B said he was contacted by someone purporting to be from Starling (the scammer) to say his account had been compromised. Mr B said he was instructed by the scammer on how to transfer funds to a new account. But unbeknown to him, he was making the following two debit card payments from his existing Starling account:

Date	Type	Amount
22 December 2023 (16.42)	Debit card transaction	£2,494.48
22 December 2023 (16.51)	Debit card transaction	£2,395.00
Total:		£4,889.48

The payments were authorised by way of 3DS verification and Mr B had to approve the payment amount and the payee before proceeding by way of biometric authentication.

Neither payment was flagged by Starling as suspicious – and so, the payments were processed in line with the instructions received.

Mr B told his parents what had happened and immediately contacted Starling. It refunded the £2,395 payment because it said this payment was out of character for Mr B's account.

Mr B complained to Starling. In short, it said it wasn't responsible for Mr B's loss and so wouldn't refund the remaining £2,494.48. Starling did however pay Mr B £200 for poor customer service when considering the claim.

Mr B referred his complaint to the Financial Ombudsman. He maintained that Starling hadn't done enough to protect him – particularly given his young age and the sophistication of the scam. He wanted the remaining funds returned to him.

Our Investigator thought the first payment wouldn't have appeared suspicious to Starling. But she thought Starling should pay 8% interest on the second payment to recognise the loss of use of money Mr B had suffered. Our investigator also thought it unlikely a chargeback claim would've succeeded.

Starling accepted our Investigator's opinion, but Mr B asked for his complaint to be reviewed by an Ombudsman. So, it's been passed to me to decide.

Mr B thought the first payment (£2,494.48) was out of character for his account and so, it should've been flagged by Starling as suspicious. He referred to other Financial Ombudsman decisions; and questioned why his case was being dealt with differently.

Mr B was also concerned that our Investigator hadn't taken account of his limited banking experience given his age. And he was also unhappy that Starling hadn't explained to him from the outset that the Contingent Reimbursement Model (CRM) didn't apply (as the disputed payments were made with a debit card) – nor did it advise him about making a chargeback claim or make one on his behalf.

Mr B also disagreed that a chargeback claim would've likely been unsuccessful, but thought this was somewhat irrelevant, as it was the opportunity of making the claim that had been missed. Mr B said Starling didn't do enough to try and recover the lost funds – particularly as it was alerted to the loss so soon after it happened.

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'm upholding this complaint in part in relation to the interest Starling should pay on the £2,395.00. But I agree with our Investigator, and for largely the same reasons, that Starling isn't responsible for Mr B's remaining loss.

I'm sorry Mr B has been the victim of a scam and I don't underestimate the impact this has had on him. But I must consider whether Starling is responsible for the loss he has suffered, and while I realise this isn't the outcome Mr B is hoping for, I don't think it is. I therefore don't think Starling has acted unfairly by not refunding the £2,494.48 payment. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Starling should refund Mr B's remaining loss.

I appreciate that Mr B thinks he is being treated differently by the Financial Ombudsman when looking at other final decisions we've published. But we look at each case on its own individual merits – which is what I've done when looking at this complaint.

As a starting point, it's not in dispute that the payments were made in line with Mr B's instructions to Starling – albeit under the influence of the scammer. In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

However, I consider that as a matter of good industry practice that Starling ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to fraud or a scam.

The question then arises whether Starling ought reasonably to have held such suspicions or concerns in relation to Mr B's payments.

Starling has accepted that it should've flagged the second payment (£2,395.00) as suspicious; and I would agree that it had a reasonable basis to do so. By the time of the second payment, Mr B had made two payments in very close succession totalling almost £5,000.

So, my focus is on the first payment of £2,494.48 and whether the instruction given by Mr B to Starling in respect of that payment was unusual enough, individually, to have expected additional checks being carried out before the payment was processed.

I've looked back over Mr B's account activity for the previous 12 months and I accept that this payment is larger than other payments he made – and so was arguably 'out of character'. But I must be mindful of the fact that it isn't unusual for customers to make a larger, one-off payment, from a normal operating bank account. The payment was also being made to a legitimate foreign exchange company and was funded by a genuine payment of just over £7,000 into Mr B's account a month before. In other words, the £2,494.48 payment didn't empty Mr B's account or make it go overdrawn.

So, whilst I accept the first payment does stand out when compared to Mr B's previous account activity, I'm not persuaded there was anything suspicious about it that ought reasonably to have triggered Starling's fraud monitoring systems, or that would have indicated he was in the process of being scammed.

I therefore think it was reasonable for Starling to assume the £2,494.48 payment was being made for legitimate purposes. And so, it follows that I wouldn't have expected Starling to have taken steps or carried out additional checks before processing that payment.

I've considered next whether, on being alerted to the scam, Starling could reasonably have done anything more to recover Mr B's losses, but I don't think it could.

It's not in dispute that the CRM doesn't apply here. And whilst it's unfortunate Starling didn't make that clear to Mr B from the outset, I can't see that this caused him any detriment.

The only possible option for recovery here, given the payments were made by debit card, would've been via a chargeback claim. That claim would've needed to be made by Starling – either on its own initiative – or at the request of Mr B. But the chargeback scheme is voluntary, and so there was no obligation for Starling to raise a claim, particularly if it thought it had no prospect of success.

Any fraud chargeback claim Starling might've made on Mr B's behalf would've failed because he authorised the payments. Starling could've raised a dispute chargeback claim against the two merchants - but given these payments were for the purchasing of goods and services with legitimate firms, I don't think a dispute chargeback claim would've likely been successful because the services paid for would've been received (albeit by the scammer not Mr B).

As such, whilst I can understand Mr B's frustration at not being told about the chargeback scheme by Starling when he alerted them to the scam – I don't think it was unreasonable for Starling to have not raised a dispute chargeback claim against the merchants. Nor do I think it likely any such claims would've been successful. And so, I don't think Starling could've reasonably done anything more to recover the lost funds.

Starling does however accept that it could've handled Mr B's case better and has paid him £200. Mr B hasn't disputed this level of compensation and it doesn't seem unreasonable to me.

I have a great deal of sympathy for Mr B and the loss he's suffered, and I do appreciate that he's been the unfortunate victim of a sophisticated scam – with the scammers potentially exploiting Mr B's lack of banking experience.

But it would only be fair for me to direct Starling to refund the £2,494.48 if I thought it was responsible for Mr B's loss – and I'm not persuaded that this was the case. For the above reasons, I think Starling has acted fairly and reasonably, and so I'm not going to tell it to do anything more than to pay 8% simple interest on the £2,395.00 to recognise the loss of use of money Mr B suffered.

My final decision

My final decision is that I uphold this complaint in part. Starling Bank Limited should:

- Pay Mr B 8% simple interest on £2,395.00 (less any tax properly deductible) from the date of payment to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision **before 20 June 2024**.

Anna Jackson
Ombudsman