

## **The complaint**

S, a limited company, has complained Starling Bank Limited won't refund them for two disputed transactions executed after their debit card was stolen.

Mr S is a director of S and represents them in this complaint.

## **What happened**

In July 2023, Mr S's car was broken into and various cards and personal possessions, belonging to his uncle as well as S and Mr S, were taken. Mr S was alerted quickly by Starling that his card was being used to withdraw cash so went to the petrol station where this was taking place. Mr S also called the police and Starling.

Mr S discovered that £200 was withdrawn from S's account and the card was also used for transport early the following day. There were at least three other attempted transactions which were declined.

Starling wouldn't refund S as *"we cannot prove where your PIN was compromised. This precludes Starling from raising your dispute"*.

Mr S brought S's complaint to the ombudsman service.

Our investigator was unsure how an unknown third party could have known the PIN for S's debit card so wouldn't ask Starling to refund S.

Mr S has asked an ombudsman to consider S's complaint.

I completed a provisional decision on 11 November 2024. I believed Starling needed to refund S.

Starling disagreed with my provisional outcome. They believed their terms and conditions specified if there was no point of compromise, then they could continue to hold the customer liable for the disputed transaction. They continued to believe that Mr S had either made the transaction himself or had been grossly negligent.

I now have all I need to complete my 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. I'll explain why.

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.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

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 S's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN – to be used by someone else.

To help me come to a decision, I've reviewed the evidence Starling provided as well as what Mr S has told us on S's behalf. This includes the evidence showing balance enquiries carried out before the first cash machine withdrawal and a later attempted withdrawal which was declined. Starling has provided no evidence to suggest S acted in a grossly negligent manner. There is clear provision from the Financial Conduct Authority that they're required to do so if they believe a refund is not due because of this.

I don't believe S made or authorised the disputed cash machine withdrawal and later transaction. I say this because:

- I believe there is a clear point of compromise of S's card. Mr S's car was broken into and items were stolen. I've seen correspondence with the police which confirms this.
- I can't pinpoint exactly how a fraudster obtained S's PIN but the PSRs don't require me to do so. I just need to be satisfied that there are scenarios which enable a third party to get hold of the PIN. The Starling app allows someone to check what their PIN is so I can see no reason why Mr S would keep a note of the PIN with S's card which is I believe what Starling is implying. What I can see though is that a theft took place and cards – including those belonging to Mr S's uncle – were subsequently used.
- I know Mr S has highlighted that he used the debit card a week previously to withdraw cash and feels he could have been watched. But I think that would entail a fraudster watching and following Mr S for a week before getting the opportunity to steal S's card. I don't believe that's likely, but it is obviously possible even if any fraudster got quite a poor return of £200 for that effort.
- Starling's own recording of the phone call with Mr S suggests he was trying immediately to get CCTV evidence to see if he could see S's card being used and who'd stolen the card.
- I'm satisfied that the evidence shows S's card was stolen. I don't believe this aspect is in doubt. I find it extremely odd that Starling seems to dispute this when their own evidence – the phone call – seems to confirm this.
- The transactions that take place resemble fraudulent behaviour – specifically balance enquiries, withdrawals (successful and failed) and later transport use of the card, where because of the nature of the transport system's authentication, a card transaction was made despite Starling knowing by that stage the card was stolen.

I disagree with Starling's view that being unable to prove how the PIN was compromised

stops them from accepting that Mr S was a victim of a crime which led to S's card being used without authorisation. As I can see they provided nothing to suggest how S acted in a grossly negligent manner, I believe asking them to repay S's losses is fair and reasonable.

Based on the evidence I've considered I don't believe there's enough to show the withdrawal was completed by Mr S. Starling will need to refund £201.75 to S along with 8% simple interest from 9 July 2023.

### **My final decision**

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

- Refund £201.75 to S. and
- Add 8% simple interest to that amount from 9 July 2023 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 23 December 2024.

Sandra Quinn  
**Ombudsman**