

complaint

Mr S complains that Starling Bank Limited debited his account with a series of online and card payments totalling approximately £20,000 which he says he didn't make or otherwise authorise.

background

Mr S disputes making thirty-six payments between 16 October and 5 November 2018 which totalled around £20,000. These payments were a combination of online and card transactions, and most were made to gambling websites or shops. Whilst these transactions were ongoing there were several undisputed payments on the account including payments in of gambling winnings and faster payments, and one payment out to a garage.

Mr S explained he was in hospital for a couple of days, starting just before the disputed transactions occurred. He explained he didn't have his Starling card with him in hospital and couldn't recall where he'd left it. He then spent a few weeks recovering at home where his parents looked after him. He said he was bedbound so had no reason to use his card and didn't notice the card was missing during that period.

He said he had never shared or recorded his PIN, nor was it something memorable which someone close to him could have guessed. He didn't know how someone would have accessed his other personal details to set up gambling accounts in his name but thought perhaps his details may have been obtained online or by a cybercriminal.

Starling contacted the gambling companies and received evidence that showed at least one of the accounts was set up using Mr S's correct details. Someone also contacted one of the gambling companies to dispute the transactions, which led to the account being blocked. Mr S initially told us he didn't gamble, but then accepted he did gamble but told us he would only gamble money that he could afford.

Mr S complained that Starling should have questioned why so much money left his account and done something to prevent this. He also explained that he had reported the transactions to the relevant authorities.

Mr S complained to Starling who refused to refund the transactions on the grounds they believed he'd authorised them as:

- his genuine card and PIN, and his card details including CVV, were used to complete the transactions
- the card remained active for around three weeks and during this time the available account balance wasn't fully utilised
- they received details from one of the gambling companies that was registered using all of Mr S's genuine information.
- credits were received from gambling merchants, as well as funds being transferred from another bank account that appeared to be in Mr S's name

They also took the decision to close Mr S's account with 30 days' notice.

Mr S didn't agree with Starling's decision, so he asked us to investigate. Our investigator didn't recommend the complaint should be upheld. In summary, they felt unable to conclude the transactions had been made fraudulently and were persuaded they were most likely

made and authorised by Mr S. Ms S asked for the answer to be reviewed by an ombudsman, so the complaint has been passed to me.

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 S 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 S's genuine card and PIN 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 S consented to these transactions being made.

From what I've seen, I think it's reasonable for Starling to conclude that Mr S authorised the transactions. This is because:

- The disputed transactions were made using Mr S's genuine card and card details, but Mr S accepts he made some transactions during the period the disputed transactions were taking place. Whilst I accept it's possible, I'm not persuaded it's the most likely explanation here than an unknown third party took Mr S's card and then returned it to him without him noticing, only to take it again.
- I say this because it also seems unusual that an unknown third party could have learned Mr S's PIN. By his own admission he hadn't shared it, written it down or picked a number someone could have guessed. His last genuine use of his card and PIN was about twenty-one hours prior to the first disputed transaction, and I'd find it unusual if an unknown third party had been able to observe him entering his PIN, take his card but wait that long to use the card.
- Further, it also seems unusual that an unknown third party with access to both the card and PIN would take and replace the card more than once, to mainly complete gambling transactions over a three-week period. The winnings were returned to the card which Mr S could cancel at any point which would prevent an unknown third party benefitting from any winnings. One might expect an unknown third party to maximise the use of any account balance through withdrawals or spending as soon as possible in case Mr S were to notice his card was missing and cancel it.
- Further, the details used to set up at least one of the accounts including the email address and mobile number matches those belonging to Mr S. I find it unlikely that an unknown third party would have been able to access all of these details. It would also be unusual for an unknown third party to use all of Mr S's correct details as this would risk alerting Mr S to the fraudulent activity as messages would have likely been sent to confirm setting up the account or transactions taking place.
- It is unclear why an unknown third party would have contacted one of the gambling companies to dispute some of the transactions as this led to the account being

closed, and this took place approximately five days before Mr S got in touch with Starling to cancel his card.

- The transactions weren't out of character for Mr S - I've seen that Mr S has used the gambling company and other betting merchants on another account prior to these disputed transactions.
- Mr S suggested to us that a cybercriminal may have completed the transactions, but I am satisfied some of the transactions required his genuine physical card so I'm unclear how a cybercriminal would have obtained this. Mr S has made no suggestion that someone close to him completed these transactions, nor is there any evidence to suggest someone other than Mr S completed these.

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 S to accept or reject my decision before 6 December 2019.

Katherine Jones
ombudsman