

## **The complaint**

Mr M complains that Starling Bank Limited is holding him responsible for transactions which he says he didn't authorise.

## **What happened**

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

Mr M has told us that around midnight on 8 September 2023 he checked his balance at an ATM and it retained his card. He said he spoke to some people nearby who told him the ATM always retains cards, and so he left.

Mr M said he went home and checked his account balance - at which point he noticed a cash withdrawal for £300, as well as three other transactions, for £100 each. Mr M contacted Starling to dispute the transactions.

Starling declined Mr M's claim on the basis it believed Mr M had authorised the transactions. It said the transactions were in line with previous genuine transactions made by Mr M, and it didn't think the specific circumstances and timing of the disputed transactions were conducive with fraudulent activity. Mr M didn't agree and referred his complaint to the Financial Ombudsman.

One of our Investigators considered the complaint and didn't uphold it. In short, she thought Starling hadn't acted unreasonably in holding Mr M responsible for the transactions. She also thought it had conducted a fair investigation into the matter.

Mr M didn't accept the Investigator's findings, so the complaint has been passed to me to make a decision. He said someone could've seen him entering his PIN in the ATM when he made the balance enquiry, and he was more than 60 miles away by the time the last disputed transaction was made. Mr M also thought Starling should've requested CCTV footage as part of its investigation.

## **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 agree with the conclusions reached by our Investigator, and for largely the same reasons. I'll explain why.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I've not addressed; it isn't because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Starling has acted reasonably in concluding Mr M authorised the disputed transactions.

I can understand why Mr M thinks CCTV footage would help support his case, but this isn't something we generally ask for as it's often not as conclusive as the technical evidence relating to the payments in dispute. And as our Investigator has already explained, CCTV footage *might* show someone else using Mr M's card, but that doesn't prove that the transaction was unauthorised, as Mr M might still have consented to the payments being made.

Mr M's claim is essentially based on his belief that his card was taken from the ATM by a third party – and that the third party saw him enter his PIN. By Mr M's account, that then enabled the third party to use his card and PIN to withdraw £300 in cash from the ATM and make three further transactions a couple of hours later.

I've given Mr M's testimony a lot of thought. But I should add that where the evidence is incomplete, inconclusive, or contradictory, I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

The technical evidence I've seen supports Mr M's testimony, insofar as it shows he made two balance enquiries on 8 September 2023 at 00.03.23 and 00.03.56 at an ATM. Mr M has said he wanted to check that his *'money had gone in'* and I can see that he had a payment into his account for £609.58 around the same time. So, this all seems plausible to me.

I've not seen any technical evidence from the ATM – and so I don't know if it had any reported problems or if it retained Mr M's card as he has described. What I do know is that the card wasn't retained for long (given the timing of the cash withdrawal). And I'm also mindful that even if technical evidence showed the ATM *had* retained Mr M's card, it wouldn't show *who* took it. That said, I have carefully considered Mr M's account that the card was taken from the ATM by a third party after he left. And in doing so, I think this is unlikely.

I can see from the technical evidence that the £300 withdrawal was made at 00.04.48 at the same ATM Mr M used for his balance enquiry. Mr M said his PIN wasn't shared or written down, but that someone could've seen him enter it. But, for this withdrawal to have been made as Mr M describes, a third party would've needed to have taken his card and inputted the correct PIN to request the funds – all within less than a minute of when Mr M says his card was retained. For the reasons I go on to explain, that seems unlikely to me.

Mr M has said that when his card was retained, he spoke to some people who said it happens a lot. Mr M has also said:

***'I stayed at the cash machine until it returned to the cash machine home screen and it was clear [the card] wasn't being returned'.***

This suggests to me that Mr M didn't leave the ATM *immediately* after the card was retained – and so if his card had been returned less than a minute later – I think it likely, on balance, that Mr M would've been there to retrieve it himself. And if it was taken by a third party, I think it's unlikely they'd have attempted to use the card whilst Mr M was still in the vicinity.

Looking next at the transactions themselves; I agree with our Investigator that they don't follow a pattern conducive with fraudulent behaviour. I appreciate that the events happened late at night – and the cash withdrawal was made promptly after the alleged incident. But I still think it's unusual for a fraudster to wait over two hours before attempting to use the card again. I can also see from Mr M's bank statements that there was a similar pattern of genuine transactions the month before. This, in my opinion, all weakens Mr M's testimony.

Mr M has also said he was more than 60 miles away by the time the last transaction was made. Firstly, I've no information or evidence to show where the merchant was located. Secondly, any evidence supporting Mr M's location when the payments were made doesn't negate that he still could've consented to them.

Taking everything into account, it follows that in my judgement, on balance, it is more likely than not that either Mr M authorised the disputed transactions by making them himself or authorised another to do so by providing them his consent. And so, I won't be asking Starling to take any further action in this regard.

This is a difficult message for me to give as I know how strongly Mr M feels about this matter. But given the evidence I have and on the balance of probabilities, I'm unable to reasonably reach any other conclusion in the circumstances of this complaint.

So, taking everything into account, I don't think Starling needs to take any further action.

### **My final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision **before 7 March 2024**.

Anna Jackson  
**Ombudsman**