

The complaint

Mr J is unhappy that Starling Bank Limited (“Starling”) haven’t reimbursed him after a number of transactions he’s said were unauthorised were carried out using his debit card.

What happened

Mr J says someone stole his debit card and spent over £13,400 on 16 and 17 December 2023. Mr J is disputing the following transactions:

16 December 2023:

8:04 pm	ATM withdrawal	£200
8:05 pm	Balance enquiry	-
8:05 pm	ATM withdrawal	£100
8:30 pm	Retailer A	£8,596
8:40 pm	Retailer A	£1,199

17 December 2023:

12:54 pm	Balance enquiry	-
12:55 pm	ATM withdrawal	£200
12:56 pm	ATM withdrawal	£100
13:17 pm	Retailer A	£2,999
13:48 pm	Retailer B	£27.90

Mr J said he was out celebrating a friend’s birthday on 16 December 2023 when his card must’ve been stolen. He later went on to a different venue in a different part of the city he was in and continued drinking with friends. He’s said he didn’t notice the card had gone until the following day because:

- He kept the stolen card loose in his pocket so he still had his wallet with his other cards;
- He used a different card to pay for travel that evening;
- His friends paid for his drinks for the rest of the night;
- He was drunk on the evening of 16 December 2023 and his phone ran out of battery

at some point so he didn't see any notifications from Starling regarding the payments until the next day.

Mr J contacted Starling the following morning when he was able to turn on his phone and noticed the transactions. Starling investigated the matter and requested further information from Mr J regarding his use of the account and the events that led to him losing his card.

On 19 February 2024 Starling told Mr J it didn't feel it had sufficient evidence to conclude the transactions were fraudulent. It told him it wouldn't be reimbursing the funds and would be closing his account. Mr J was unhappy with this and made a complaint to Starling. It responded to his complaint on 22 February 2024 but said it was satisfied it had acted reasonably.

I issued my provisional decision earlier this year. I said that:

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened given the available evidence.

The relevant law surrounding authorisations are the Payment Service Regulations. The basic position is that Starling can hold Mr J liable for the disputed payments if the evidence suggests that it's more likely than not that Mr J made them or authorised them. Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Starling has supplied evidence that shows Mr J's card and PIN details were used to make the payments so I'm satisfied the disputed transactions were authenticated.

Consent refers to the way in which Starling has agreed to operate the account to allow it to make payments on Mr J's behalf. For example, Starling's terms and conditions set out that if a payment is arranged through the use of a device (such as Mr J's bank card) then Starling accept that the instruction to make the payment is authorised by the account holder.

But the regulations relevant to this case say that is not, on its own, enough to enable Starling to hold Mr J liable. I also need to think about whether the evidence suggests it's more likely than not he consented to the payments being made. I can't know for certain who carried out the disputed payments, as I wasn't present at the time. So, in order to reach my decision, I take all the available evidence into account and make my decision on what I think is more likely than not to have happened.

Having looked at all the evidence and considered Mr J's explanation carefully, I'm not persuaded by what he has said. And on balance I've ruled out that a third-party was responsible for making the payments without Mr J's consent. So, I don't think it would be fair or reasonable to say Starling needs to reimburse him.

Mr J has said only he knows his PIN and this hasn't been written down or kept with his card. So it's not clear how, if someone took his card without his knowledge or consent, they also knew his PIN.

Mr J has suggested someone must've seen him use his PIN in a bar, and then later stolen his card which was loose in his pocket rather than in his wallet. But according to Mr J's testimony, the person who stole his card would've needed to have seen him use his PIN, later steal his card and then travel to a different part of the city (that Mr J had also travelled to) to start using it. Overall I don't think this seems plausible.

When a fraudster steals someone's card they'll have no way of knowing how long they will be able to use the card undetected. So it seems unusual that after stealing Mr J's card they would travel to another part of the city to start using it. Especially as the card was used to withdraw cash and make large purchases at "retailer A". Retailer A is a large chain that had locations very close to where Mr J says he last used the card and where, based on what he's said about his PIN, the card would've had to have been stolen from him. And I'm satisfied there also likely would've been ATMs available in this location. So it's not clear why the fraudster wouldn't have just carried out these transactions at the nearest location.

It also seems odd that the fraudster who Mr J says took his card travelled to a different part of the city that Mr J says he also travelled to later that evening. And if the fraudster had stolen Mr J's card in that second location, it's not clear how he would've obtained Mr J's PIN. As Mr J says he didn't use his card or his PIN again that evening.

I've also carefully considered the pattern of spending on Mr J's account. As I've mentioned, it seems odd the fraudster would've waited to travel before trying to access Mr J's money. But it seems even more unusual that part way through spending the money in the account they stopped overnight only to resume again the next day. They didn't start accessing Mr J's money on 17 December 2023 until after 12pm and once again they appear to have been in the centre of the city, to use an ATM and make purchases at the same chain retail store as they'd used the previous day.

Again, this is unusual because a fraudster won't know how long they might have access to a card before their spending is detected. It seems odd that someone would go to the trouble of stealing Mr J's card and then not access all the money available in the account straight away. And I can see there was a balance enquiry made on 16 December 2023. So the fraudster would've known how much was in the account.

I've also noted that overall, the fraudster didn't empty the account even when their spending resumed on 17 December 2023 which again seems odd. It's not clear why they would leave around £300 in the account. Their spending wasn't curtailed by any intervention by the bank or by a declined transaction. It appears they simply stopped and Mr J reported the card stolen around one hour after this.

