

## **The complaint**

O, a limited company, complains that Starling Bank Limited won't refund their losses from an email intercept scam. They'd like a full reimbursement of the losses and interest.

## **What happened**

O is represented by its director, but for this decision I'll refer solely to O. O held a business account with Starling Bank.

In late 2020 O set up a new payee on its Starling account. They then made a series of payments to the new payee. They contacted Starling through their online chat to ask if the payment limits could be increased, saying they needed to make repayments to a loan. Starling agreed to increase the limits for specific transactions. In total seven payments were sent, totalling just over £200,000.

The day after the last payment O contacted Starling again to query whether two payments had been returned, and the bank confirmed they hadn't. Later O contacted Starling again to say they'd fallen victim to an email intercept scam. They explained that they'd been in contact with their lender's solicitor to ask for a redemption statement, and then it appeared a scammer had intercepted it. O said an initial payment was attempted with a different bank but had been rejected because security details had recently been changed, so they'd decided to make the payments using the Starling account.

While making payment the receiving bank couldn't match the name on the account to the payee name O had put on the transaction. O questioned this with the scammers but was persuaded because it was a client account this may happen.

Starling contacted the beneficiary bank, and a little over £18,000 was recovered. But the remainder had already been moved on.

O complained, saying Starling shouldn't have allowed the payments to go through without investigating. O said Starling was unresponsive to the scam, and unhelpful when it was trying to contact them about this. O asked to be reimbursed for the lost funds under the Contingent Reimbursement Model (CRM) code.

Starling looked into what happened but decided against refunding O under the CRM code. They said they had displayed effective warnings to O when the increased payment limits were requested, and when the payments were made – including warnings about email intercept scams. They felt O hadn't done enough to confirm the correct payment details had been supplied. But they accepted some areas of their customer service had fallen short – such as delays to responding and asking for the same information twice. They paid O £100 compensation.

Unhappy with this the complaint was referred to our service. One of our investigators looked into what happened and was satisfied the claim met the standards under the CRM. They didn't feel the warnings given by Starling were effective, as they didn't relate to the scam O fell victim to. They were satisfied O had a reasonable basis of belief for making the

payments. And they were satisfied that Starling ought to have noticed the later transactions were significantly unusual and asked further questions. Overall, they felt it fair that Starling should refund O, and add 8% simple interest to the transactions. They agreed that the £100 compensation already paid was fair.

O accepted this outcome, but Starling disagreed. They felt that as the payment instructions to O had recently changed then their warnings about checking unexpected or amended instructions should have sufficed. They also felt their warnings were specific enough to say fraudsters could intercept email chains. They also submitted further evidence for review. But this didn't change the investigators mind.

As no agreement could be reached the complaint was passed to me to decide. I reached a different conclusion to the investigator, and issued my provisional decision which said:

*Where the evidence is unclear, contradictory, or sometimes unavailable, I have to based my decision on what I consider to be the most likely explanation of what happened. I've reviewed all the considerable evidence supplied by both O and Starling. I've decided to focus on what I consider to be the key issues involved – which is something our rules allow me to do, and also reflects our service's role as an informal alternative to the court system.*

*I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. Some of the information Starling has provided is information that we considered should be kept confidential. This means I haven't been able to share a lot of detail with O, but I'd like to reassure it that I have considered everything.*

*Having done so, I'm not minded to uphold this complaint. Based on the information available to me about how O's account was funded, I'm not satisfied that the money in O's Starling account is money that O is entitled to. For that reason, any finding I would make on whether the transactions were covered by the CRM code would effectively be moot, since I don't consider them to represent a loss to O. I wouldn't expect a bank to refund funds that their customer wasn't entitled to. On that basis I don't think it's unreasonable for Starling to decline to refund the remaining balance of the transactions.*

*Starling have accepted their customer service could have been better. I agree it would have been disruptive to have to submit the same information repeatedly. But overall, I'm satisfied that the £100 already paid is reasonable for any inconvenience caused to O, so I'm not asking them to increase it.*

Starling didn't respond to the provisional decision. O responded with further information about funds paid into the account. They said the funds had come from a loan provided by a company owned by the wife of the director of O, as well as regular income from another company. They insisted the funds from these companies had been acquired legitimately. They said the disastrous customer service from Starling had left them in a vulnerable position both mentally and financially.

This additional information was provided to Starling, but they had no new comments to make.

I've now considered all the information afresh.

### **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 remain satisfied with the conclusions drawn in the provisional decision.

I appreciate O's concerns that the provisional decision treats certain information we've received as confidential – so cannot be discussed in as full a detail as we would generally like to do. This isn't a decision I've taken lightly, but I will again assure O that I have considered all submissions by both parties and given the evidence received appropriate weighting.

O has provided additional information about the source of funds, which I thank them for. Although I would say it's not information that I was entirely unaware of when I issued my provisional decision. However, on balance I'm not persuaded this demonstrates O's entitlement to the funds that were sent from the Starling account.

As I'm not satisfied the funds sent represent a true loss to O, I don't see it would be fair to ask Starling to refund them under the CRM code.

I'm sorry to hear how this has affected the directors of O. But overall, I'm satisfied the £100 paid for the customer service failings is adequate compensation for the impact.

### **My final decision**

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask O to accept or reject my decision before 11 October 2023.

Thom Bennett  
**Ombudsman**