

The complaint

Miss S complains that Starling Bank Limited (Starling) wouldn't refund money she lost in an investment scam.

What happened

What Miss S says:

In January 2022, Miss S read an article about bitcoin investment – and how someone had made good returns. She went online and looked at a bitcoin trading platform and was then contacted by someone who said he was an investment advisor.

She was told how to set up an account with an investment platform ('B') and was given an account manager, who then contacted her. Miss S researched the website of B and it looked credible. She saw reviews from other customers of B – who said they were making good returns. The account manager said she could double her money within six months.

He coached her to set up an app for the investment platform (I will call the investment company 'B') and helped Miss S open an account with a payment services provider (which I will call PSP1). This was a 'crypto wallet' for the purposes of receiving money from a bank account and then transferring it to B.

Miss S made several small trades – by sending funds from her bank accounts to PSP1 and then to B. And saw her investment growing by looking at her account in B's website. She was encouraged to make further investments – and sent £15,610 from her Starling account.

The account manager sent her WhatsApp messages every day to make sure she could see the 'profits' she was making. And sent regular investment reports. He pressurised her to invest more money.

In March 2022, she received a warning from PSP1– to say her account had been frozen due to suspected suspicious activity. The account manager told her how to respond to PSP1, and she was then encouraged by him to open another account with a second payment services provider ('PSP2'). The account manager showed her how to transfer money from her bank accounts to PSP2, and then onto the investment company.

In April 2022, Miss S made payments from her Starling account to PSP2 totalling £21,928.

Miss S made payments from one of her other bank accounts to PSP2 and then to B - totalling £17,290.

Miss S was in touch with the account manager by WhatsApp messages from January 2022 to June 2022.

In May 2022, the account manager said the bitcoin market was crashing and her account was falling into deficit – her initial investment was going down. Miss S went into 'panic mode'. He said she had to buy insurance (costing £20,000) to protect her investment – but she would still make a profit. Miss S said she had no money left – but under pressure from

the account manager, she took out a loan for £4,000 and sent that to PSP2 and then to the investment company. These payments were made from another bank account.

The payments made from Miss S's Starling account (totalling £37,538) are the subject of this complaint:

Number	Date	Type/ Beneficiary	Amount
1	26 January 2022	Faster payment/ PSP1	£60
2	27 January 2022	Faster payment/ PSP1	£550
3	7 February 2022	Faster payment/ PSP1	£4,000
4	14 February 2022	Faster payment/ PSP1	£2,000
5	14 February 2022	Faster payment/ PSP1	£2,000
6	15 February 2022	Faster payment/ PSP1	£1,000
7	20 February 2022	Faster payment/ PSP1	£1,000
8	21 February 2022	Faster payment/ PSP1	£5,000
Total		Faster payment/ PSP1	£15,610

Number	Date	Type/ Beneficiary	Amount
9	28 March 2022	Faster payment/ PSP2	£50
10	28 March 2022	Faster payment/ PSP2	£450
11	29 March 2022	Faster payment/ PSP2	£3,800
12	5 April 2022	Faster payment/ PSP2	£5,000
13	14 April 2022	Faster payment/ PSP2	£5,000
14	19 April 2022	Faster payment/ PSP2	£5,000
15	26 April 2022	Faster payment/ PSP2	£2,528
16	26 April 2022	Faster payment/ PSP2	£100
Total		Faster payment/ PSP2	£21,928

Miss S believed she would immediately get her investment money back, but she couldn't then get access to the website of B, and the WhatsApp messages to / from the account manager were blocked. She then realised she had been the victim of a scam.

She had sold her house the year before and a lot of the money had been lost. She was now finding it difficult to pay bills. She now had a high interest loan to make repayments to; and had to move in with her partner to enable her to live. Her losses were putting pressure on her relationship. She feels anxious and angry.

Miss S said the payments weren't typical. She said Starling should've done more to protect her. She says the bank should refund the money she paid from her Starling account.

