

The complaint and what happened

Miss C complains that Starling Bank Limited won't refund transactions she didn't make otherwise authorise.

The full details of this complaint are well known to both parties, so I won't repeat them in full here. Instead, I'll recap the key points and focus on giving the reasons for my decision:

- Miss C was between meetings at work when she received a call from someone purporting to be Starling. The caller was in fact a scammer. Miss C says she was told direct debits had been set up and the bank wanted to check they were legitimate. Miss C said they weren't.
- The caller verified Miss C by asking various personal information and information about her account. She was also asked to confirm a code that appeared on her phone interface; she usually needs to provide when speaking with Starling – this was in fact a different code needed to make a payment. The following day Miss C noted two transactions that she didn't recognise one for £0.10 and another for £3,012.13 that were pending. It isn't clear the 10p was ever paid (it doesn't appear on the statements) but £3,012.13 was.
- She contacted Starling who said it couldn't stop the payment. And when she complained it didn't uphold her complaint and didn't refund the payment as it said it had been authorised using the online payment code.
- Our investigator upheld the complaint as she wasn't persuaded Miss C had authorised or consented to the payment. And she didn't find Miss C had acted with intent or gross negligence but that as this was a distance contract this didn't apply.
- Starling disagreed. It said Miss C has received scam calls for other banks and should have been more live to it, and due to working in the banking industry herself. That she had never been asked for a code to authorise a payment ought to have been a flag and its found in a different part of the app to the customer service code. The transaction needed the online payment code, which Miss C shared despite the message alongside the code saying that Starling would never ask for it.

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 the following reasons:

- In-line with the Payment Services Regulations 2017 (PSRs), Miss C isn't liable for payments she didn't authorise unless she failed with gross negligence, or intent, to comply with the terms of the account or keep her personalised security details safe.
- Under section 77(4)(d) of the PSRs, except where a payer has acted fraudulently, the payer is not liable for any losses incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract. A distance contract means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme

without the simultaneous physical presence of the trader and the consumer subject to some exemptions (as per regulation 5 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. There isn't any provision within this part of the PSRs that holds Miss C liable for the transaction if it was unauthorised, even if she acted with gross negligence or intent (which I make no finding about here).

- The transactions made on Miss C's account were on-line payments. As the payment instrument was used in conjunction with a distance contract, gross negligence isn't a factor for my consideration. Under the PSRs Starling can only hold Miss C liable for it if she either authorised the transaction or she acted fraudulently. There is no persuasive evidence, nor has Starling sought to argue, that she acted fraudulently. Therefore, my consideration is solely in relation to whether Mrs G authorised the transaction.
- Starling as said Miss C provided the online payment code which enable the transaction to complete. I accept she did so, even if she didn't realise that was what she was doing (as she says she has never needed to provide such a code before when making transaction). But authentication is only part of the process of a payment being authorised. Under section 67 of the PSRs, a payment transaction is regarded as having been authorised if the payer consents to it ((1)(a)) and that consent *must* be given in the form, and in accordance with the procedure, agreed between the payer and its payment service provider ((2)(b)).
- I have considered the terms and conditions Starling have provided to us as being applicable. These are largely silent on the form and procedure required to authorise the transaction. I think there was most likely a requirement for details to be entered onto the merchant's website – such as the long card number, the expiry date and the three digits from the back of her card. And it appears on some occasions, but not all, the online payment code.
- I accept Miss C provided the online payment code required to complete the transaction. But as it wasn't Miss C who completed the initial steps required for authorising the payment (the inputting of the payment details including destination name and account information) and it doesn't appear she was aware, or realised that was happening (nor did she authorise anyone else to do so on her behalf), it follows that in accordance with section 67 of the PSRs she did not authorise the transaction. It follows that under section 77 (4)(d) it can't hold her liable for it and so it needs to put that right.
- Under section 76(1) and (2) of the PSRs, a payment service provider must refund the amount of an unauthorised transaction and that should be done as soon as is practicable. Starling didn't do that and so I uphold this complaint.

My final decision

For the reasons given, my final decision is that I uphold Miss C's complaint. I require Starling Bank Limited to:

- Reimburse £3,012.13 to Miss C; and
- Rework the account to the position it would have been had it been refunded when Miss C raised the matter. This includes the refund of any overdraft interest and charges; and
- Add 8% simple interest to the above sum from the date Miss C initially disputed the transaction to the date of settlement (less any lawfully deductible tax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 8 July 2022.

Claire Hopkins
Ombudsman