

## **The complaint**

Mr T has complained Starling Bank Limited won't refund him more than £2,913 for seven transactions which he didn't authorise.

## **What happened**

In November 2022 Mr T was abroad. He went out to a bar and bought some drinks during the evening. Mr T spent some time there and used his Starling debit card to pay for his transactions. Just before this, Mr T had lost his phone.

The bar was having difficulty in processing his payments and told him they kept being declined. Mr T ended up having to verify a number of different transactions during his time there. The position of the card terminal meant it was difficult for him to be sure exactly what amount he was paying.

In the morning Mr T realised the number of transactions that had been processed and what this had cost him – over £2,913. As he didn't believe this mirrored what he'd have expected to pay, he got in touch with the bar over social media. He was supplied with receipts to reflect what the bar said he'd spent but Mr T believed this was suspicious. The timings of the receipts didn't reflect when he was in the bar.

Mr T asked Starling to investigate. Whilst they were sympathetic over the chat service, Starling wouldn't take any further action. They believed Mr T had authorised the transactions. And they didn't believe the evidence of receipts he could provide them would enable them to complete a chargeback.

Mr T brought his complaint to the ombudsman service. He couldn't see why Starling wouldn't refund him as he'd never knowingly spend that much money.

Our investigator reviewed the evidence. He felt as Mr T had consented to the disputed transactions, Starling shouldn't refund him.

Mr T was upset by this conclusion. Despite accepting what the PSRs may consider as consent, he remained convinced that Starling should have taken further action.

He asked an ombudsman to consider his complaint.

I completed a provisional decision on 7 August 2023. I believed a slightly different outcome would be fair and reasonable. I asked Starling to refund Mr T part of what he'd paid.

Mr T accepted this outcome. Starling's response concentrated on whether a chargeback would have been possible.

I now have all I need to complete a final 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.

Having done so, I've reached the same outcome as I did in my provisional decision. What follows explains my thinking.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – specifically whether the customer was grossly negligent in looking after their card and PIN – but nothing else that's had a marked impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make without undue delay, in accordance with the terms and conditions of the customer's account.

And taking into account the law, regulators' rules and guidance, any relevant codes of practice and what I consider to have been good industry practice at the time, I consider Starling should fairly and reasonably:

- have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Having carefully considered all of this, I consider that there were reasonable grounds for Starling to suspect potential fraudulent use of Mr T's debit card and I'm not persuaded that it took proactive steps to protect Mr T's account.

To help me reach this decision, I've considered evidence provided to us by Starling and Mr T. I've also noted the detail in our investigator's view of 24 April 2023.

### ***What happened?***

I think the following aspects are pertinent to this complaint:

- There's no dispute Mr T was in a bar at the time of these transactions.

- I don't doubt Mr T's story that he was being told transactions were being declined and was asked to keep inputting his PIN, perhaps repeating transactions. One of the key aspects is that Mr T has confirmed he put in his PIN to authorise the transactions.
- Mr T is insistent that he was unable to see what amount was on the card terminal so didn't know what he was being charged.
- By using his card and PIN, regardless of the amount on the terminal, or even whether Mr T was so drunk he didn't notice what it said, Mr T was consenting to the transactions. I know Mr T disputes this finding.
- I don't believe Mr T's story is massively inconsistent. I accept he initially asked Starling about one payment, then he said he was concerned that somebody saw him enter his PIN and took temporary possession of his card to make additional transactions. In fact I believe Mr T realised there were seven individual payments and was just struggling to understand how this could be. In fact there are two pairs of payments (at 01:46 and 01:52 and again at 02:03 and 02:07) which match his story that he was being told payments were declined.
- It's also the case that the electronic record of his card transactions show there were two declined payments before the last authorised transaction at 03:02. These were declined as Mr T had insufficient funds remaining in his account. There were then another seven transactions declined over the next two hours for the same reason.
- Our service is aware that bars can be involved in over-charging, or misleading customers about what they were paying.

Starling hasn't dismissed Mr T's story in its entirety but has relied on both the PSRs and their terms and conditions to support their outcome. I note what they've said about the chargeback rules. I don't dispute that, based on the evidence, there wouldn't have been a successful chargeback. However this is not really pertinent to my decision.

There are two aspects to authorisation under the PSRs: authentication and consent. Authentication means the genuine card and correct PIN were used and consent means that Mr T entered the PIN himself. I appreciate Mr T believes consent must involve knowledge of the amount. However there is nothing specific under the PSRs to confirm this and nor, in general without other evidence, is that the approach our service takes.

I don't dispute Mr T has told us he wouldn't have entered his PIN if he'd been aware of the value of the transactions but that alone doesn't mean he didn't consent to the actual transactions.

Mr T accepts he entered his PIN when the terminal was presented to him so I don't think it's a stretch to say – under the PSRs – he consented to the transactions.

Because I believe Mr T authorised these transactions, Starling had an obligation to follow Mr T's instruction. But there are some situations in which it should reasonably have had a closer look at the circumstances.

### ***Should Starling have done more?***

There are two aspects of Mr T's complaint which I consider Starling should have acted on, considering good industry practice.

The first is the value of the disputed transactions. The seven transactions were for generally increasing, and high-value, amounts: £117.33, £371.83, £462.08, £103.05, £546.92, £1,131.74 and £180.50. Having reviewed Mr T's account statements around this time, there's no dispute these transactions were extremely unusual considering his normal account use and rose substantially in value over a relatively short time period.

The second aspect which should have alerted Starling to these payments is where they were taking place. Mr T's debit card was being used in a bar and club. The merchant code allocated to the club would mean this information would have been known to Starling – or their agent – when authorising the transactions.

I would have expected Starling to have intervened and contacted Mr T to check that all was as it should be. It's confirmed it didn't do this. I appreciate that Mr T has told us he was without his phone at this time, but this doesn't have a material impact on what action I believe Starling should have taken.

I can't be sure what would have happened had Starling taken the decision to stop authorising payments. But knowing that subsequent payments did get declined, I think it's most likely Mr T would have just been chucked out of the club earlier as his card was blocked. This would have saved him considerable losses.

I think the fact that Starling's systems didn't flag these payments as suspicious wasn't fair and reasonable given the circumstances. If they had I appreciate it's likely, Mr T wouldn't have responded at all to any authorisation requests as he wasn't in possession of his phone. This would have resulted in cancelled transactions.

As I think Starling should have done more, I've gone on to consider exactly what reimbursement is fair and reasonable taking all the circumstances of this case into consideration.

Starling would have needed a starting point. I think it's more than likely they wouldn't have noticed the first three transactions but as soon as the fourth transaction followed within minutes of the third, I believe they should have been alerted and taken action to prevent subsequent transactions. I say this because the next transaction was five times the value of the fourth transaction and took place less than 10 minutes afterwards.

Any check on potential fraudulent transactions should identify transactions in certain foreign currencies in certain types of outlets, including bars and nightclubs.

I have considered whether Mr T was just in a bar and subsequently found himself to have spent too much on drinks or services. It's not Starling's role to stop someone's genuine entertainment spending. However I have no evidence this was the case.

Therefore I think it's fair and reasonable that Starling refund the fifth to seventh transactions to Mr T. They'll need to add 8% simple interest a year to those amounts.

### **My final decision**

For the reasons I've given, my final decision is to instruct Starling Bank Limited to:

- Refund Mr T the last three disputed transactions carried out on 5 November 2022 for £546.92, £1,131.74 and £180.50 (as confirmed on Mr T's statement); and
- Add 8% simple interest to the refunded amounts from 5 November 2022 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 October 2023.

Sandra Quinn  
**Ombudsman**