

The complaint

Mr P complains that Starling Bank Limited failed to complete a chargeback after transactions he didn't recognise left his account.

What happened

Mr P operated his account with Starling for business purposes as a sole trader, buying and selling items. He often used the services of a popular trading site who I'll refer to as J and a payment processor who I'll refer to as V.

Mr P was victim of two different thefts of his funds. One was for false products he paid for through J which were later refunded by them and the second was a false credit account set up with V that used Mr P's Starling account to fund the purchases.

Mr P believes that the first fraud against him involving J gave the necessary details about himself and his financial arrangements that then enabled the false credit account to be set up. Mr P believes false "landing" pages were used to defraud him when he attempted to purchase stock for his business.

There were about £6,000 of payments made using the credit facility with V that Mr P's account was used to then settle. Mr P approached V about the loss in the first place and they confirmed Mr P had been the victim of a fraud.

V confirmed they'd refunded the lost money back to the credit account, but as it was not in Mr P's name, they couldn't release the funds back to his Starling account and advised him to ask Starling to make a "Chargeback" request for these funds.

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme, here Mastercard rules would apply.

Mr P approached Starling about both of the frauds against him and it's apparent from the notes that this complex situation wasn't well understood early on in the process.

Mr P asked Starling to make a Chargeback request, but they declined to do so. Starling also closed Mr P's account, including access to his online account and messaging facility. Starling didn't believe they had grounds for making a Chargeback as they thought this was a "goods not received" complaint and Mr P couldn't provide any invoices. Mr P had told Starling that he had a lack of documentation because he'd been asked to reset his devices and had lost some information. But here, Mr P was claiming that he'd been defrauded in relation to V, not the "goods not received" claim Starling thought was the case. Starling wrote a detailed response to Mr P about his situation and accepted that they'd let him down with their customer service and apologised. They didn't accept they were responsible for Mr P's losses, believing themselves a "third-party" in the matter.

Mr P then brought his complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who initially thought that Starling hadn't made an error. But further information from V changed his mind and he upheld Mr P's

complaint, recommending that Starling repay the full loss including interest at 8% and an amount for compensation for the way Mr P had been treated.

Starling disagreed with the investigators outcome and asked for a further review of the complaint which has now been passed to me for a decision.

I asked for some clarification concerning the refund held by V and they were able to confirm that they would make an exceptional refund to Mr P directly which has now been completed. Mr P remained unhappy and indicated he'd lost out as a result of Starling's refusal to process the Chargeback and they'd caused him unnecessary stress and inconvenience by their handling of his complaint. Mr P wanted Starling to pay the full amount (with interest) plus compensation for the way his complaint was dealt with.

I issued my provisional findings on the merits of Mr P's complaint on 13 February 2023. In my provisional findings, I explained why I intended to uphold Mr P's complaint (in part) and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

V have now completed the refund to Mr P, which means that it wouldn't be appropriate to require Starling to make the substantive refund as well because that would mean Mr P would receive double what he lost, resulting in betterment to him. So while it wouldn't be fair for me to expect Starling to refund Mr P money which he has now received, I have considered how Starling handled this situation and whether it did so fairly and reasonably.

Starling declined to make a Chargeback request which is the ongoing basis for the principal complaint by Mr P. Chargebacks are subject to strict rules and timeframes and aren't a right that the account holder can insist on. Having said that, if there's a reasonable chance of success, then our service would expect the business to undertake one.

Essentially Mr P was telling Starling that he hadn't authorised the payments to the credit card held with V. Rather that he'd attempted to purchase items but unknowingly used a fraudulent "landing site". He believed the scammers then used the details that Mr P had entered, used these to apply for a credit card to make purchases which Mr P's account was then used to "backfill" the debt. V confirmed that the credit account was set up fraudulently in another name.

Chargebacks can be used for several types of disputes, including where the account holder denies making them – as is the case here. Additionally, V had advised Mr P to ask Starling to make the Chargeback so they could deal with the refund. The time limit for such applications has passed, so this process is no longer available to Starling.

So here I'm considering whether Starling's approach to Mr P's situation was fair. I don't think it was and that's because he'd taken a situation to them where he believed he'd been defrauded and had already sought help from V about it. V had explained how he could obtain the refund which required Starling to raise a Chargeback request. Even without the additional assistance from V, I would have expected Starling to raise the Chargeback as it seemed that there was a reasonable chance of success here. But Starling didn't do that and neither did they show that Mr P was responsible for the authorising the payments – either of which would have satisfied their obligations here.

Starling's assessment of the initial information caused them to think that Mr P had changed his story, but having read the interactions between them, I don't think that's the case. I think

the situation was complicated and initially not well understood, which may well have impacted how Starling dealt with the claim.

The fact remains that Mr P had a legitimate request that Starling declined, resulting in a delay for Mr P in receiving a refund (by V). If Starling had raised a Chargeback at the time, I think that V would have used that process to refund the money to Mr P, because that's what they said they would do and have now completed. The fact it didn't do that, means that I think Starling has caused a delay in Mr P getting his money back here.

