

## The complaint

Mr J complained because Starling Bank Limited refused to refund him for transactions which he said he didn't authorise while on holiday abroad.

## What happened

On the morning of 28 January 2024, Mr J contacted Starling by chat. He was abroad on holiday, and said his wallet and card had been pickpocketed when he'd been on a night out. There had been three cash withdrawal and two debit card payments, which Mr J said he hadn't authorised. The sterling equivalent for these five payments was £619.99.

Starling cancelled the card and ordered a replacement. It asked Mr J some questions. In reply to a question asking whether Mr J had written down his PIN, Mr J replied *"I have my pin on some paper in my wallet."* Starling told Mr J it would investigate.

Later that day, in the evening, Mr J sent another message to chat, saying *"I don't actually think I had the pin in my wallet after all, this is really upsetting and hope I can get my money back."* And the next morning, Mr J added a further chat message saying *"The pin and paper is actually locked in my suitcase, so therefore this cannot be the reason why I've been hacked."* He also rang Starling, and said he'd thought there was a piece of paper with his PIN on it, with his card. But he'd now realised that he'd taken out that piece of paper and locked it in his suitcase.

Starling refused to refund Mr J. It sent a chat message saying that its terms and conditions state it wasn't liable for losses incurred as a result of a customer's negligence, fraud or breach of any of the terms of our Agreement. It noted that Mr J had said he hadn't authorised the disputed payments, but they could only have been made with his knowledge or through his failure to keep his PIN secure.

Mr J complained. He spoke to Starling's complaint adviser, and explained that his wallet and phone had been stolen when he and friends were on a night out. He'd later found the phone again at the venue where he'd been. Mr J also sent Starling a long and detailed email about the transactions. The main points were that the payments were out of character for his normal spending, so Starling should have obtained extra security to check whether he'd authorised them. He also said he hadn't received any warnings or notifications about the transactions. He saw that there had also been a rejected cash withdrawal after the first two, but this had been followed by the two debit card payments.

Starling replied that although the transactions might follow genuine fraudulent spending patterns, the reason for the decline took precedence. It told Mr J that he could access his PIN quickly and securely via the Starling Bank app on his phone.

In its final response to Mr J's complaint, Starling said he'd been told on 13 February that Starling didn't accept liability for the loss, because Mr J had failed to keep his card's PIN number secure. It explained that the reason for the rejected cash withdrawal was that the daily cash withdrawal limit had been reached. It wasn't that the PIN had been incorrectly entered, and there had been no incorrect PIN entries throughout this time.

Starling said that although Mr J had said his card had been stolen, it had to consider how a thief could have known his PIN, given that Mr J subsequently told Starling he hadn't after all written it down in his wallet.

Starling considered whether Mr J could have been "*shoulder surfed*", ie someone had seen him enter his PIN. But there hadn't been any PIN transactions either immediately before the first disputed transaction, or the previous day. So it couldn't have been that a fraudster had seen Mr J enter his PIN before stealing the card.

In reply to Mr J's argument that Starling should have stopped the fraudulent spending, Starling said that Mr J's genuine card and PIN had been used. As there had been no incorrect PIN attempts, and no other factors to indicate the card was being misused, it was reasonable for Starling to have accepted that the payments were genuine, and it didn't have to stop them.

Starling said that as the disputed payments had been made using Mr J's genuine card, and correct PIN for which no compromise could be established, it couldn't refund Mr J. But it did accept that its fraud team hadn't taken into account that Mr J had subsequently said his PIN hadn't been stored with his wallet. It paid him £75 for service in relation to this.

Mr J wasn't satisfied and contacted this service.

Our investigator didn't uphold Mr J's complaint. She said that she couldn't see how anyone else could have authorised the transactions, as Mr J had said his PIN wasn't one which could easily be guessed, and there had been no incorrect PIN attempts. She said that even if she'd found it had been a third party who'd carried out the transactions, she accepted from what Mr J had told Starling that his PIN had been written down. And she said there were also inconsistencies in what Mr J had said. As it was a breach of Mr J's terms and conditions to write down a PIN, Mr J was liable for the transactions.

Mr J didn't agree. He sent several emails. He said that the debit card payments had been made three minutes apart, but it took 10 minutes to travel between the two locations. He said this meant it wasn't possible for him to have been present for both, so they were fraudulent. Mr J acknowledged that some of his initial explanations may have seemed inconsistent, but that was because of stress, and a bereavement and employment issues. He suggested that Starling could meet him half way by refunding the two debit card payments, totalling £320.52.

