

The complaint

Mr A complains that Starling Bank Limited ('Starling') won't refund the money he lost in a scam.

What happened

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

Mr A says that he met someone on a social media platform. I'll refer to this person as O in my decision. Mr A and O started to exchange messages and built up a friendship before O introduced the idea of Mr A investing in cryptocurrency. O asked Mr A to open wallets at cryptocurrency exchanges and in April 2022 Mr A followed O's instructions to invest funds from an account with another bank. Mr A was able to see that he was making a profit so continued to invest.

Later in April 2022 Mr A applied to withdraw his funds from the investment but was told he needed to pay tax. Initially Mr A was asked to pay US tax and then O said that as Mr A was a UK citizen, he needed to pay UK tax. Once he'd made the tax payments Mr A was advised of a refundable late payment fee of 22% of the amount in the account. He was told this figure would go up by 2% each day until it was paid. From 5 May 2022 Mr A started to make payments from his account with Starling. Each time he made a payment though he was told of further charges he would need to make before he could withdraw his profit.

I have set out the transactions Mr A made from his Starling account:

Date	Amount	Payee	Payment method	Payment review (see below)?
05/05/22	£1,160	1	Faster payment	Yes
05/05/22	£2,010	1	Faster payment	Yes
13/5/22	£250	2	Mastercard	N/a
14/05/22	£850	2	Mastercard	N/a
15/05/22	£450	1	Faster payment	Yes
15/05/22	£1,454.35	3	Mastercard	N/a
16/05/22	£1,009	1	Faster payment	No
16/05/22	£1,500	1	Faster payment	Yes
19/05/22	£300	1	Faster payment	No
28/05/22	£50	1	Faster payment	No
30/05/22	£11	1	Faster payment	No
30/05/22	£11	1	Faster payment	No
30/05/22	£4	1	Faster payment	No

30/05/22	£6	1	Faster payment	No
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Payees one and two were different cryptocurrency exchanges. Payee three was an electronic money institution, so Mr A was transferring funds to his own account.

Mr A realised he was the victim of a scam when he wasn't able to withdraw his funds. He reported what had happened to Starling on 1 June 2023.

Starling considered Mr A's claim but didn't agree to refund any of his loss. In summary, it said:

- Mr A authorised the payments and Starling's primary obligation was to complete them.
- It provided a scam warning when the card payments were made and Mastercard rules don't allow for a chargeback in these circumstances.
- The scam happened when Mr A moved funds from his own cryptocurrency accounts, so Starling isn't responsible. The faster payments were to legitimate cryptocurrency exchanges.
- The faster payments weren't deemed to be suspicious, and Mr A was provided with a new payee warning and further warnings after he'd been asked some questions about the payments.
- Mr A hasn't made Starling aware of any vulnerabilities.
- Mr A didn't complete appropriate checks before making the payments.

Mr A was unhappy with Starling's response. He said the payments were unusual and should have been flagged by Starling. Mr A also said he is taking numerous medications to treat conditions relating to his mental and physical health and that Starling failed to recognise his vulnerabilities and protect him accordingly.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. In summary, he said:

- Although Mr A hadn't used his account prior to the scam payments, before each transaction Mr A credited his account. This pattern isn't unusual.
- The payments were made to legitimate companies.
- Starling has provided this service with chat transcripts in respect of some of the payments when the purpose of the payment was discussed.
- Any further intervention by Starling wouldn't have prevented Mr A from making further payments. By the time Mr A made the payments from his Starling account he'd been unsuccessful in withdrawing his funds. Mr A also told O he was lying, and he wouldn't pay more, but continued to make payments.
- There was nothing Starling could do to recover Mr A's funds as they went to his own account and chargeback wasn't possible.
- Starling hadn't been made aware of Mr A's vulnerabilities so had no reason to provide additional support.

Mr A didn't accept the investigator's findings and asked for a final decision, so his complaint has been passed to me to consider. In summary, he said:

- Greater weight should have been given to Mr A's circumstances at the time and Starling missed an opportunity to establish whether he was vulnerable. Starling intervened but didn't ask anything about Mr A's vulnerability or put in place any

additional measures.