What Starling said:

Starling said that when Miss S made the first payments to PSP1 (on 27 January 2022) and PSP2 (on 28 March 2022), she was given a scam warning when she set up the new payees. Miss S clicked to say, '*I understand*'. In response to further questions, Miss S said the payment were for 'investments'; for shares, funds, cryptocurrency...; she was making the investments 'via a crypto or currency exchange'; she said she'd made such an investment before; and had paid the payee before.

Miss S was given a link to check the FCA's register. Miss S again clicked '*I understand*'.

Starling went on to say the payments were to a crypto wallet – and from there, funds were passed to the investment company by Miss S. Starling said they couldn't be held liable for that – as the point of loss wasn't with the payments from Starling. And because the payments were to Miss S's own account, the transactions couldn't be considered under the Contingent Reimbursement Model Code (CRM).

Our investigation so far:

Miss S brought her complaint to us. Our investigator said Starling should've gone further than they did and intervened in the eighth payment (on 21 February 2022 - £5,000). By then, Miss S had made a series of five payments to a crypto exchange over a seven-day period, totalling £11,000.

But even if Starling had've intervened, he wasn't persuaded that it would've made a difference and Miss S would've gone ahead anyway. He referred to a call with one of her other banks (in April 2022) - when that bank intervened in a similar payment. He felt that Miss S would've answered the questions in the same way, and the payments would've been released.

He said Starling couldn't have recovered any funds as they would've been removed from PSP1 and PSP2 by Miss S and moved to the investment firm.

Miss S didn't agree and asked that an ombudsman look at her complaint, and so it has come to me to do that.

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'm sorry to hear that Miss S has lost money in a cruel and sophisticated scam. It's not in question that she authorised and consented to the payments in this case. So although she didn't intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at 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 and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Starling should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Miss S' own account with the payment services firms (PSP1 and PSP2).

The important matter here is whether these were payments that Starling might reasonably have considered unusual, and therefore whether they should've held or stopped the payment and contacted Miss S about them.

I looked at Miss S' account history with Starling – from August 2021 to the beginning of January 2022, the account was 'dormant' with no activity and a balance of 49p. Then, in January 2022, the main activity was for the account to be used for the payments to PSP1 and PSP2. So – it's reasonable for me to say that the payments to PSP1 and PSP2 were unusual.

Payments 1-7: 26 January 2022 to 20 February 2022:

Having said that, there's a balance to be struck: Starling has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Starling acted reasonably in processing the payments between 26 January 2022 and 20 February 2022 - as they were relatively low value.

Payment 8: 21 February 2022: £5,000:

I agree that Starling should've intervened at this point and asked questions of Miss S. By then, a series of payments for £10,610 had been made in period of just over three weeks and from an account which had been dormant up to then. But – Starling didn't do so.

But I then must consider whether, based on probabilities, Miss S would've gone ahead and made the payments in any case. And here, like our investigator, I'm persuaded she would have. I say that because:

- Miss S had already responded to the warnings given to her by Starling previously. When the payment to PSP1 was set up on 26 January 2022, Starling asked:

