

The complaint

Mr K complains that Starling Bank Limited would not refund a debit card payment he was tricked into making.

What happened

Mr K was abroad. He took a taxi to travel a short distance and paid for the journey using his Starling debit card. Mr K says the expected fare was MX\$280, but the taxi driver dishonestly entered MX\$2,800. Mr K explains that he questioned the taxi driver at the time, but there was a language barrier between them. The taxi driver drove off before Mr K could get help.

Mr K contacted Starling. Starling rejected the claim. In its final response letter, Starling said the transaction was authorised by chip and PIN and there was no way for it to dispute the payment through the card scheme without any receipt or written confirmation of what the correct amount should have been.

Mr K made a complaint. He said he did not authorise the payment as the amount was fraudulently altered by the taxi driver without his knowledge. He thought it was unfair Starling was refusing to investigate when the taxi driver had refused to provide a receipt. Mr K said it was obvious the transaction was not the correct amount because the price for a short taxi journey is clearly excessive, especially in a country where taxis are very cheap. He provided information he'd found online posted by other people that had lost money in this way.

Our Investigator looked into the matter but didn't recommend that it should be upheld. He explained that by entering his PIN, Mr K would be seen as having accepted the charge, whatever the amount. He said there was no chance for Starling to successfully reclaim the funds without any evidence to challenge the merchant.

Mr K was disappointed. He said he clearly did not authorise or consent to the higher amount by entering his PIN into the card reader and the facts are clear on this. He pointed out the card reader didn't show this amount and the taxi driver had altered it on a separate device that he could not see. He wanted to know what evidence consumers are expected to obtain when the taxi driver would not issue a receipt and became aggressive. He felt the outcome pushed all of the risk onto the consumer, even though it was clear there had been a fraud.

As no agreement could be reached, the complaint has been referred to me.

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 accept that Mr K has been the unwitting victim of sharp practice from the taxi driver. But unfortunately, that alone isn't enough for me to say Starling is responsible for refunding the loss.

When an account holder raises concerns about a transaction, I'd expect their card issuer to

look into the situation further to see whether it has any responsibility for refunding the amount in dispute. It may need to provide a refund if its customer didn't authorise the transaction, or if it didn't intervene in the payment to check it was one its customer wanted to make when it ought fairly to have done so. In some circumstances, a card issuer can ask for a transaction its customer made to be refunded through the chargeback process operated by the card scheme.

I have carefully considered whether Starling has treated Mr K fairly by declining his claim for a refund. I'll address each potential avenue of redress for Mr K in turn and explain why it isn't applicable on the circumstances here.

Did Mr K authorise the transaction?

In broad terms, the starting position in law is that a bank is expected to process transactions that a customer authorises it to make, in accordance with the relevant Payment Services Regulations and terms and conditions of the customer's account. I have taken that into account when deciding what is fair and reasonable in this case.

The relevant rules on what defines an authorised or unauthorised transaction are set out in the Payment Services Regulations 2017. Broadly they say Starling would only be required to refund Mr K if he didn't make or authorise the disputed transaction himself. Authorisation here carries a narrow meaning. If Mr K made the transaction himself, then it is unlikely to be fair to ask Starling to refund it.

Mr K agrees he was in the taxi at the time the disputed payment was made and that he used his card to make a payment. This means the transaction can't be treated as unauthorised, even though Mr K was being deceived by the taxi driver. Mr K made the transaction himself by inserting his card and entering his PIN when prompted. I do appreciate that at the time Mr K thought he was spending MX\$280 and not the MX\$2,800 that was charged to his account, and that spending ten times as much feels like a very different proposition. But Mr K doesn't need to agree to the amount he's spending in order to agree to the transaction being made.

As Mr K entered his card and PIN to authenticate and consent to the transaction, it doesn't matter whether he knew the amount or not to be able to authorise the payment. His actions meet the requirements for Starling to be able to treat the payment as being authorised.

Should Starling have intervened in the transaction at the time?

I'm also mindful that Starling should fairly and reasonably 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 (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

Mr K's statements show that he typically makes transactions of this size. As such, I am unable to fairly say that the amount that was being spent in relation to this transaction was necessarily enough to cause Starling concern. In addition, Mr K had been using the account whilst he was away, so I don't think the fact his card was being used in another country ought to have concerned Starling either. Overall, I don't think the transaction was unusual or suspicious enough that Starling ought to have intervened before it was made.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme (in this case Mastercard) rules. What this means is that Starling can in certain circumstances ask for a payment made to be refunded.

A chargeback isn't guaranteed to result in a refund. There needs to be a right to a chargeback under the card scheme rules and under those rules the merchant can defend a chargeback if it doesn't agree with the request. There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists, and it is reasonable to do so.

But Mr K doesn't have any supporting documentation as required by the card scheme rules, which specifically require documentation detailing the correct transaction amount. Without this documentation, all the merchant or merchant's bank needed to do was respond advising Starling hadn't supplied the documentation needed to meet the chargeback requirements and the chargeback would have been rejected.

I accept Mr K's point that he wasn't given a receipt. I've also considered the information Mr K has provided from the internet to show other visitors to the area have lost money in similar circumstances. But the criteria for a chargeback claim is set by the card scheme, meaning there are only limited grounds and limited forms of evidence for a chargeback to be considered valid. As such, I'm satisfied that Starling didn't make an error by not disputing this payment through the chargeback scheme as I don't think there was any reasonable prospect of a chargeback succeeding. I say this because I agree that the card scheme rules required Mr K to provide supporting evidence of what the correct transaction amount should have been. Mr K's testimony or a common-sense approach to the cost of a metered fare for a journey of this distance is not sufficient to meet the card scheme's rules.

Overall

I have every sympathy for Mr K as the particular circumstances of this case mean he is afforded little protection and I know my outcome will not feel fair to him because it is clear he's lost out financially. But, having considered these matters carefully, I can't fairly say that Starling must refund this payment when the relevant law, rules and codes of practice do not place that responsibility on it. As such, I can't agree Starling made a mistake by declining to provide a refund to him.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 October 2024.

Claire Marsh
Ombudsman