

The complaint

Mr P has complained Starling Bank Limited won't refund transactions he didn't make.

What happened

Whilst on a night out in July 2022, Mr P's phone was stolen. The following morning he reported this and a few days later got sent a replacement device. He realised lots of money had been taken out of his Starling account. His debit card details had been extensively used, as well as online transfers made, including transfers overseas. An overdraft was also applied for, although Starling rejected this. Mr P's savings in another account (with a provider I'll call M) was also transferred to his Starling account and spent.

Starling confirmed that all the transactions were properly authenticated using the device registered to Mr P. They didn't see how an unknown third party would know Mr P's password to access his bank app.

Upset with this outcome, Mr P brought his complaint to our service.

Our investigator reviewed the transaction evidence. She was also able to get confirmation of a replacement mobile device being delivered to Mr P on 3 August, after which he was able to successfully re-authenticate himself as registering the device. However she found it odd how a third party could know Mr P's passwords to access his Starling account. She wouldn't ask Starling to refund Mr P.

Still disappointed, Mr P has asked an ombudsman to consider his complaint.

I completed a provisional decision on 7 August 2023 upholding Mr P's complaint.

Mr P accepted this outcome. No response was received from Starling.

I now have all I need to complete a final decision.

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 I did in my provisional decision. What follows explains my thinking.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr P's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Mr P's case.

The PSRs also require financial institutions to provide evidence that they relied upon in rejecting any claim about disputed transactions. Whilst Starling has been able to provide information on the individual transactions, there was limited other evidence which could indicate, for example, IP addresses in use during the period of the disputed transactions.

So to help me decide what happened, I've looked at the evidence of the transactions as well as what Starling and Mr P have confirmed to us. Specifically I can see:

- Mr P has told us his phone went missing during the evening of 27 July 2022 (or early morning of 28 July) after a night out with friends. He and they tried to look for his phone but without success.
- What followed was many transactions Mr P has said he didn't make. These were made using his phone and app with Apple Pay, online transfers, an application for a £5,000 overdraft in the early hours as well as a purchase for an Apple laptop sent to an address which wasn't Mr P's.
- Mr P's app with M was accessed and the contents of that account – minus the penalty charge – was then transferred into his Starling account. This was then spent on transfers.
- Mr P was able to get refunds of Uber transactions direct from them as they accepted these were not him. A couple of online transactions also failed, and the money was re-credited back into his account.

Mr P has said that he's looking for £7,058 to be refunded by Starling.

Mr P tried to register an old phone with Starling to access his account. This was on 29 July but failed as there was a lack of audio provision. There's evidence to show Mr P was provided with a new phone through his mother's insurance policy and he got this on 3 August. He was immediately able to access his account.

Unfortunately Mr P had not notified Starling prior to 3 August that he'd lost his phone. This was because he'd thought his account would be secure, particularly as he still had his physical debit card which he continued to use during the period of the disputed transactions.

I have considered whether Starling can hold Mr P responsible because there's no simple explanation for how the payments were made without his involvement as our investigator has suggested. However the test under the PSRs isn't whether I can exactly pinpoint how the fraud happened but whether these were authorised by Mr P. There is no evidence facial recognition was used to authenticate any transactions, which Mr P had enabled on his accounts. And I believe there are various scenarios which explain how his password could have been known – particularly if Mr P's phone had been targeted by fraudsters during the evening. I also note that the password was changed after the fraudsters initially accessed Mr P's account which shows they tried to limit Mr P's ability to access his own account.

I've also considered the nature of the disputed transactions. These clearly follow the type of transactions we see when fraud is being committed. An overdraft was applied for in the early hours of the morning. Whilst this application failed the credit checks that Starling undertook, this application was very out of character for Mr P, as were the rest of the transactions that

followed. New payees were set up, with large amounts being sent to these individuals. An app enabling worldwide transfers was used to send money abroad. An account was set up in Mr P's name, but failed ID checks. Various purchases were made including high-value electronic equipment. This was sent to addresses that weren't Mr P's. Whilst we need to be careful about saying certain payment patterns look like fraud, in this case I'm in no doubt what happened here matches fraud-related activity.

Mr P's account with M was accessed and money transferred. This money had been saved by Mr P's mother for his future. I can see no reason why Mr P would spend this himself.

I have considered Mr P may have authorised these transactions but if this were the case, he'd have to have committed extensive and varied first party fraud and I don't see any reasons for him doing this.

I note Mr P is concerned that at no stage when these transactions were being made did Starling intervene or wonder what was going on. I share his concerns. These transactions were out of character for this account. I believe there was plenty of opportunity for Starling to identify that something unusual was happening. However this hasn't impacted the decision I'm making as I've decided Mr P didn't authorise the disputed transactions.

Putting things right

Based on the evidence, I'm satisfied Mr P didn't authorise these transactions. Starling will need to refund the disputed transactions in full. As Mr P has been without a large amount of money for a long period, Starling will also need to add 8% simple interest to the amounts from the date his account was debited until the date of settlement.

I know Mr P will also have concerns about his financial loss with M. The money transferred from his account with M and then spent from his account with Starling is to be refunded by Starling. He should also make M aware of the outcome of this complaint which will clarify that what happened was not his fault. They should consider whether they will reinvest his funds along with the conditions that apply to that type of savings. If this becomes an issue, Mr P can pursue a complaint against M.

My final decision

For the reasons given, my final decision is to instruct Starling Bank Limited to:

- Refund £7,058 to Mr P; and
- Add 8% simple interest to the debited amounts from the dates of debit until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 October 2023.

Sandra Quinn
Ombudsman