

The complaint

Mr S is unhappy that Starling Bank Limited (Starling) won't refund a transaction which he says he didn't authorise.

What happened

In April 2021, Mr S received a call from someone claiming to be from Amazon, offering a refund for his Prime subscription. He says this seemed credible as he had a Prime subscription which he'd been trying to cancel. He was sent a link to a form and told to fill it in to get the refund. It seems, that in the process, this gave the caller remote access to his phone.

The caller directed Mr S to check his accounts to get the refund and help rectify the issue he'd been having with his subscription. He recalls mention of needing to link his accounts. When open banking was approved on his Starling app, then around one minute later a payment of £400 was made – seemingly to an account in his name, held with another firm ("R"). Mr S says he didn't authorise this and he's never held an account with R.

Starling has refused to refund Mr S. It says he breached the terms by giving access to his phone and log-in details. But our investigator didn't think the payment wasn't authorised by Mr S. Nor did they think he'd failed intentionally, or through gross negligence, to keep his account safe. So they thought Starling should refund the payment – which they were satisfied hadn't been paid into an account actually held by Mr S – with interest, and that it should pay £100 for poor service.

Mr S also thought Starling had blocked his account following the dispute, but the investigator found no evidence of this.

Mr S agreed with the investigator's outcome – but Starling didn't. It said the recipient account couldn't have been opened without his knowledge, so it has no way of knowing whether he benefitted from the payment. And it questions R's liability if he didn't open the account.

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 agree with the conclusions reached by the investigator for these reasons:

In line with the Payment Services Regulations 2017 (PSRs), Mr S isn't liable for payments he didn't authorise – unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security credentials safe.

It's clear the payment was properly authenticated via online banking. But to be authorised, the PSRs also require him to have consented to the payment. They also set out how consent is given; this isn't open to interpretation. It must be given in the form, and accordance with the procedure, agreed between Mr S and Starling. Essentially that means Mr S would have

consented to the payment if he, or someone acting on his behalf, completed the agreed steps for making a transaction.

On balance, considering the PSRs, I'm persuaded he didn't authorise this payment. To do so, he would have needed to log into his online banking; give consent to Starling to participate in open banking; then enter his password to create the destination payee and allow the payment to go through. Mr S says he did enter his password to log onto his online banking. But it's unclear if he gave consent for open banking. And I'm satisfied it wasn't him who entered the password to allow this particular payment to go through. He's given a consistent and plausible account for how a scammer got unauthorised control of his device, allowing them to see the details he entered to log into the app and use those to make the payment. The steps he took (such as logging into the app) were done to receive a payment, not to allow anyone else to *make* payments.

I appreciate Starling's point about the loss, given that the recipient account appeared to be in Mr S's name. But we've seen records from R showing the funds were transferred in and out of the account very quickly – fitting a known pattern of fraud. R has told us the account doesn't seem to have been opened by Mr S, and could have been opened by an unauthorised fraudster using stolen personal data. Starling hasn't provided comparable evidence to refute this. I'd also point out that I'm not considering R's role here. What I am considering is Starling's liability under the PSRs. Overall, I'm persuaded neither Mr S, nor someone with his permission, completed all the steps required to have consented to the payment – meaning it was unauthorised. And this unauthorised payment caused him a loss.

That means Starling is liable for the payment unless Mr S failed with intent or gross negligence. I consider it clear that he didn't intentionally fail to keep his account details secure. It's clear he didn't think that the steps he followed (such as using the scammer's link and opening his online banking to check for the refund) would affect his account security. Nor am I persuaded his actions showed such a *significant degree of carelessness* to constitute gross negligence. He reasonably thought he was acting on the instructions of a legitimate, established company, with whom he holds a customer relationship, and which appeared to have correct information about his subscription. In the circumstances, I can see why he therefore trusted their instructions – and didn't foresee the risk.

For these reasons, I'm satisfied Starling should fairly and reasonably refund Mr S for the £400 payment. And that it should also pay 8% simple interest per year on this amount to compensate him for the loss of use of those funds.

Our investigator also suggested £100 compensation for Mr S's distress and inconvenience. The loss itself was ultimately caused by the cruel actions of the scammer, as the investigator pointed out. But Starling added to his stress and frustration by failing to refund him promptly in line with its obligations under the PSRs. So I'm satisfied this compensation is fair.

Although Mr S hasn't disputed this point – for completeness, I've checked the available information and haven't found anything to suggest Starling blocked his account. And so I don't think it needs to take action to put this right.

My final decision

For the reasons given above, my final decision is that I uphold this complaint and direct Starling Bank Limited to refund Mr S £400 for the disputed transaction. It should pay 8% simple interest per year on this amount from the date of payment to the date of settlement. And it should pay him £100 compensation for his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 November 2022.

Rachel Loughlin
Ombudsman