

## **The complaint**

Miss L complains that Starling Bank Limited won't refund her the money she lost after she fell victim to an Authorised Push Payment (APP scam).

## **What happened**

The background to this complaint is well known to both parties so I won't repeat it in detail here. But in summary I understand it to be as follows.

On 10 October 2023, Miss L received a communication, through a well-known messaging application, from whom she thought was her daughter. But unknown to her at the time it was a fraudster impersonating her daughter. The fraudster tricked Miss L into believing that her daughter had damaged her phone and couldn't access her online banking and that she needed help paying her rent. This led to Miss L making a transfer from her Starling account, for £1,200, to an account that the fraudsters controlled.

Miss L realised she'd been scammed when she later contacted her daughter's partner and then spoke to her daughter, who told Miss L that it wasn't her who had sent the messages.

Miss L raised a fraud claim with Starling. It investigated Miss L's claim and considered its obligations to provide her with a refund. Starling is a signatory of the Lending Standards Board Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Starling says one or more of those exceptions applies in this case.

Starling said that Miss L didn't have a reasonable basis for belief when making the payment. It added that Miss L, by selecting incorrect answers to questions it raised at the time of the payment, had prevented it from offering specific warnings for this type of scam.

Unhappy with Starling's response, Miss L brought her complaint to this service. One of our Investigator's looked into things and thought Starling should have refunded Miss L, in full, under the provisions of the CRM Code.

On receiving our Investigator's view, Starling changed its stance. It partially agreed with our Investigator's position – in that it agreed Miss L had proceeded to make the payment with a reasonable basis for belief, but it maintained that Miss L had prevented it from offering effective warnings, by not selecting appropriate answers to questions around the payment.

As agreement couldn't 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.

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.

When thinking about what is fair and reasonable in this case, I've considered whether Starling should have reimbursed Miss L under the provisions of the CRM Code and whether it ought to have done more to protect Miss L from the possibility of financial harm from fraud.

Having done so, I am satisfied that under the terms of the CRM Code, Starling should have refunded the money Miss L lost in full. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case. I'll explain why.

As I've said above, the CRM Code requires payment service providers to reimburse customers who have been the victim of APP scams, in all but limited circumstances. If Starling declines to reimburse its customer in full, it is for Starling to establish that one, or more, of the listed exceptions set out in the CRM Code applies. I don't think it has done that here.

Starling says that it is not required to refund Miss L for the money she lost. This is because Miss L had misled it when she told it she was paying a trusted family member or friend, however this was not the case as the payment was going to a third party on behalf of her daughter. Starling added that Miss L had also said she received the bank details face to face, which was not the case. It said if Miss L had told the truth then it could have warned her accordingly.

I appreciate the point that Starling is making here, and if the CRM Code didn't apply to these payments, the argument might have some merit. But as I have explained above, I find that the CRM Code does apply to these payments, and put simply, the CRM Code requires APP scam victims to be reimbursed in full, except where any of a limited number of exceptions apply.

Those exceptions relate to the victim's actions and beliefs about the payment at the time of the scam. Where those don't apply, then the victim is to be reimbursed. That reimbursement isn't contingent upon whether the firm was at fault or could have prevented the scam from occurring.

Indeed, even if it could not have been possible for the firm to have prevented the scam and the resulting financial loss, under the provisions of the CRM Code, the firm will most often still be liable to fully reimburse the scam victim. To quote section R1: *"Subject to R2, when a Customer has been the victim of an APP scam Firms should reimburse the Customer."*

The relevant exceptions to full reimbursement are set out in the CRM Code at R2. If a firm seeks to rely on R2 as a reason not to reimburse a scam victim, then it needs to establish that one of the listed exceptions applies.

However, the exceptions are limited. Only three of the five possible exceptions listed under R2(1) could be relevant here. I will consider each of those in turn before turning to R2(2).

