

## **The complaint**

A company, which I'll refer to as H, complains that Starling Bank Limited will not refund payments which it claims not to have authorised.

The complaint was initially brought to us by H's director, Mr H. H has recently entered into voluntary liquidation, so I've considered it with the authority of H's liquidator. However, for ease, I'll refer mainly to Mr H in my decision.

## **What happened**

In late 2023 H entered into an advertising agreement with a social media platform. The agreement was for buying adverts to be delivered via the platform. The agreement appeared to involve the social media platform taking a regular payment up to an amount agreed in advance, through an automatic billing arrangement - and the payment could fluctuate depending on how many adverts were delivered or clicked upon.

H made an initial payment of £724.62 on 23 November 2023. The payment was authenticated by stronger customer authentication (SCA), using the device linked to H's account, and although Mr H initially disputed the payment, he now doesn't dispute that this payment was authorised. But between January 2024 and April 2024 a further ten payments were made to the social media platform. The payments totalled £4,032.35 (including the first payment). Starling says the sixth payment and the eleventh payment were also authenticated by SCA via the same device, although Mr H says he didn't authorise any payments other than the first payment. He says the social media platform automatically took the further payments without his authorisation.

Mr H says he noticed something was wrong when he logged onto H's advertising account and noticed that what H had been charged for the adverts exceeded the amount H should have been billed for the adverts it had received - so essentially it was being billed for advertising activity that wasn't its own. H raised this with the social media platform and after an investigation it confirmed that H's advertising account had been compromised. It said that H should dispute the payments with its bank to obtain a refund.

Mr H contacted Starling to dispute 11 payments relating to the advertising account being hacked (but he subsequently said he, on behalf of H, had authorised the first payment). Starling carried out an investigation but replied to Mr H to say that it didn't think there'd been a fraudulent spend, and the card details used for the recurring payments had been stored with the social media platform following the use of SCA. Mr H raised a complaint with Starling, but on 8 May 2024 it issued its final response drawing broadly the same conclusion. Starling did accept that it provided a poor service when investigating the fraud claim, in not returning Mr H's requests for messages or call backs, and it paid £150 into H's account to recognise this.

Mr H brought H's complaint to the Financial Ombudsman Service, and it was looked into by our Investigator. He didn't think H's complaint should be upheld. He said, in summary, that he was satisfied that Mr H had authorised the first, sixth and eleventh payments through the device that was linked to H's account and through which he had also authorised legitimate

payments. Although the remaining payments weren't separately authenticated through SCA and were instead taken from H's account on a recurring subscription basis, he was satisfied that Mr H had authorised them, as he couldn't see how any else could have done so. He questioned why Mr H hadn't noticed them when he'd been using H's account regularly during this time via Starling's app. Having reached the conclusion the payments were authorised, he said he didn't think they would have looked suspicious such that Starling should have intervened or blocked them for any other reason. Finally, he concluded that Starling hadn't initiated chargeback claims for the payments in dispute, but that any chargeback was unlikely to have been successful because the social media platform had provided the service H had paid for.

After further correspondence with Mr H, the Investigator later added that the card subscription payments likely came from H giving the social media platform a continuous payment authority so it could charge fixed or varying amounts for advertising. He said he was happy to consider any further information Mr H could provide about how this was set up with the social media platform, and evidence of how the advertising account was compromised and when.

Mr H didn't agree with the Investigator's view of H's complaint. He said, in summary, that he didn't verify the payments, and the social media platform had set up a subscription service without his knowledge which was then abused by the person that compromised the advertising account. He also remained unhappy that Starling had refused to attempt chargebacks for the disputed payments even though the social media platform had told him these would have been successful.

H's complaint was passed to me for review and a decision. I asked Mr H if he could provide any more information from the social media platform to show the advertising agreement H had, or to show that H hadn't received the advertising it had paid for. Mr H sent a link to the current terms of advertising accounts offered by the social media platform but was unable to provide anything further.

### **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'm really sorry to disappoint Mr H as I know he feels strongly about what's happened here, but I'm not upholding H's complaint. I'll explain why.

#### **Were the disputed payments authorised?**

The relevant law here is the Payment Services Regulations 2017 – these set out what is needed for a payment to be authorised and who has liability for disputed payments in different situations. With some exceptions, the starting point is that the consumer is responsible for authorised payments, and the business is responsible for unauthorised payments. Mr H disputed authorising the payment, so I'll address this point first.

The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether H, or someone acting on its behalf, consented to them.

The PSRs go on to specify how consent is given. It must be in the form, and in accordance with the procedure, agreed between H and Starling. I've reviewed the terms of H's account with Starling, but it doesn't specify exactly how H gives consent to online card payments. But broadly speaking, this is usually through entering the long card number, the card expiry date

and CVV into the merchant's website. The terms also say that when you approve a payment via the app or online banking (so through SCA) you confirm to Starling that you are authorising it to process the payment on your behalf.

I have asked for evidence of the advertising agreement H had with the social media platform so I can see on what basis H agreed to the social media platform taking payments from its account. Mr H has only been able to supply a copy of a link the current terms of the platform's advertising agreement, which implies that an agreed regular payment range is set up at the time of the agreement and that the social media platform would contact H about any payments which fall outside the pre-agreed range. In the absence of anything else I must assume this reflects the agreement H had with the social media platform (and this ties in with what Mr H told Starling about the agreement).