I've considered that ultimately V's decision to refund Mr P was taken outside of Starling's involvement here. I'm not considering V's role in this dispute as a part of this decision. But having considered what happened here in the context of Starling's involvement, it still remains that had Starling taken action here, I'm persuaded that it would have resulted in Mr P getting a refund much sooner than he actually did.

Closure & delays

Starling's decision to close the account was based on the terms and conditions that the account operated under. They gave Mr P seven days' notice after considering all the information they held. Having reviewed that information, I can understand why they closed it and I don't think this was an unreasonable decision for them to make. But it made dealing with the complaint harder because the messaging part of the app was no longer available to Mr P, even though email continued to be used.

Starling later accepted that they'd let Mr P down with their handling of the complaint and the delay in responding to Mr P or updating him about the situation.

Overall

I think Starling let Mr P down here, especially when it was apparent that a resolution to the situation had been suggested which would likely have meant that Starling's contribution was minimal, with the substantive refund to be made by V. But, because Starling declined to make the Chargeback request, this unnecessarily impacted the refund to Mr P, delaying the return of his funds.

Whilst I don't think the full refund is due to Mr P, I currently think it reasonable that Starling contribute an interest payment of 8% simple interest per annum, from the time of the loss until he receives his refund from V. He was without those funds and this no doubt impacted his ability to make further purchases. Mr P has already provided some information concerning additional costs he incurred as a result of losing these funds, and I'll consider any other evidence regarding this before I make my final decision. But for me to recommend further costs, I would have to be satisfied that they were caused by Starling's failure to process the Chargeback.

My intention is to recommend a payment for the unnecessary stress and inconvenience caused by Starling's actions here and I'm currently thinking that a payment to him of £500 is reasonable, considering the time Mr P was left without his funds and the delays that Starling caused by their handling of the complaint. Mr P indicated he wanted far more than this, but I have to take into account that Starling caused a delay as opposed to being responsible for the loss.

My provisional decision

I'm currently intending to uphold this complaint against Starling Bank Limited and have set out my thoughts above on the redress.

I invited Mr P and Starling to give me any more evidence and information they wanted me to consider before issuing my final decision. Starling didn't think they should have to pay interest as part of the redress but did accept the £500 I recommended. Mr P disagreed and wrote numerous emails where, in summary he said:

- he disagreed that the payment from V was considered a refund and should be classed as a goodwill gift.
- That Starling are the ones who should refund the full amount he lost due to fraud plus interest.
- Mr P was unable to correctly classify the funds for his business expenditure.

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 reviewed the responses from both parties, I haven't seen anything that would change my provisional decision and I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision. I've commented on both parties responses below.

Starling's response

Starling didn't believe that they should be responsible for interest payments when another merchant repaid the losses. As mentioned in my provisional decision, Mr P was without the funds he was using for his business for a considerable period, which was the result of Starling's refusal to process the chargeback request. I think it's both fair and reasonable that they pay interest because Mr P was unable to use those funds when it's likely he would have been able to use them to invest in his.

Mr P's responses

Whilst I've summarised Mr P's responses above, I've read his emails in depth to understand his position regards this complaint.

Essentially Mr P disagreed with the terminology of the payment to him. He doesn't think it can be classed as a refund and by doing so it impacts his ability to correctly administer his business affairs. He has said he's happy to receive a payment from V, but this can't be considered a refund and thinks only Starling can pay this to him.

I disagree, this service's role is to look at complaints independently and where there has been some failing or loss, to put it right. In this case, V made an offer to repay the funds that Mr P lost as a result of fraud on the account he used for business purposes.

That repayment, whether called a refund or a goodwill gesture, is a direct repayment to him for his losses, putting him back into the situation he was in before the fraud happened. It wouldn't be either fair or reasonable to require Starling to make another payment of the same amount to him because Mr P would then be in a better position than he was before the fraud happened.

Essentially here, Mr P lost money and has had it repaid to him. I can't comment on how Mr P deals with his tax affairs, but overall, he's received a payment for his losses equal to that which was taken from him. I have held Starling at fault for not processing the chargeback,

which is why I've recommended a payment for the stress and inconvenience of £500 and the addition of interest to account for the loss of opportunity to use that money.

I haven't seen any other evidence that would lead me to recommend additional payments to Mr P for the loss of his funds from his business account. I have examined the information he sent in about additional costs he incurred, but I haven't seen evidence that this was linked to his business.

Putting things right

In order to settle this complaint, Starling are required to pay Mr P £500 for the impact on Mr P due to their decision not to process a chargeback and also to pay Mr P 8% interest on his loss from the time of the payment to the point it was repaid to him by V.

My final decision

My final decision is that I uphold this complaint, in part, against Starling Bank Limited and require them to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 April 2023.

David Perry
Ombudsman