

background

Mr T complains that Starling Bank Limited debited his account with a series of online and contactless card payments totalling over £1,000 which he said he didn't make or otherwise authorise.

complaint

Mr T had a Starling current account between June and October 2018, when Starling took the decision to close Mr T's account. During this time Mr T made several complaints to Starling disputing making payments on his account.

In the first complaint in July 2018 he disputed making any payments on his account bar two at a newsagent. Starling commenced an investigation and asked Mr T a number of questions, but he responded to Starling telling them that he realised the transactions were made by his wife and so the complaint didn't need to continue.

Mr T later disputed numerous gambling, retail and other transactions that took place on his account over several complaints to Starling. Starling didn't uphold any of Mr T's complaints. Across their responses to Mr T, Starling said they thought it was most likely Mr T that had authorised these payments. This was because:

- The genuine card and PIN, card details including CVC, or contactless were used for the transactions.
- Transactions were funded by payments into the account shortly before.
- Account changes such as removing the gambling block function were made from his device around the time of the transactions.
- He'd raised numerous fraud claims in a short space of time so they felt that it was likely he hadn't taken the necessary steps to protect his account and told him they wouldn't progress one of his complaints – and when he'd been told that he'd replied 'that's not a problem, thanks'
- He'd accepted his wife made the payments he disputed in his first complaint, so they felt if it was not him that made the payments they were made by his wife.
- Mr T would have had notifications alerting him to payments and failed payments, so they'd expect him to have got in touch with them sooner to dispute them
- When some of the disputed transaction complaints were rejected Mr T told them that he'd realised some payments were his partner, and also said he'd take more care in relation to his finances.

Mr T didn't agree with Starling's decision so asked this service to consider his complaint. When Mr T came to our service he disputed every contactless and online payment on his account with Starling, having only taken out cash. He didn't mention the transactions carried out by Chip and PIN so I've considered these as disputed transactions too. The transactions that weren't cash withdrawals totalled over £1,300. There were approximately one hundred and eighty transactions including approximately twenty cash withdrawals, the latter being the only ones Mr T accepts he made.

Mr T requested and was sent four cards for his Starling account. Mr T told us several cards were not received due to someone forcing his locked letterbox open, though he hasn't said who may have done this. It is also unclear how, having done so, an unknown third party may have accessed his PIN code. There were undisputed transactions on three of four cards. There were also disputed and undisputed transactions on the same day on some occasions.

Our investigator reviewed Mr T's complaint and said they didn't feel Starling had done anything wrong. They felt that on balance it was most likely that Mr T had carried out the transactions himself, though he may have forgotten doing so.

Mr T disagreed as he said he didn't authorise or otherwise consent to the transactions. He also felt Starling didn't care about his personal health conditions. As Mr T disagreed, the case has been passed to me to make a decision.

my findings

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, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for much the same reasons.

Generally, Starling can hold Mr T liable for the disputed transactions if the evidence suggests that it's more likely than not that he made or authorised them himself. I'm satisfied from the bank's technical evidence that Mr T's genuine card and PIN or contactless were used to make the disputed transactions in person, as well as his genuine card details including the CVV being used for online payments. But the regulations relevant to this case say that is not, on its own, enough to enable Starling to hold him liable. So, I need to think about whether the evidence suggests that it's more likely than not that Mr T consented to these transactions being made.

From what I've seen, I think it's reasonable for Starling to conclude that Mr T authorised the transactions. This is because:

- Mr T gave numerous accounts across his complaints to Starling and then to us. These accounts contained contradictions and inconsistencies, bringing Mr T's recollection of his account activity into question.
- Mr T said he didn't receive some of the cards and suggested they were stolen from his letterbox, but I don't think this is the most likely explanation here. I say this because it appears from what he's said that there are undisputed transactions on three of the four cards, and by his own admission he and his wife made transactions on one of the cards – none of which would have been possible if an unknown third party had stolen multiple cards from his letter box. They'd also have had to break into a post box multiple times, without getting caught and without any knowledge as to when the cards were due to be delivered. So, I think it is most likely that Mr T did receive the cards.
- I've gone on to consider whether the cards could have been received but used without his authority. Firstly, I've thought about whether someone known to Mr T, namely his wife, made transactions without Mr T's consent. Whilst Mr T doesn't seem to be saying this is the case to our service, he told Starling during the original complaint that he realised his wife completed the transactions. With that in mind I consider it is likely that Mr T's wife may have made some of the disputed payments, but I think it remains reasonable to hold Mr T liable for these.
- I say this because once he realised his wife had made the payments in his first complaint with Starling he didn't continue to dispute the transactions or refute giving the card and PIN to his wife. So, I think that whilst he may not have known about all the payments she made, he likely let her use his card and PIN. As such Mr T failed with intent to comply with his obligations as a payment service user – namely

keeping his card and PIN safe - and Starling are entitled to hold Mr T liable for these transactions.

- I've gone on to consider the suggestion that the cards were received but someone unknown to Mr T completed these transactions without his consent. However, I consider this improbable.
- This is because if an unknown third party had made these transactions, they would have had to take and replace multiple cards, multiple times without alerting Mr T to what they were doing – which seems highly unlikely. Several disputed transactions were made by chip and PIN – and its not clear how an unknown third party would have accessed this.
- It also seems unusual that an unknown third party would gamble using the card when any winnings would be returned to the card – and indeed some were. So, either the third party would have to risk taking the card again or could not benefit from any returns on the gambling meaning it is likely Mr T would be the only one likely to benefit from any winnings.
- Further, money was also sent to the account to fund the transactions, sometimes just before they took place. I cannot see an explanation for why money would continue to be sent to a compromised account – or how an unknown third party would know when it was being sent.
- Alerts went to Mr T's phone when actual or failed transactions took place. And Mr T was in contact with Starling over his telephone application during the period of the disputed transactions. So, I think it is likely he was aware of the activity on his account. It seems strange that if these transactions were completed by an unknown third party that he would have only disputed some of the transactions at the time, and later dispute far more transactions.
- Changes were made on Mr T's account that allowed transactions to take place. For example, there were some transactions that were stopped by a gambling block feature that was activated on Mr T's account. The gambling block was then taken off through the phone application and the gambling transactions were completed again. I think it is most likely that Mr T made these account changes, and can't see why he would have if an unknown third party was making the gambling transactions without his knowledge or consent.
- Also, it does seem unusual that an unknown third party with access to a card and PIN would utilise the balance slowly and mainly on everyday spending such as supermarkets and travel.

my final decision

My final decision is that I don't uphold Mr T's complaint against Starling Bank Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 January 2020.

Katherine Jones
ombudsman