

The complaint

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

What happened

In June 2023 Mr B was out at a networking event. He then went out for further drinks at a private club. After not feeling well and meeting someone with common interests, Mr B ended up staying in their temporary flat. He woke up in the morning later than expected and had to rush out for a meeting.

It was only later Mr B realised his phone was now slightly charged whilst the night before he'd noticed the battery had run out. He'd not remembered charging this himself. Mr B then noticed a £5,000 transfer from a business account he held with another bank to his Starling account along with at least two transactions from his Starling account he didn't recognise. He complained to Starling. They couldn't see any "*clear point of compromise*" and felt Mr B "*may have been negligent while in a drunken state*". They also approached the bank who held Mr B's business account who confirmed Mr B had not reported any fraud on that account.

Mr B brought his complaint to the ombudsman service. After a detailed review, our investigator felt it was most likely the transactions had been authorised by Mr B.

Still unhappy, Mr B asked an ombudsman to review his complaint.

I completed a provisional decision on 27 March 2024 as I believed there was insufficient evidence to show Mr B had authorised the disputed transactions.

Mr B accepted this outcome. Starling didn't. They questioned the evidence we may have received from S, where Mr B's business account was held.

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.

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 B'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. Starling has implied Mr B was negligent by potentially giving his phone to a third party, so I've considered the gross negligence aspect too.

To help me come to a decision, I've reviewed the evidence Starling provided as well as what Mr B has told us.

I believe these transactions were carried out without Mr B's authorisation. I say this because:

- Starling's evidence shows the device used for the disputed transfer of £1,100 was Mr B's. They've also been able to demonstrate that Mr B's Starling card and PIN were used for the disputed £4,500 card transaction.
- The transactions themselves however alert me to potential fraud. The card payment was made at the merchant's premises at 05:32. There's nothing in Mr B's payment history which would suggest he'd be likely to make this type of transaction. To enable the transfer to be made, a new payee was set up. The first transfer of £1,100 was made at 04:34. A further transfer of £530 to the same payee was attempted at 05:54 but was cancelled most likely by the person trying to make this transaction. Again there's nothing to show why this would be Mr B.
- None of the above appears to me like Mr B's normal payment behaviour.
- Mr B has been able to provide us with evidence of fraud on one of his other accounts which happened at the same time. I've seen the written evidence that the other financial institution investigated fraud and refunded £3,000 to one of Mr B's account.
- Mr B has also told us he didn't report fraud to the bank that held his business account, despite £5,000 being transferred from that account to Starling. This matches what Starling subsequently found out. However Mr B has told us that he changed his user ID and password to prevent any further compromise. His other bank was able to show that Mr B contacted them after the fraud to change his details and told them he was concerned about potential compromise to match the timeframe of what happened.
- Starling has said there's no clear point of compromise, but I disagree with them. Mr B's testimony is that his phone was mysteriously charged following a night out. He spent that night ill and unconscious. His evidence to Starling – and shown in copies of their chats with Mr B – was that he kept password prompts for his Starling account on his phone and his PIN was the same as his phone PIN. It seems clear to me that someone else most likely had access to Mr B's device and card whilst Mr B may well have been asleep after a hefty night out.
- Mr B's evidence about what time he reached his new friend's property is unclear although he's suggested this could have been about 03:00. There's an undisputed taxi fare at 04:01 which I believe may well have been Mr B arriving at this flat. There's then also an attempted cash withdrawal of £150 at 04:04. This didn't proceed as Starling has said Mr B had exceeded his daily withdrawal limit (see further below). However this could very easily have been the time that Mr B's PIN was observed. This compromise would then have enabled a fraudster to access Mr B's device.
- A further cash withdrawal of £300 was made at 06:34 most likely close to where Mr B was staying. Although this has not been raised previously as fraud, I believe this is most likely since the card was used for what I believe is an unauthorised transaction at 05:32.

- Mr B has told us that the app he uses for trading cryptocurrency was deleted from his device and more than £30,000 was moved from his account. Because of the nature of this transaction, he's very unlikely to get any of these losses back. I have asked him whether he has additional evidence about this and he's been able to share this with us.

I don't believe there's sufficient evidence to show Mr B authorised the three disputed transactions.

In addition I've considered aspects relating to gross negligence. As required under the guidelines about gross negligence, the burden of proof lies with the financial institution to show a customer committed gross negligence. Based on the evidence Starling provided, I don't agree this has been shown.

It is not the case under the PSRs that I have to specifically identify a point of compromise to be sure fraud has happened. Nor is it my role to explain how fraud takes place. All I need is to be satisfied there was an opportunity for fraud to take place and based on what I have seen here, I am. It's difficult to ignore the substantiated evidence of fraud on Mr B's other accounts.

In cases where we find it difficult to explain exactly what happened, the correct response isn't just to confirm the customer must bear the responsibility. This wouldn't meet the requirements of the PSRs. In Mr B's complaint, the nature of the transactions and his testimony outweigh other evidence.

Starling will need to refund £5,900, along with 8% simple interest.

My final decision

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

- Refund £5,900 to Mr B; and
- Add 8% simple interest from 23 June 2023 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 May 2024.

Sandra Quinn
Ombudsman