

## **The complaint**

Mrs C complains that Starling Bank Limited ('Starling') won't refund the money she lost.

## **What happened**

Mrs C is represented in this case but for ease I'll refer to Mrs C throughout this decision.

Mrs C says that someone she had known for some time through her late husband, who I'll refer to as R, offered her an investment opportunity. R was a builder and Mrs C says she believed she was investing in the development of a property. The initial investment involved the payment of £20,000 which Mrs C was told would bring her a return of £70,000 in two months. Mrs C says that R then asked her to pay for materials, to pay workmen and to help R out when another customer didn't pay him and when he got a contract that wouldn't pay him for the first six months.

Mrs C made the first two £10,000 payments in February 2021. Over the next two years and two months she made multiple payments to accounts held by R, R's business, and R's son. The transactions ranged from £10 to £12,000 and ultimately reached over £500,000. Mrs C wasn't provided with a contract and hasn't supplied evidence of her communications with R until March 2023.

Mrs C says that as time went on R threatened her and said that if she didn't continue to make payments, she ran the risk that no properties would be developed so she wouldn't receive a return.

Mrs C contacted Starling to explain what had happened in April 2023. She later asked Starling to withdraw the claim and unblock R's accounts saying that R had paid the full amount back in cash which credited an account she held with another bank. Starling asked for evidence of this, which Mrs C was unable to provide. As Starling had concerns it asked the police to visit Mrs C. Mrs C later said that she hadn't been honest about the funds being returned because she was frightened.

Starling hasn't agreed to reimburse Mrs C's losses. It said it couldn't conclude Mrs C was the victim of a scam under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and that Mrs C regularly made payments to R, so the transactions weren't out of character.

Mrs C didn't agree with Starling's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He said that there was insufficient evidence to conclude that Mrs C was the victim of a scam. The investigator considered whether Starling should have intervened and noted that the first transactions weren't so unusual and out of character that it should. But in any event, even if Starling had intervened the investigator didn't think it would have made a difference.

Mrs C didn't agree with the investigator's findings. In summary, she said:

- She is the victim of fraud. Mrs C's representative provided the definition of fraud under the Fraud Act 2006 and noted that Mrs C didn't receive the return promised on the original investment, and that some funds were for materials but there is no

evidence these were provided.

- If Mrs C failed to send additional funds R would harass and threaten her, telling her that if she didn't pay, she wouldn't get any funds back as properties would not be developed.
- The entire investment was made up and R didn't provide a contract or any evidence in respect of wages paid, or materials bought, and his business was struck off in September 2021.
- Starling recognises Mrs C was the victim of a scam because it initiated contact with the police in April 2023 and the police are now investigating R.
- The payments were concerning and should have triggered an intervention when the first transaction was made as it was for a significant amount and was to a new payee. Given that Starling unraveled the scam when it invoked the Banking Protocol years later, it is clear Mrs C's loss could have been prevented. Mrs C's investment wouldn't have made sense to Starling and Starling could have checked R's account and established the payment wasn't being used for the intended purpose.

The complaint has been passed to me to decide.

### **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 about the situation Mrs C has been left in. I don't have the power to decide any dispute between Mrs C and R though. My role is limited to looking at whether Starling has treated Mrs C fairly.

As a starting point in law, Mrs C is responsible for payments she has instructed Starling to make. Unfortunately, there is little protection available to her for bank transfer payments like these.

I've considered whether the CRM Code applies. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

*...a transfer of funds executed across Faster Payments...where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

In other words, the CRM Code only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.

So, I need to consider not simply whether R made any misleading claims but whether Mrs C was induced to make payments with the intent to defraud her from the outset. That would mean the evidence supports a finding that it's more likely than not (rather than just as likely) that R obtained payments for a purpose that was different to the one Mrs C thought she was making the payments for because of dishonest deception. It's important to note that it isn't for Starling to investigate R or to prove that he wasn't acting fraudulently. It is for Mrs C to provide evidence to prove these allegations.

