

The complaint

A complain that Starling Bank Limited (“Starling”) failed to refund transactions they didn’t recognise.

What happened

A are a limited company and are represented here by Mr B who was involved in the incident. So, I’ll mainly refer to him throughout the complaint.

Mr B explained that he was out with friends and had been drinking. Early the next morning, Mr B and his friends left the venue and were in conversation with another group of males.

Mr B said he was trying to gain access to his phone at the time by entering his personal identification number (PIN) into the device. He later said that he believed one of the group of males who was very tall was stood behind him and observed the PIN being put into the phone.

At some point outside the venue, Mr B’s phone was taken by one of the group, although Mr B didn’t realise it was missing until later. Mr B looked for the phone but couldn’t find it.

When Mr B got home later that morning, he tried to use his computer to locate his phone. He then saw messages that his phone details (password) had been changed and could no longer be tracked. Mr B believed that whoever took his phone was able to change the settings and disable the ability of the phone to be found.

He got in touch with the phone provider and told them it had been stolen. Mr B also noticed an email from a crypto currency merchant he had an account with that said he’d moved money into the account earlier that morning.

Mr B was then made aware of other transactions using his phone and called Starling to tell them about the theft. In total, £8,250 was taken from A’s account and most of those funds were paid to various other businesses that Mr B had accounts with. Further evidence showed that those other accounts were then accessed, and the funds sent to different accounts, including crypto payments to “wallets” not controlled by Mr B.

Mr B later received a refund from one of the merchants reducing his overall losses to £7,250. Starling were asked to refund the remaining money because Mr B confirmed he hadn’t authorised the payments.

Mr B also notified the police about the incident, who mounted an investigation into the loss of the phone and A’s funds.

Starling looked into what had happened and didn’t think they were responsible for refunding A. They told Mr B to approach the merchants who had received his funds and seek refunds from them because the loss occurred at that point.

A were unhappy with the length of time Starling took to look into his loss and complained. Starling again examined the circumstances but didn’t change their position. A then brought

their complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators.

Information was sought from both parties and Mr B provided details of the incident and a witness statement he'd produced for the criminal investigation. He repeated what had happened but couldn't explain how the thieves had managed to access his Starling account to move his funds.

Starling provided details of their investigation and maintained that the loss was at the point when funds were moved from the other merchants where Mr B held accounts. Starling wrote to Mr B and said:

"...Whilst I appreciate that you did not authorise these transactions, the transactions were made to B, M and R accounts that are held in your name and were then transferred away, therefore, B, M and R should be investigating how these funds were transferred away as they have a responsibility to secure your funds."

After considering the information, A's complaint was upheld because the evidence pointed to those payments carried out after Mr B lost his phone were unauthorised.

Starling didn't accept this and continued to argue it wasn't their responsibility to refund because the loss occurred later in the chain of transactions.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my investigations, I asked the police to set out their position regarding the events surrounding the loss of Mr B's phone and subsequent transfer of A's funds. They were able to confirm that individuals were being sought in connection with the incident and were confident Mr B was the victim of a crime. They didn't believe he was responsible for making the transactions.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Starling can hold A liable for the disputed payments if the evidence suggests that it's more likely than not that they made them or authorised them.

Starling can only refuse to refund unauthorised payments if it can prove A authorised the transactions, but Starling cannot say that the use of Apple Pay or online payment details conclusively proves that the payments were authorised.

Unless Starling can show that consent has been given, it has no authority to make the payment or to debit A's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows they were authenticated using the payment tools issued to A. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold A responsible for the disputed transactions or not.

Firstly, I'd like to address the position that Starling have taken here. They appear to be

arguing that as the loss occurred after the funds left A's account and were sent to other ones Mr B controls, that the responsibility lies with those merchants.

There is an argument regarding which merchant is liable when assessing scam complaints. But, those particular considerations relate to transactions authorised by the complainant as a result of a scam. The situation here is very different, that's because Mr B's argument is that his phone was stolen, and payments made from his account weren't authorised by him or A.

This complaint revolves around whether there's evidence to show Mr B consented to those payments leaving his account, because without that consent, the payments would be considered unauthorised, and Starling would be liable to refund the outstanding losses made from the account (minus any other refunds there may have been).

Mr B's version of events has been supported by an ongoing criminal investigation into the theft of his phone and payments made from his account after the phone was taken. Whilst it would be inappropriate to discuss, in detail, an ongoing criminal investigation, I have seen confirmation that Mr B was the victim of a theft and further fraud.

On the face of it, it seems unlikely he could have made those transactions because he no longer had his phone. There remains a question of how the thieves managed to access his Starling account as Mr B confirmed he didn't store his password/PIN on his phone. I've also considered whether Mr B had knowledge of the payments before they were made. But the evidence from the Police shows that a genuine event happened outside the club Mr B had been drinking at and several transactions made from various accounts culminating in the transfer back to one of the suspects.

I've also considered Starling's own assessment of the complaint where they've recognised Mr B (on behalf of A) hadn't authorised the transactions, although they've then gone on to say liability is with other merchants.

So, when I've considered the entirety of the evidence in this particular case, I can see the payments were properly authenticated, but I'm not satisfied that Starling have been able to demonstrate that Mr B consented to those payments. I think it's more likely than not that Mr B didn't authorise these payments. Without proper authorisation, the payments must be considered unauthorised and refunded.

Putting things right

Starling should now repay the losses incurred when Mr B's phone was taken, and his funds likely stolen. I understand that some of them have been refunded by one merchant, so Starling are required to refund the remaining £7,250 plus interest calculated at 8% simple from the day of the loss until it's repaid.

I'd like to add that if A receive any other refunds from other merchants, they should notify Starling to ensure they only receive those funds back that were lost.

My final decision

My final decision is that I uphold this complaint against Starling Bank Limited and they're instructed to settle it as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 10 October 2023.

David Perry
Ombudsman