Firstly, R2(1)(a) requires the firm to establish that:

*The Customer ignored Effective Warnings, given by a Firm in compliance with SF1(2), by failing to take appropriate action in response to such an Effective Warning [...]*

When considering the payment Miss L has made, I don't think Starling intends to argue that it gave Miss L an Effective Warning in compliance with SF1(2). Rather, it states it *would* have given Miss L an Effective Warning had she answered its questions correctly.

However, for this exception to be established, Starling would need to, as a starting point, demonstrate that it provided an Effective Warning in compliance with the code. If it did not, then regardless of why it did not (whose fault that was) it cannot establish that a hypothetical warning was ignored. It cannot have been ignored, because none was given. It could never have been possible for Miss L to have failed to take appropriate action in response to a warning she did not receive.

Simply put, Starling cannot rely on R2(1)(a) here.

Secondly, R2(1)(c) may only be applied where a firm can establish:

*In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: (i) the payee was the person the Customer was expecting to pay; (ii) the payment was for genuine goods or services; and/or (iii) the person or business with whom they transacted was legitimate.*

Following our Investigator's view, Starling no longer appears to be arguing that Miss L made the payment without such a reasonable basis for belief, so I don't think it necessary to cover this exception in detail here.

Suffice to say, that I am not persuaded Starling could fairly seek to rely on this exception. I am persuaded by Miss L's testimony that at the time she made the payment she was convinced she was interacting with her daughter about an urgent payment, and more importantly I think it wasn't unreasonable of her to have held that belief in all the circumstances at the time.

The final exception that could conceivably be relevant to Miss L's case is R2(1)(e):

*The Customer has been grossly negligent. [...]*

The CRM Code does not provide a specific definition of gross negligence. In line with the interpretation adopted by the Financial Conduct Authority (FCA) in its guidance document to the Payment Services Regulations I take the view that "gross negligence" is: *"a higher standard than the standard of negligence under common law. The customer needs to have shown a very significant degree of carelessness."*

I do not find this can be fairly applied here. I have found the scam was plausible and persuasive to Miss L in the circumstances. I do not find she was very significantly careless in that respect.

I say that as this kind of scam is designed to prey on a parent's natural inclination to help and defend their child. And so, it's fair to say, the rationale or circumstances may not be questioned as much as they otherwise might be. The fraudster is playing on an emotional response, that the parent is unlikely to be particularly aware of at the time. The apparent similarities in how the fraudsters were interacting with Miss L, compared to how her daughter usually did, lead me to find it was both plausible and persuasive for Miss L in the moment. Miss L believed the messages were coming from her daughter and that she was concerned she needed her help to pay her rent, which she reasonably would have considered to be important to her.

I have specifically considered whether Miss L showed a very significant degree of carelessness in the answers she gave to Starling when she made the payment. But I don't find that she did, I don't think the answers she gave demonstrates an intent to mislead the bank in any way.

I'm not persuaded the significance of these questions would have been sufficiently evident to her at that very moment. At the time, I don't think she was aware of why the answers mattered or the consequences of not pausing to think and give the most accurate answers she could.

Neither do I find Miss L was very significantly careless in any other relevant respects. That means I don't find Starling is entitled to rely on exception R2(1)(e).

For completeness, under section R2(2) the CRM Code contains a provision applying where:

*[...] during the process of assessing whether the Customer should be reimbursed, the Customer has acted dishonestly or obstructively in a material respect.*

I don't think Miss L was acting dishonestly with the answers she gave to the questions – at most she did so with a slight degree of carelessness, but I don't find this could fairly be classed as “dishonesty”. In any event this clause cannot apply here. It refers to dishonest or obstructive acts occurring “during the process of assessing whether the customer should be reimbursed”. Nothing I've seen suggests this is applicable here.

Therefore, overall and when considering the CRM code, I don't think Starling is able to rely on any of the exceptions to reimbursement, so it follows that Miss L should be refunded in full.

### **Putting things right**

For reasons explained above, I now direct Starling Bank Limited to:

- Refund Miss L the £1,200 she lost to the fraudsters.
- Pay 8% simple interest on this amount, from the date it declined her claim until the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 25 December 2024.

Stephen Wise  
**Ombudsman**