

The complaint

Mr P complains that Starling Bank Limited failed to raise a chargeback or refund transactions from an internationally based gambling merchant.

What happened

Mr P made several transactions through a foreign based merchant who offered online gambling services I'll refer to as J. Following these transactions Mr P complained to the Gambling Commission as he believed J were not authorised to operate in the UK. They advised Mr P that J were unlicensed to offer their services in the UK and this was illegal. Mr P was advised to approach his bank to recall the funds.

Mr P approached Starling about the transactions he'd made to J. Starling initially told Mr J that they couldn't deal with his loss because he was no longer a customer. Starling corrected this position and advised Mr P that they couldn't raise a "Chargeback" against J because the rules they operate under for card payments meant that the type of transactions he'd carried out weren't covered. Starling operate under the Mastercard rules and are required to follow them when challenging card payments, which is how the transactions were made by Mr P.

Starling declined to refund Mr P and he made a complaint. Starling maintained their position and told Mr P they couldn't use the Chargeback system to challenge his transactions. Mr P remained unhappy with how Starling had dealt with his issue and brought this complaint to the Financial Ombudsman for an independent review.

It was looked into by one of our investigators who thought it was reasonable for Starling not to make a Chargeback request and hold Mr P liable for the transactions. Mr P disagreed with the investigators outcome and asked for a further review of his complaint.

Mr P explained that Starling should have raised a Chargeback because J were an "illegal" business and the service which they provided was "gambling related" but not a fair and legal service in the UK.

Mr P added that *"they (J) have no jurisdiction to communicate or work in the UK."*

Mr P's complaint has now been passed to me for a decision.

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 P sought a refund using the Chargeback system, which is a way to challenge card payments and is operated under specific rules set out by the operator of the system – in this case Mastercard.

Mr P acknowledges that he made the transactions, so the issue of whether they were authorised isn't something I need to consider here. Essentially Mr P's complaint is that

Starling declined to undertake a Chargeback request.

Starling believed the Mastercard rules exempted gambling transactions and Mr P argued that because J aren't licensed by the Gambling Commission – the services they offered weren't fair or legal.

What I need to consider is whether it was reasonable for Starling to decline a Chargeback request and that's because if there was a reasonable chance of success, we'd expect a Chargeback request to be made.

Mastercard describe their exception for gambling related to Chargebacks as:

"Chargebacks are available to the issuer for transactions in which any value is purchased for gambling, investment or similar purposes. However, issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value."

Mr P argued that Starling could have attempted a Chargeback using the reason code *Goods or services not provided*. That's because J weren't licensed by the Gambling Commission and their services were illegal to offer to UK residents. Mr P accepts that he received a service, but not a fair and legal one.

The Mastercard exclusion for gambling transactions allows for a dispute, but not once the service(s) had commenced, which is the case here. So, I don't think that it was unreasonable for Starling to decline Mr P's request for a Chargeback as I don't think it would have been successful.

I appreciate Mr P says their services were illegal in the UK, but that's not the issue here. There are no specific Chargeback reasons for Mr P's particular complaint and Starling couldn't proceed on the basis that the Gambling Commission consider J an illegal business.

I realise Mr P will be disappointed but because the transactions were authorised and I think Starling acted fairly and reasonably when they declined to use the Chargeback process, I won't be upholding this complaint.

My final decision

My final decision is that I do not uphold this complaint against Starling Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 April 2022.

David Perry
Ombudsman