

The complaint

Mr R complains that Starling Bank Limited won't refund him for transactions he says he didn't authorise.

What happened

On 10 October 2021, Mr R was robbed in his home, he was physically assaulted, and, amongst other possessions, his phone and bank cards were stolen. Mr R was discharged from hospital on 12 October 2021, when he realised that a series of payments had been made from his Starling account, totalling nearly £10,000. The payments were made using Apple Pay, which Mr R's card was added to after the theft, and which had been set up on a different phone to Mr R's.

Mr R contacted Starling to explain what had happened and to ask for the payments to be refunded. Starling ultimately decided not to refund the disputed payments, as it said there was no evidence of fraud, so Mr R referred his complaint to us.

One of our investigators looked into what had happened, and felt that with the evidence provided, it was not reasonable for Starling to hold Mr R liable for the disputed payments, so he asked Starling to refund them, along with 8% interest and a payment of £200 for distress and inconvenience.

Starling did not agree with the investigator's findings, in summary it said:

- there were inconsistencies between what Mr R and the police had said about why the police investigation was closed
- the photographs and hospital documents Mr R had provided had not been verified
- there was no clear way that a thief could have accessed Mr R's phone and app to access what they needed to set up Apple Pay and to then authorise the payments
- the pattern of spending was not what it would usually expect in a fraud case – there was a long interval between when the phone and card were stolen and when the first payment was made, and the fraudsters didn't take all of Mr R's money, only spending around half of what was available in his accounts.

As no agreement could be reached, this complaint has now been passed to me.

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've reached the same outcome as our investigator, and for the same reasons.

The relevant law here is the Payment Services Regulations 2017, and broadly speaking Mr R is responsible for any payments that he has authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments.

The terms and conditions of Mr R's account also explain that Starling will not accept liability for losses incurred as a result of negligence or fraud on Mr R's part.

So, the key question here is whether Starling has acted fairly in concluding that Mr R authorised the disputed payments.

I'm satisfied from the bank's technical evidence that Mr R's genuine card details were used, via Apple Pay, to make the disputed transactions, and that the payments were correctly authenticated. But the regulations relevant to this case say that is not, on its own, enough to enable Starling to hold him liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr R consented to the payments being made.

I've thought carefully about all the evidence provided by both Mr R and by Starling, and with the evidence I've seen from the police, the hospital, and the photographs Mr R has provided, I don't think there can be any doubt that Mr R was injured on 10 October 2021, or that he was then in hospital until 12 October 2021.

And bearing that in mind, I'm satisfied that Mr R has give us a plausible explanation for what happened here – that he was attacked and his possessions stolen, which were then used to make these payments without his permission – which is supported by the evidence he's provided. He has been clear and consistent in his correspondence with us and with Starling and nothing in either Mr R or Starlings submissions to us has made me think Mr R is acting in bad faith here.

In summary:

- The payments were made with a phone that had not previously been used by Mr R
- I have seen nothing to suggest that the hospital paperwork Mr R has provided is in any way questionable or that it has been tampered with, and this paperwork shows he was in hospital when the disputed payments took place
- Given that the thieves had Mr R's card and his phone, as well as other personal information about him from his wallet, and could potentially have used Mr R's fingerprint to unlock the phone while they were assaulting him, I think there is a clear point of compromise where they could have gained access to his phone, thereby giving them access to everything they needed to set up and then use Apple Pay
- The pattern of spending may not be what Starling usually sees with fraud cases, but this is not enough to make me think that it wasn't a fraudster who made these payments
- I'm satisfied with Mr R's explanation for why he chose not to ask the police to continue with their investigations, and I don't think what Mr R and the police have said about this is contradictory in any way
- Starling has not put forward any plausible alternative explanation for what may have happened here

With all this in mind, I'm not satisfied that I've seen enough to show Mr R was responsible for or consented to the disputed payments. It follows that I don't think it is reasonable for Starling to have held him liable for these payments.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr R's complaint for Starling to put things right by:

- Refunding to Mr R the disputed payments made on 11 October 2021 – totaling £9,997.99.
- Pay 8% simple interest* on those payments from the date they were made until the date of settlement
- Pay Mr R £200 to recognise the distress and inconvenience caused to him

*If Starling considers that it's required by HMRC to deduct tax from this interest it should tell Mr R how much it has taken off. Starling should also give Mr R a certificate showing how much tax it's taken off if he asks for one.

My final decision

I uphold this complaint. Starling Bank Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 October 2022.

Sophie Mitchell
Ombudsman