

The complaint

Mr R has complained that Starling Bank Limited won't refund transactions he says he didn't make or otherwise authorise.

What happened

Over the course of a few days in spring 2024, Mr R's Starling account was used for around £2,000 of card payments towards in-game purchases.

Mr R reported these to Starling as unauthorised, initially believing he'd been hacked. Later, a young relative of his, who'd been staying with him, admitted to making the payments.

Starling held Mr R liable for the payments in dispute, on the basis that they thought someone's biometrics were used to authenticate them.

Our Investigator looked into things independently and didn't uphold the complaint, on the basis that they thought Mr R may have intentionally failed to keep his account safe.

Mr R appealed, so the complaint's been passed to me to decide.

I sent Mr R and Starling a provisional decision on 17 December 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

Broadly speaking, Starling could hold Mr R liable for the payments in dispute if the evidence supports that he authorised them. In other cases, they might have been able to hold a customer liable on the basis that they failed to keep the account safe – either intentionally or through acting with gross negligence. However, these payments were distance contracts, which do not appear to have been excepted contracts. And so a failure to keep one's account safe would not be a relevant consideration in this case.

We asked Starling for key evidence about how these payments were authenticated, as far back as July 2024, which was not provided. Recently, I made a further request, and gave them a further two weeks to reply. That deadline has now passed, so I've assessed the case based on the evidence I have. I should note, though, that the outcome might change if Starling subsequently sends me the requested evidence before the deadline of this provisional decision.

The technical evidence we have so far shows that the card payments in dispute were approved in-app. Starling says that someone's biometrics were used, but they have not provided evidence of this as yet, let alone evidence of whose biometrics they were.

Mr R's relative has admitted to making the payments. Mr R has given clear and consistent testimony that he did not give them permission to make payments on his behalf. And there are plausible and likely ways that Mr R's account may have been compromised. The young relative borrowed Mr R's device from time to time, and was staying with him. They would only have needed to access his card once to record the details. And they could have watched Mr R enter his security details previously and/or perhaps added their own biometrics to the device while they were using it.

As such, based on the evidence I have so far, it seems likely and plausible that these payments could've been made without Mr R's consent. I've not got sufficient evidence to show that he did consent to them. And, being distance contracts, a failure to keep the account safe would not be a relevant consideration for these payments.

So I currently think that Starling should refund the disputed payments as unauthorised. They should also add simple interest to the refund at the rate of 8% simple a year, to compensate Mr R for the time he's been without the funds.

In response, Mr R accepted the provisional decision. Starling sent in further information, which I'll talk about below.

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.

Starling provided further evidence. This shows that the payments were indeed approved on Mr R's registered device. But Starling conceded that there was no data showing that his biometrics were used.

It looks like Mr R's passcode would've been used. From what I understand, this was the same as his device's passcode, which his relative could've likely and plausibly watched him enter. So it still seems both likely and plausible that the disputed payments were made without Mr R's consent. Mr R's relative has admitted to making the payments without his consent. Mr R has been clear that he didn't give them his authority to make payments. And I've not got sufficient evidence to show that Mr R did authorise the payments.

It does sound like Mr R may have failed to keep his account sufficiently safe. If he's not done so already, he should make sure that his device's passcode and his banking passcode are not the same. But as I set out before, as these were non-excepted distance contracts, under the relevant rules Starling cannot hold Mr R liable for the payments on the basis of a failure to keep his account safe.

Other than that, neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct Starling Bank Limited to:

- refund the disputed transactions; and-

- pay simple interest to Mr R on those transactions, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned. This is to compensate Mr R for the time he didn't have his money.

If Starling considers that they're required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, they should tell Mr R how much tax they've taken off. They should also give Mr R a tax deduction certificate if he asks for one. Mr R may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

My final decision

I uphold Mr R's complaint, and direct Starling Bank Limited to put things right in the way I set out above.

If Mr R accepts the final decision, Starling Bank Limited must carry out the redress within 28 days of the date our service notifies them of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 January 2025.

Adam Charles
Ombudsman