DRN-3731683

The complaint

H, a limited company, complains that Starling Bank Limited won't refund a payment that it didn't authorise from its account.

What happened

H disputed a card payment of £219.59 taken under a continuous payment authority (CPA). It said that it never agreed to this. Although the merchant involved had provided a refund it had deducted an administration charge of £36 from that.

Starling Bank said it wouldn't be refunding this remaining amount. It said that the merchant's terms and conditions referred to there being a CPA. A tick box accepting those terms and conditions had to be completed to proceed with an order. And it provided a link to the merchant's website page which referred to services being subject to renewal. Starling Bank said H would have been aware of this when going through the sign-up process. And the merchant said in response to a general query that its process was to send a renewal notice in advance. The fee for cancelling within 14 days of payment was set out in the terms and conditions.

Our investigator recommended that the complaint be upheld. He said that Starling Bank needed to show that the merchant had made H sufficiently aware of the CPA. That was more than it being included in the terms and conditions. And so, he didn't think that the CPA was authorised by H. He said that Starling Bank should refund H £36 plus eight per cent simple interest to the date of settlement.

Starling Bank didn't agree and said it couldn't see it was responsible for this refund. It referred again to the information it had provided about the merchant's website.

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.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with card details. And if a payment wasn't authorised H wouldn't generally be responsible for it.

Guidance about CPAs was issued by the Office of Fair Trading, the then relevant authority in 2012, and the Financial Conduct Authority has since confirmed that these principles still apply. Key to those is that a merchant should make clear that it is using a CPA and that the relevant parts are displayed clearly and not just included in the terms and conditions. And that failure to get informed consent may mean that a refund is appropriate.

It is clear that in April 2021 H did purchase certain company services from the merchant including it arranging a confirmation statement for H and providing a service address for each director.

I can see for example from public records about H at Companies House that a confirmation statement was made on the day before the renewal date given by the merchant. And that in March 2022 H had changed its registered address from the service address used by that merchant. H also changed the service address details for the directors at a relevant time. I'm satisfied on balance that it was making alternative arrangements to the ongoing use of the merchant.

I've looked at the website for the merchant. But I can't see exactly what H would have seen about payment when it got to entering details. I understand Starling Bank's point that this seemed to be a renewal service. But this is based on its general questions of the merchant and what can be seen on the website. And that's because after H had disputed the payment, the merchant had made the refund set out above. So, Starling Bank didn't consider it had a basis to make a chargeback as the refund had been in line with the terms and conditions. That means that it hasn't for example got any other specific information about what actually happened when H purchased the services in 2021 and anything to show that the CPA was appropriately brought to H's attention. And nor is there anything showing that H actually received a renewal notice as the merchant said it should and so allowing sufficient time to cancel without any administration charge.

I also note that even if a chargeback had been made that it is subject to the rules of the relevant scheme. And it wouldn't be a definitive outcome as to whether a payment was authorised or not.

On one hand I can see why Starling Bank takes the view that H agreed to the CPA and ought to have familiarised itself with the terms and conditions, having needed to tick a box stating it accepted them. But that's not enough here to show that the CPA was sufficiently brought to H's attention and positively confirmed. And H says that it wasn't and as I say it seemed to be making plans to move away from these services. So, on balance I'm not persuaded that H consented to the CPA. And as it didn't continue to access or require services I think that it should have been refunded the full amount.

I conclude that H didn't authorise this payment and is fairly due a full refund under the PSR. I agree with the recommendation of the investigator.

My final decision

My decision is that I uphold this complaint and I require Starling Bank Limited to:

1) Refund H £36.

2) Pay H simple interest of eight per cent per annum from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask H to accept or reject my decision before 18 November 2022.

Michael Crewe
Ombudsman