Mr J has said he doesn't use retailer A which he feels offers further evidence the spending wasn't carried out by him. But earlier in the same year he received a refund of around £5,000 from it. And the items he purchased and returned were the same type of high value items purchased when his card was stolen. Mr J has said he bought a laptop and returned it. And the retailer is a common high street retailer, so I accept it isn't, in itself, unusual that he might've used it. But this is part of what I've taken into account when considering the overall circumstances of the complaint.

It seems unusual that Mr J moved such a large amount of money – around £13,000 – into his account in the two weeks leading up to the disputed transactions. Mr J has said both that this money was in his account in case a good deal of a car came up and he needed access to the money immediately and that the money was owed to him by various different people who happened to repay him around this time. He's also said he transferred the funds in separate transactions because at first he was planning to pay a deposit on a car, but then potentially pay for the whole car.

If Mr J was in the market for a car and thought he might wish to spend £13,000 on one at short notice, it seems odd that he'd lent nearly this amount to friends in the time leading up to the disputed transactions. And if he'd been keeping money in a savings account ready to use, it's not clear why he suddenly decided to start keeping the money in his current account instead.

Whilst I understand he's said it's because the interest rate on his Starling account was reasonable, and I accept this, it's not clear then why the money wasn't always in his Starling account or why this move was prompted by a potential car purchase that then didn't go through for some reason. And overall, it seems odd that Mr J felt such a large purchase would be one that might need to be carried out so urgently.

It is for Mr J to keep his money where he chooses. But as with other points above, it's information I've taken into account when considering the overall circumstances of this case.

Our rules allow us to receive evidence in confidence. We may treat evidence from banks and financial businesses as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information.

In addition to all of the above, Starling has provided this service with information regarding Mr J's use of his account. Some of what Starling has provided is information that we considered should be kept confidential. This means we haven't been able to share a lot of detail about this, but I consider that it was appropriate to take it into account in this case when considering all the circumstances.

Overall, taking all the evidence into account in this case, I don't think it's unreasonable that Starling have held Mr J liable for the transactions he's said were carried out by a fraudster. Based on the evidence available I think it's more likely than not they were carried out with his consent.

Mr J has said that he doesn't feel Starling sent him a 'pre-approval' request for the high value transactions he's disputed as it should've. But I don't think that point is relevant here as I'm satisfied Mr J more likely than not consented to the payments.

Starling concluded that Mr J was responsible for transactions he's said were fraudulent. And as part of this decision it closed his account without notice. For the reasons given, I don't think Starling's conclusions were unreasonable in this case and I'm satisfied the terms and conditions of the account allow it to close the account with immediate notice in these circumstances.

I said I'd consider any further submissions I received from either party by 6 November 2024. Starling didn't have any further comments. Mr J responded with further points he asked me to consider. Broadly there were a repetition of points he has raised previously, albeit with some additional reasoning around the following:

- He reiterated where he kept his card, why he didn't tell the bank his card was missing

until the next day, why he had the money in his account and why he didn't notice his card was missing and how he felt someone had likely seen his PIN;

- He commented that he wasn't familiar with the patterns we might ordinarily see from scammers but stated that some scammers might operate outside of usual patterns;
- More detail around why he lent money to friends leading up to the potential purchase of a car;
- He raised again that he didn't receive any alerts for the transactions that he feels should've been recognised as unusually high.

The complaint has been passed back to me to make 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.

I've also very carefully considered all the additional information Mr J has provided in response to my provisional decision. But having done so I'm afraid I haven't been persuaded to depart from the findings set out in my provisional decision, outlined above.

Much of what Mr J provided is information I'd already taken into account when reaching my provisional decision. He's not provided any additional, material evidence other than his testimony. So if I haven't responded to something specifically, it's because the additional commentary he's provided hasn't persuaded me to depart from the conclusions set out above.

As I've explained, the outcome here doesn't turn on any single piece of evidence in isolation. I've reached a conclusion based on what I think is more likely to have happened taking into account all of the circumstances of this case.

That said, I would like to clarify my position in response to his comments about the pattern of spending on the account.

Mr J has said it's significant that the transactions he's disputing are outside of his usual pattern of spending. He's said both that this should've triggered intervention from the bank and that this supports his position that he wasn't the one carrying out the spending. He's also said that it's possible the scammers were acting outside of the usual patterns we might typically see.

I understand and accept that scammers may sometimes act outside of the usual patterns we expect to see. It is possible that the scammer might've gone to the trouble of stealing Mr J's card, then chosen to spend moderately and over the course of two days rather than take full advantage of their use of it in as short a time as possible. But I don't think this is the more likely option. I think it's likely that if someone stole Mr J's card they did so in order to access his money. And if they were able to successfully do this it's not clear why they would opt not to access as much as possible as quickly as possible given the missing card might've been discovered and blocked at any point.

But as I set out in my provisional decision, the pattern of spending on Mr J's account is one of the many points I have taken into account overall when reaching a conclusion in this case – detailed in the excerpt from my provisional decision above. It's been considered alongside all the other information available and I've reached a conclusion based on what I think is more likely based on the balance of probabilities.

Overall I think it's more likely than not Mr J consented to the transactions he's disputing. Because of this, I don't think it materially impacts the complaint that Starling might not have sent him notifications of the transactions he's disputing or that the disputed transactions were outside of Mr J's normal spending patterns. Ultimately, taking everything into account, I think it's more likely than not Mr J was aware of the transactions and consented to them.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 December 2024.

Faye Brownhill
Ombudsman