

The complaint

Mr O complains that Starling Bank Limited won't refund to him the amount by which he was overcharged for some beers.

What happened

I issued a provisional decision on this complaint in November 2022 in which I described what had happened as follows:

"Mr O used his Starling Bank debit card to pay for some beers when he was overseas in January 2021. He says that the cost of the beers was 180 currency units and he told the cashier to add 40 currency units so that he could buy a beer after work as he had given Mr O some tips on the area – but he says that he was charged 18,040 currency units and the amount of that transaction on his account statement is £668.66. He says that he disputed the payment with Starling Bank but it said that it was a chip and PIN sale so it was his responsibility to verify the amount charged. He says that that wasn't possible as the card machine only asks for the PIN and there was no amount to verify. He also says that the merchant said that it couldn't refund him as his bank has to make the refund even though it acknowledges that it is its mistake.

Starling Bank said that in order to dispute the transaction under the chargeback scheme, the card scheme rules require evidence to be submitted that demonstrates that the cardholder was incorrectly charged and that a receipt or invoice with a breakdown of the charges can be used as evidence to show the cost of the goods or services. Mr O wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that his complaint should be upheld. He thought that it was unlikely that a chargeback claim would have been successful without having any of the supporting documentation set out in the scheme rules. He thought that Starling Bank had a good reason not to attempt a chargeback in these circumstances and that it had acted fairly and reasonably.

Mr O has asked for his complaint to be considered by an ombudsman. He says that he went back to the merchant and made the same purchase and has provided a receipt for 180 currency units. He says, in summary and amongst other things, that that receipt, or his written evidence, may well have been enough evidence for a chargeback claim to be upheld and it's not for Starling Bank to make that decision so it should have submitted the chargeback claim to see if the evidence was sufficient".

I set out my provisional findings in that provisional decision and I said: "I consider that Mr O's complaint should be upheld for these reasons:

- *if a consumer disputes a card payment, the card issuer may be able to make a chargeback claim to the merchant under the relevant card scheme to try to settle the dispute;*
- *there's no right for a consumer to require that a chargeback claim be made, but if*

the right to make a chargeback claim exists under the applicable scheme rules and if there's a reasonable prospect of success, I consider it to be good practice for a chargeback claim to be made;

- Starling Bank didn't make a chargeback claim for the payment that was disputed by Mr O because it said that the card scheme rules require evidence to be submitted that demonstrates that the cardholder was incorrectly charged and that a receipt or invoice with a breakdown of the charges can be used as evidence to show the cost of the goods or services;*
- Mr O had provided it with evidence that demonstrated that he was incorrectly charged in the form of the explanation that he'd given to it and the receipt that he'd provided for another transaction – he hadn't provided a receipt for the transaction because he says that he wasn't given one;*
- I'm not persuaded that he was required to provide Starling Bank with a receipt for the disputed payment in order for it to be able to make a chargeback claim in these circumstances;*
- I consider that it would have been fair and reasonable for Starling Bank to have made a chargeback claim but it didn't do so and the time limit in which a claim could be made has now expired;*
- the merchant may have defended the chargeback claim in which case I consider that it would have been fair and reasonable for Starling Bank to keep the payment on Mr O's account – but it may have accepted the chargeback claim in which case Starling Bank would be expected to remove the charge from Mr O's account;*
- the payment was authorised by chip and PIN but Mr O has explained the reasons that he didn't notice that he was charged an incorrect amount and I don't consider that the chip and PIN authorisation is enough to prevent Starling Bank making a chargeback claim in these circumstances;*
- I'm not persuaded that Starling Bank has acted correctly and I consider that its decision not to make a chargeback claim has removed the possibility of the payment being refunded to Mr O; and*
- I find that it would be fair and reasonable in these circumstances for Starling Bank to refund to Mr O's account the difference between the 18,400 currency units that he was charged and the 220 currency units that he had agreed to pay”.*

Subject to any further representations from Mr O and Starling Bank, my provisional decision was that I intended to uphold this complaint. Starling Bank says that Mr O is disputing a transaction from January 2021 but the receipt he's provided is from March 2021 as he didn't get a receipt initially, and it's provided an extract from the scheme provider's rules about disputes involving gratuity amounts. It says that it doesn't believe that a chargeback would have been successful as the receipt doesn't match with the transaction being disputed.

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'm not persuaded that I should change the findings that I set out in my provisional decision. Mr O has explained why he wasn't able to provide a receipt for the transaction that he was disputing and I don't consider that his dispute is about the amount of the gratuity that he was charged.

I consider that it would have been fair and reasonable for Starling Bank to have made a chargeback claim in these circumstances – but it didn't do so - and I find that it would now be fair and reasonable for it to refund to Mr O's account the difference between the 18,400 currency units that he was charged and the 220 currency units that he had agreed to pay.

Putting things right

I find that it would be fair and reasonable for Starling Bank to make the refund to Mr O that's described above and as set out below.

My final decision

My decision is that I uphold Mr O's complaint and I order Starling Bank Limited to refund to Mr O's account the difference between 18,400 and 220 currency units.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 January 2023.

Jarrold Hastings
Ombudsman