

The complaint

Mr G complains that Starling Bank Limited have unfairly declined to refund him, after his phone was stolen and used to make several transactions. He subsequently had his account closed. He'd like the transactions refunded to him.

What happened

Mr G held an account with Starling. In January 2023 he says he was on a night out, when he was mugged at knife point, with his phone being taken. The phone was then used to make four point of sale transactions, totalling £623.55, as well as a payment for a taxi service.

When Mr G reported this to Starling, they declined to refund him. They said they'd found no evidence of fraudulent activity. They reviewed his account usage and asked him about several transactions on the account. Although he supplied further information, the bank decided to close his account.

Unhappy with this Mr G complained to Starling. The bank responded to apologise for any trouble and upset caused but felt they'd followed their correct processes. He then referred his complaint to our service – he said there had been an unreasonable burden on him to provide CCTV of the mugging.

Our investigator didn't ask Starling to do anything further. They felt that it was more likely than not that Mr G either made the transactions himself or allowed them to be made. They felt the closure of his account was in line with the terms of the account.

Mr G disagreed with this outcome – saying he hadn't been involved in the transactions. As no agreement could be reached the complaint was passed to me to decide. Upon review I reached different conclusions to our investigator. I issued a provisional decision, which said:

Disputed transactions

The relevant regulations about payments from an account are the Payment Services Regulation 2017. Broadly these say that a bank can only debit an account for payment that are authorised by the consumer, or someone on their behalf. If the consumer hasn't authorised the payment, the bank can only hold them liable in very limited circumstances.

The key question for me here is whether I think it's more likely than not Mr G authorised the payments himself.

Mr G has been consistent with the story that he was mugged at knife point in the early hours of the morning. Starling have also confirmed with the police that this was the allegation put to them, and they are investigating.

Mr G has also provided our service with evidence to show that he reported his phone missing to his network provider, at about the time he reported the disputed transactions to Starling. This is all consistent with the actions of someone who has had their phone stolen. He's also shown us there were attempts to reset his account with the phone manufacturer.

I can also see that there were attempts to use the phone to make large payments at a supermarket after Mr G had reported the loss to Starling. This may suggest whoever had the phone wasn't aware it wouldn't make payments anymore. There don't seem to be any further attempts to use the phone after these were declined.

Whoever had the phone would have needed Mr G's phone passcode to make payments using the phone – and it's unclear how this happened. It's unlikely I'm ever going to know this with certainty. He's commented that the phone was unlocked when it was taken, but this wouldn't necessarily give the mugger access to the payment services without the phone passcode. He's told our service that he didn't share this with the mugger. It's possible he was overseen entering his phone passcode before being mugged.

I've considered the evidence Starling have submitted, but nothing in it disputes Mr G's version of events. The reasoning given to Mr G for declining the claim is very vague and unclear. I'm also unsure what use CCTV would be in this situation, or why it was discussed. It may be helpful in solving the crime, but not decisive for determining whether Mr G is liable for the transactions. So, I can see how he would find the investigation and response frustrating, and I don't see that the outcome Starling reached was fair to Mr G.

Overall, I think it's more likely than not the transactions were unauthorised. Under the relevant regulations Starling can only hold Mr G liable in limited circumstances – such as if he'd failed to keep his personalised security details for his Starling account secure, either intentionally or with gross negligence. Considering the circumstances, I'm not persuaded that Starling can hold him liable for these reasons.

On that basis I think it's reasonable for Starling to return the disputed funds to Mr G, along with 8% simple interest per annum to reflect the loss of use he's had of these funds.

Account review and closure

Starling, like all regulated financial businesses in the UK, have legal and regulatory obligations to meet when providing accounts to their consumers. These obligations are broadly there to spot signs of people falling victim to financial harm, as well as detect and prevent fraud and financial crime.

This can mean that on occasion they need to carry out a review of an account, to better understand how it's being used. Often this will also involve preventing any transactions while the review is ongoing. There's provision for this in the terms of Mr G's account. So, in this case I don't think they've done anything wrong by carrying out their review.

Starling aren't under any specific obligation to explain why an account is under review. In this case, they've asked Mr G to explain certain transactions into his account. He's provided an explanation as well as supporting evidence.

The review was completed in a reasonable timeframe, and Starling decided they no longer wished to provide banking services to Mr G. Starling don't have to tell him why they've closed his account. But the rules of our service allow us to receive certain evidence in confidence, for example if it is commercially sensitive. I'm satisfied that it's appropriate for the reasoning to remain confidential, so it would be inappropriate for me to detail it here.

Banks have the commercial discretion to choose who they provide accounts to, so long as the decision is based on non-discriminatory reasons. The terms of the account allow them to close it for any reason so long as they provide the two months' written notice. This is in line

with the relevant regulations and is generally considered enough time to arrange alternative banking arrangements. But in this case, they only gave 7 days' notice.

The terms don't refer to a notice period of this length. But they do give reasons when an account can be closed immediately, with no notice. So, I've taken these into consideration when deciding whether the notice given was reasonable.

Having considered everything I'm satisfied that Starling were reasonable in closing Mr G's account – I've seen nothing to suggest the decision was irrational or based on incorrect assumptions. It's a legitimate commercial decision they are entitled to make. But I'm not persuaded that it was appropriate to only offer seven days' notice of the closure, based on the circumstances outlined in the terms of the account. I think it would have been reasonable to give Mr G the full two months' notice.

I've considered the impact on Mr G, and I think it will have caused a degree of inconvenience and upset. This will have been compounded by the fact he'd recently been the victim of a violent crime. But from the transactions on his statements, it seems he had other accounts in his name, which will have mitigated the disruption somewhat. But I'm minded that it was unfair for Starling to close his account with only 7 days' notice.

To resolve the complaint, I suggested Starling should:

- Refund Mr G the disputed amount of £623.55
- Apply 8% simple interest per annum to this amount from the date of payment to the date of settlement
- Pay him £200 compensation to reflect the distress and inconvenience of the handling of his dispute, and the unreasonable notice period for closing the account.

This was accepted by Mr G. Starling confirmed they have nothing further to add. It now falls on me to issue my 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 reviewed the evidence afresh – and in the absence of any new evidence or arguments from either party – I remain satisfied with the conclusions reached in the provisional decision.

I'm not satisfied Starling have demonstrated that Mr G should be liable for the disputed transactions, as per the relevant regulations. As such, they should refund him for them, along with 8% simple interest per annum. I'm also minded that while Starling have the right to stop providing banking services to Mr G, but I'm not satisfied Starling gave the appropriate notice. And I accept this will have caused Mr G a degree of inconvenience and upset.

Putting things right

To resolve the complaint, I suggested Starling should:

- Refund Mr G the disputed amount of £623.55
- Apply 8% simple interest per annum to this amount from the date of payment to the date of settlement
- Pay him £200 compensation to reflect the distress and inconvenience of the handling of his dispute, and the unreasonable notice period for closing the account.

If Starling considers that HMRC requires them to deduct tax from the interest amount, they should tell Mr G how much has been taken off. They should also provide him with a certificate if he asks for one, so that he can reclaim the tax from HMRC, if appropriate.

My final decision

My final decision is that I uphold this complaint, and direct Starling Bank Limited to settle it as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 April 2024.

Thom Bennett
Ombudsman