The evidence provided by Mrs C in this case is very limited and it's unclear what each transaction was for and why Mrs C continued to make payments for years without receiving

any returns. Mrs C says that she initially invested £20,000 and expected a return of £70,000 in two weeks. She then continued to make payments to R (or to R's business account or a family member) she says to cover things like materials, wages and to help R out in the short term on the basis the money would be returned. But she hasn't provided any evidence to support what she has said and the overall amount Mrs C transferred greatly exceeded the initial investment.

Other than her testimony, the only evidence Mrs C has provided is a chain of messages she exchanged with R between 24 March and 25 April 2023. Some of these messages appear to have been sent by Mrs C's daughter but she has explained that her daughter wasn't involved, and the messages were sent by Mrs C to try to get R to return the funds.

I've carefully considered the messages provided. Having done so, I don't consider they support the version of events Mrs C has given to Starling or this service, or that they support a finding that Mrs C is the victim of a scam. There are a lot of messages about R needing to pay a third party funds before the third party can release a large sum of money. For example, on 3 April 2023 R refers to needing to pay a third party £15,000 and then Mrs C would get a cheque for £400,000. It's clear from the messages that R stood to gain when the funds were paid.

The messages refer to a £20,000 investment but also to giving R money to help him and to R giving £500,000 to a third party. Later messages though refer to the version of events Mrs C has provided to Starling and this service as a "story" that R should stick to. On 24 April 2023 Mrs C said,

*"I've (sic) just had CID at the door. I told them i (sic) lent you money for a property investment. That you're doing up. They were happy with that so stick to the same story".*

Mrs C went on to say she told the police she didn't have a contract and was also paying for materials and workmen and to, "Keep to the same story". R told Mrs C that she knew what she was getting involved in.

So, the limited evidence that Mrs C has provided lead me to believe that Starling and this service aren't being given the full picture. And the messages provided don't demonstrate Mrs C is the victim of the scam she says she fell victim to or any other scam.

No other evidence that the high bar required for fraud has been met has been provided. For example, there is no evidence that R has been convicted of fraud. I understand that the police are investigating but I have no further information. If material new evidence becomes available at a future date, which suggests that R did take Mrs C's payments by using dishonest deception Mrs C can ask Starling to reconsider her fraud claim. If she isn't satisfied with its response, she can bring a new complaint to our service.

Mrs C's representative says that Starling recognised Mrs C was the victim of a scam as it invoked the Banking Protocol. I disagree. I'm satisfied that Starling took appropriate steps to try to protect Mrs C when she sought to withdraw her fraud claim and said that R had paid the full amount in cash. Starling asked Mrs C to evidence this but when she was unable to do so Starling contacted the police as it was possible that Mrs C was being coerced to withdraw the fraud claim. Starling's actions do not suggest an acceptance that Mrs C was the victim of a scam.

As I've decided the CRM Code doesn't apply, I can't consider Mrs C's point about vulnerability under it. And in the absence of any evidence that Mrs C made Starling aware of a vulnerability I can't reasonably conclude Starling did anything wrong in not providing additional support.

Mrs C has said Starling should have identified that the first transaction was unusual and out of character and intervened at this point. I don't agree. Two weeks before this transaction Mrs C had made a £9,000 payment so a £10,000 transaction wouldn't have stood out as unusual.

In any event, I can't fairly conclude that had Starling intervened at this point, or indeed at a later point, it would have had any concerns about the transaction. I can't say with any degree of certainty what Mrs C would have told Starling given that the investment was described as a 'story' in messages between Mrs C and R. And as I'm not persuaded Mrs C was the victim of a scam, I don't think Starling had an obligation to protect her or to try to recover her funds.

Mrs C has said that on occasion she was threatened with violent repercussions if she didn't continue to make payments. I'm sorry to hear this. Duress of this nature is a matter for the police rather than Starling though.

Overall, I'm not persuaded Mrs C was the victim of a scam or that Starling could have prevented the payments from being made.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 May 2024.

Jay Hadfield  
**Ombudsman**