"Could this payee be part of a scam? If in doubt, just stop here and visit our website to learn about avoiding fraud". A link was provided to information about scams.
- The 'Confirmation of Payee' then failed and Starling warned *"Starling or any other institution will never call unexpectedly and ask you to move money to a new or 'safe' account. If you are being instructed to make this payment or have any doubts about what you are doing, stop and contact us through in app chat".*
- When Miss S made the payment of £550 on 27 January 2022, Starling gave a warning which said: *"WARNING. Are you being told to make this payment? Anyone telling you what buttons to click, or asking you to read the text on this screen out loud is a criminal. You must not make the payment if you are being told how to answer the questions or explain the payment. Read each question carefully and answer truthfully, otherwise you could lose all the money sent."* – Miss S selected *"I understand"*.
- Starling then asked further questions:
 - *Please tell us what this payment is for* – Miss S answered *"investments"*
 - *Where are you transferring money to?* – Miss S answered *"Shares, funds, cryptocurrency, foreign exchange or pension..."*
 - *How are you making this investment?* – Miss S answered *"Via a crypto or currency exchange"*
 - *WARNING. Always research a company and check reviews from other people. if the investment returns sound too good to be true - this could be a scam. All Financial Advisors and Financial institutions should be FCA registered. You can check the FCA register here <https://www.fca.org.uk/register>* - Miss S selected *"I understand"*.
 - *Have you made an investment like this before?* – Miss S answered *"Yes"*
 - *Have you paid into this investment account and/or scheme before?* – Miss S answered *"Yes"*
 - *Have you paid this payee before?* – Miss S answered *"Yes"*
 - *WARNING. Fraudsters will tell you how to answer these questions to scam you. A genuine organisation will never do this. A bank or any other organisation will never tell you to move money to a new, 'safe' bank account. Fraudsters can make phone calls appear to come from a different number. Are you speaking with who you think you are? if in doubt you can call us on XXXX* - Miss S answered, *"I understand"*.
- A similar set of questions and warnings were sent to Miss S on 28 March 2022 – when she made the first payment of £450 to PSP2. She clicked to say, *"I understand"* (the warnings). In addition, I noted she was also asked at that time: *Have you been told by someone to move this money unexpectedly or urgently?* – Miss S answered *"No"*

- Of themselves, I don't think these interactions went far enough, and Miss S' responses were enough to expect Starling to have held these payments, or at least the subsequent, higher value ones.

But I also reviewed the other evidence here to reach a balanced and reasonable decision.

- I noted the calls between Miss S and another bank involved in the scam – on 25 April 2022 and 26 April 2022. This was at the same time as several of the payments from the Starling account. For reasons of confidentiality, I can't quote the conversation and Miss S' answers here, but she (and her advisors) will see that related decision and the call content. Miss S was confident in her answers, and for me, it's clear that Miss S wanted to go ahead and make the payments to PSP2, and it's more likely than not - she would've said the same to Starling.
- This is also supported by the WhatsApp chats I reviewed. Miss S was wanting to find banks that would easily make payments to PSP1 and PSP2 and was frustrated when some payments were held up. There were conversations with the account manager as to which were the best banks to use for crypto payments.
- The chats also show how keen Miss S was to make the payments over the period. She was clearly attracted by the apparent opportunity to make a profit.
- Miss S ignored the warning she got from PSP1 – in February 2022, PSP1 said *"During a recent account review, we noticed that you have transacted with wallet addresses which may be associated with an investment scam. Can you please explain the following?.... (PSP1) is committed to providing a safe and secure platform for its customers and your answers to the above questions will support us in that mission"*. Miss S was coached by the account manager to provide suitable answers.

Her account was then suspended by PSP1. But she then set up another account with PSP2 – which I think shows she was keen to go ahead.

- I accept that this was a sophisticated and clever scam, and Miss S was clearly completely taken in by the account manager – the WhatsApp chats show that. He sent her regular reports and investment 'proposals'; she could see from the (fake) website she was making money, and she was enticed into sending more funds., usually with days of receiving the investment ideas. But for me, that only goes to show that she would've gone ahead in any case, despite what Starling may have said to her.

Therefore, in summary, I don't consider I can reasonably hold Starling liable for the payments Miss S made.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Starling took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

Miss S contacted Starling with details of the scam in September 2022. Starling then tried to recover the money, but without any success. Given the passage of time since the scam, it was unlikely there would be any funds left – as it's usual in scams of this type that funds are

removed by the scammers within hours. In addition, the accounts with PSP1 and PSP2 were in Miss S's own name, and she then moved the funds onto the investment company – so there weren't any funds to be reclaimed.

Miss S has lost a lot of money. She's explained why the money was important to her, and the impact her losses have had. I was sorry to learn of her circumstances. She will therefore be disappointed by my decision, but I'm not going to ask Starling to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 November 2023.

Martin Lord
Ombudsman