

The complaint

Mr and Mrs R are unhappy that Starling Bank Limited ("Starling") has not refunded them money that Mr R lost when he was the victim of a 'safe account' scam.

As Mr R was the person who was scammed, going forwards I will be mainly referring to Mr R, even though this was a joint account.

What happened

The details are well known to both parties, so I won't repeat them here in detail. But in summary, Mr R was contacted by a scammer purporting to be from Starling's fraud team contacting him about a transaction on his account to a well-known department store. Mr R was told to sign into his online banking via the Starling App. Mr R saw that there was a payment pending which he did not agree to that needed an authorisation code. He was told by the scammer that he should cancel this transaction instead of entering the code.

After this Mr R was tricked into amalgamating all of his savings in his main joint account before a debit card payment for over £3,000 was made to an International Money Transfer company, which required Mr R to enter a code sent to his phone.

Shortly after the payment was made, Mr R realised that he had been scammed. Mr R contacted Starling to request a refund but Starling did not agree to this.

One of our investigators looked into this matter already and he concluded that the payment was not sufficiently unusual to have prompted an intervention from Starling and that there was no other means of recovering the funds. So, he did not recommend that Starling refund the transaction.

Mr and Mrs R did not agree and therefore this complaint was passed to me to issue a final decision. They have argued that the payment was unusual and that the transaction was not authorised by Mr R.

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.

Mr R has argued that the payment in question was unauthorised. However, taking into consideration the Payment Services Regulation 2017, I think that the payment was authorised. To explain, Mr R did consent to the payment by entering the authentication code. I accept that Mr R was duped into doing this, but this does not mean he did not agree to the payment in question. Therefore, the payment was an 'authorised payment', even though it was part of a sophisticated scam. So, although Mr R did not intend the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of this account, Mr and Mrs R are presumed liable for the loss in the first instance.

However, 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. The purpose of which is to counter various risks, including money laundering, the financing of terrorism, and fraud and scams.

Starling was required to have 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 large 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, financial businesses should take additional steps, or make additional checks, before processing a payment. In some cases, financial business will need to decline to make a payment altogether, to help protect customers from the possibility of financial harm.

In this case, I need to consider whether Starling acted fairly and reasonably when the debit card payment was made, or whether it could and should have done more before processing it.

In this instance I have carefully considered this and I don't think that the payment was that unusual compared to other payments Mr and Mrs R made, to have prompted any intervention more than Starling asking confirmation that the payment was genuine - which it did by asking for a code. So, I don't think that Starling needed to do anything more than it did to prevent the payments.

I've also thought about whether Starling took reasonable steps to recover the funds, once it was made aware of a scam. In this instance as the payment was made via debit card the Contingent Reimbursement Model ("CRM") does not apply. In some circumstances a chargeback could have been attempted, but given that the payment was made to a money transferring service, I don't think that there would be grounds for a chargeback to have been successful. After all, Mr and Mrs R were paying to transfer funds and the funds were transferred so they essentially got what was paid for, although I recognise that they won't see it that way.

It's clear that Mr and Mrs R were unfortunate victims of a scam, and I know this outcome will be very disappointing for them. However, for the reasons I've explained, I don't think Starling should have done more to prevent their loss. So, it wouldn't be reasonable for me to ask Starling to refund the payment Mr and Mrs R made.

My final decision

For the reasons I've explained above, I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 4 January 2024.

Charlie Newton
Ombudsman