The investigator noted Mr J's comments, but said that as the transactions were made by chip and PIN, the genuine card had been used, and there were no failed attempts at entering the PIN. And as Mr J had confirmed that his PIN was written down, this would be a breach of Starling's terms and conditions. So Mr J was liable for the transactions.

Mr J replied that chip and PIN didn't eliminate the possibility of fraud. He said that no consideration had been given to the fact that the locations were unfeasibly far apart so he couldn't have made them. He suggested a cloned card could have been used.

The investigator replied that although a card can be cloned, the chip in it can't, and she didn't change her view.

Mr J asked for an ombudsman's 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.

### *What the Regulations, and the Terms and Conditions say*

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

The terms and conditions of Mr J's account say:

#### *"Card Safety*

*You are responsible for keeping your card(s) (or in the case of Digital Wallet(s), your phone or device) safe. This includes (but is not limited to) memorising the PIN, keeping the PIN secret, not disclosing the PIN to any person, having different PINs for different cards and choosing to use a Biometric Authentication system where available."*

### *Who is most likely to have carried out the disputed transactions?*

The Regulations, and the Terms and Conditions, govern the outcome of Mr J's complaint. So I've first considered whether it's more likely than not that Mr J authorised the transactions, or an unauthorised third party.

Mr J suggested that his card might have been cloned, and that that was how a third party fraudster could have carried out the transactions. I've considered this, but I find it most unlikely. Chip technology is highly complex and it's not generally thought possible to copy the chip on a card. Our service hasn't come across any cases where we felt this was a likely explanation of what happened. I haven't seen any evidence Mr J's card was cloned, and I'm not persuaded that the payments were made using a cloned card.

Mr J said that his genuine card had been stolen, but that would still leave a question mark over how any third party could have obtained Mr J's PIN, which was essential to authorise the transactions.

Mr J's original evidence was that he had kept a written note of the PIN with his card. His amended evidence was that he hadn't written down his PIN and kept it with his card, but the paper he'd written it on was in his locked suitcase. He said that his PIN wasn't one which couldn't easily be guessed. There were also no incorrect PIN attempts. So whoever carried out the transactions knew Mr J's PIN. There are 10,000 possible combinations of a four-digit PIN, so it's most unlikely that anyone would randomly guess a PIN correctly.

The statements show that, as Starling pointed out to Mr J, there were no immediately prior transactions at which any hypothetical fraudster could have "shoulder surfed" Mr J and seen his PIN before then stealing the card. So that isn't how the correct PIN could have been obtained.

I recognise that Mr J subsequently told Starling that he was having a difficult time with bereavement and with his job. I'm sorry to hear that, and I know those are stressful and upsetting situations. But I'm not persuaded that these difficulties would necessarily mean that Mr J gave Starling the inconsistent evidence that he did.

So I think it's more likely than not that Mr J carried out the transactions himself. If he didn't, I consider it must be that he had in some form kept a written PIN with the card. I can't see any other way in which a third party fraudster could have obtained the correct PIN which was used for all the transactions. Whichever of these is correct, Mr J is liable for the disputed transactions, and Starling doesn't have to refund him. So I don't uphold this complaint.

### *Other points*

Mr J said that it wasn't physically possible for him to have travelled between two of the locations of the disputed transactions. He said that the two bars where the £106.84 and £213.68 transactions were done 3 minutes apart, were 10 minutes drive apart. I don't know the location abroad. But the real card, with whoever made the transactions, did travel between the two locations. It may also be that the names on the transaction were those of the bar headquarters, and not the individual bar in the location. But the genuine card was used to authorise both. I don't agree that the locations mean Mr J couldn't have made the transactions.

Mr J also argued that Starling should have stopped the transactions. I don't agree with this, because there was nothing to suggest that Mr J hadn't authorised the transactions. They were carried out using the genuine card and correct PIN, and there were no failed PIN attempts, or anything else to suggest the transactions weren't genuine. Banks have to strike a balance between allowing customers' authorised payments to go through promptly, and preventing fraud. I can't see that Starling should have had to stop these transactions and check whether or not Mr J had authorised them.

Finally, I've considered Starling's £75 compensation for its first response not having taken into account Mr J's changed evidence about writing down the PIN. I find this compensation was more than fair and I don't require Starling to do more.

### **My final decision**

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 J to accept or reject my decision before 27 January 2025.

Belinda Knight  
**Ombudsman**