The payments that weren't authenticated using SCA are marked as a "*recurring transaction*" on Starling's records and are shown to be exempt from SCA due to the initial authorisation payment being subject to SCA. For example, after payment one was authenticated via SCA, payments two to five did not require SCA and were marked as recurring transactions. But payment six did require SCA – and then payments seven to ten didn't require it because payment six had been authenticated (and so on). So, it seems to me that Mr H was required to authenticate payments via SCA every fifth payment to authorise the next four payments, before being required to authenticate them again.

Mr H says he didn't authenticate the sixth and eleventh payments. But I can see that SCA was completed on the same device that Mr H authorised the first payment from (which Mr H isn't disputing) and that this device had been registered to H's account since July 2021 and is listed on Starling's records under Mr H's name. There's no indication that the device was outside of Mr H's control or that anyone else could have accessed it to be able to authenticate these payments. So, on balance I think Mr H did complete SCA for these payments.

Mr H says he wasn't aware of setting up a subscription type payment to pay for the advertising. But looking at the agreement he's provided which he says reflects the agreement H had with the social media platform, I think he would have been aware that this was the basis on which H would be charged. And Mr H continued to authenticate the payments via SCA every five payments which allowed the recurring payments to continue, which suggests he was aware of the arrangement and continued to consent to the payments being debited under it.

On this basis, I don't think it's unreasonable for Starling to have treated the payments as authorised by H. I think Mr H consented to them by giving the social media platform H's card details and entering an agreement which allowed it to make recurring transactions – and periodically re-authorised this agreement by authenticating payments through SCA. H may not have been receiving the adverts it was paying for due to the advertising account being compromised, which I will consider further later – but I don't think this means H didn't authorise the payments, and as such I don't think Starling is obliged to refund them.

### *Should Starling have intervened in the payments?*

I've found that the payments were authorised so I now need to consider if Starling should reimburse H under any of its other obligations.

When a payment is authorised, Starling has a duty to act on the payment instruction. But in some circumstances, it should take a closer look at the circumstances of the payment – for example, if it ought to be alert to a fraud risk, because the transaction is unusual, or looks

out of character or suspicious. And if so, it should intervene, for example, by contacting the customer directly, before releasing the payments. I'd expect any intervention to be proportionate to the circumstances of the payment.

But I've also kept in mind that Starling processes high volumes of transactions each day. There is a balance for it to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate.

I agree with the Investigator that I wouldn't have expected Starling to have intervened here. The value of the payments is not significant in the context of the payments Starling processes every day, and H had made payments of a similar value before. I don't think these payments ought to have caused Starling to be sufficiently concerned about a scam risk that it ought to have intervened with a warning, or by contacting H directly. So, I don't think Starling ought reasonably to have done anything here to prevent the payments due to identifying they presented a scam risk.

### Chargeback

The most applicable chargeback reason here would be that the goods or services H paid for were not received. Starling didn't attempt chargebacks for the disputed payments, and I can completely understand why Mr H is frustrated it did not – because the social media platform told H that was how it needed to reclaim the disputed payments. And I can't say for sure that they would have been unsuccessful if Starling had submitted them.

But the problem here is essentially a lack of evidence to show that the adverts H paid for were not for H - so the social media platform potentially didn't provide the service H had paid for to H – which would be required to show that there were reasonable grounds for Starling to have raised chargebacks under the relevant card scheme's rules.

We do have evidence to show that the social media platform confirmed H's advertising account was compromised but this isn't enough for me to conclude that Starling ought to have raised chargebacks or that they were likely to have succeeded. I would expect Mr H to be able to provide evidence that H didn't receive the adverts that it had paid for, to include the details and cost of the adverts it *had* received and the date at which the account was compromised, so it could be established that the adverts run for H did not equate to the amount charged. Mr H implies that he has seen such evidence when he says he noticed that what H had been charged for the adverts exceeded the amount H should have been billed for the adverts it had received. But despite our requests he's not supplied this evidence to us.

I also note that the agreement with the social media platform says the following, which does raise the question of whether it would have disputed any chargeback claims on the grounds the account has been compromised:

*"You are responsible for maintaining the security of your advertising account, and you understand that you will be charged for any orders placed on or through your advertising account."*

Taking all this into account, I can't conclude that Starling was unreasonable not to raise chargebacks, as I'd expect it to want to see the evidence I've mentioned before submitting chargeback claims to the card scheme.

### Other issues

For completeness, I've also considered the payment of £150 Starling made to H following Mr H's dispute – which it's said was for some poor communication on its part when carrying out its investigation. And considering the impact of the communication on H I think this payment is fair and reasonable in the circumstances.

Once again I'm sorry to disappoint Mr H – I can understand why he feels very strongly about this. But overall, I don't think Starling has treated H unfairly by not refunding the disputed payments or attempting chargeback claims to recover them. It follows that I'm not going to ask it to do anything else to resolve H's complaint.

### **My final decision**

My final decision is that I'm not upholding H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 25 August 2025.

Helen Sutcliffe  
**Ombudsman**