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.

The Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case because it only applies to certain payments to another person and Mr A transferred funds to his own accounts.

In broad terms, the starting position in law is that Starling is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. It's not disputed that Mr A made and authorised these payments, although I accept that when he did so he didn't think his funds were at risk.

However, taking into account the law, regulator's 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 made 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.

I need to decide whether Starling acted fairly and reasonably in its dealings with Mr A when he authorised payments from his account or whether it could and should have done more before processing them.

Mr A opened his Starling account in April 2020 and the last transaction on the account before the scam payments was a debit card payment of under £10 in March 2021, after which the balance of the account was 9p. So Mr A's account hadn't been used for over a year when he started to credit the account and make payments in respect of cryptocurrency.

When Mr A made this first payment, Starling completed a 'payment review' in which it asked Mr A some on screen questions and provided warnings. I have set out below some of what appeared on the screen and Mr A's responses to the questions posed:

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.

Please tell us what this payment is for

Investment

What are you investing in?

My own savings account

Have you previously accessed the account you are making a payment to?

Yes

When did you open the account you're paying?

More than one month ago

Mr A was then provided with a warning targeted at safe account scams.

Given the amount Mr A was transferring I consider that Starling went far enough in its dynamic questions and warning. I wouldn't normally expect a bank to intervene in payments of this value (unless there was something very obviously amiss). Mr A confirmed funds were going to his own account which had been open for over a month and which he had access to – so there was nothing concerning about the answers he gave. If, for example, the account was newly opened, I consider Starling ought reasonably to have had more concerns, but this wasn't the case. Starling had also made it clear that if anyone was telling Mr A what to say then he was being scammed.

Given that Mr A said he was investing, I consider that Starling ought reasonably to have provided him with a warning tailored to investment scams. I'm not persuaded an on-screen warning of this nature would have made a difference in this case and prevented Mr A from making further payments though. Mr A has said that he built up a relationship with O and it's clear from the messages provided that Mr A has followed the instructions he was given in making the payments. Even when he had doubts, and the reasons for the payments became less and less believable, he continued to make them. So, I consider it to be unlikely that an on screen warning, like the safe account warning Starling provided him with but tailored to investment scams, would have been enough to have broken the spell and prevented any further payments from being made.

By the time Mr A made payments from his Starling account he had already transferred over £4,500 from an account with another bank, so may have received scam warnings from this bank too. As I don't know if this is the case, I haven't relied on this point in reaching my decision.

I also don't consider Starling needed to do anything more when any of the subsequent payments were made. Starling completed payment reviews and asked questions similar to those asked in respect of the first payment, but didn't always go into as much detail when most of the faster payments were made. With the exception of a transfer to an account of Mr A's with an EMI, the faster payments were also all to the same recipient as the first payment that Starling had asked questions about. They were not at a level that I'd expect Starling to be concerned about and didn't fit a common pattern of scam payments. The payments were spread over a period of three and a half weeks and didn't increase in value as time went on or follow a common scam pattern.

The card payments were low value transactions to a legitimate exchange so, again, I don't consider Starling ought to have considered them to be unusual enough to intervene. No chargeback rights apply to the card payments either. In respect of the payments to a cryptocurrency exchange Mr A received the service he paid for, and Mr A also paid his own account with an EMI.

Mr A has referred to various factors that he says made him more vulnerable to a scam of this nature. I haven't seen anything to suggest Starling was made aware of any of these vulnerabilities though. I don't consider that Starling ought reasonably to have asked Mr A each time he made a payment whether he might be vulnerable, and I can't see that there was anything in the responses he gave to Starling's questions that ought reasonably to have led Starling to think he might need any additional support.

I appreciate that overall Mr A has lost a lot of money, but I can't reasonably conclude that Starling ought to have done anything more.

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 Mr A to accept or reject my decision before 1 January 2024.

Jay Hadfield
Ombudsman