

The complaint

Mr W is disputing a transaction that debited his account with Starling Bank Limited and would like this to be refunded.

What happened

Mr W visited a shopping centre on 1 February 2024 and recalls having his wallet, which contained his Starling debit card, with him when leaving the house. However, at some point he lost his wallet. Mr W contacted Starling to report his lost card and during this call it transpired there had been a transaction of £448 to a merchant which I'll call C. Mr W says he didn't make or authorise this transaction and would like Starling to refund it.

Starling said they couldn't find any evidence to support any fraudulent activity, so they didn't provide Mr W with the refund he requested. However, they recognised there had been a delay in raising a complaint for Mr W, so they credited his account with £50 in recognition of this.

Our investigator looked at this complaint and didn't uphold it. He noted Mr W had provided conflicting information as to whether his PIN had been written down. Mr W told our service his PIN was written down because it was a new card and he wanted to set the PIN up at a cash point.

But our investigator explained the card that was reported as lost/stolen had been active since January 2024 and since then the PIN had been used so he was satisfied Mr W had used the PIN prior to 1 February 2024. And as Mr W told Starling it wasn't written down at the time he reported the disputed transaction, our investigator concluded it was more likely than not that the PIN wasn't written down.

Our investigator also explained Starling confirmed Mr W's PIN would have been created by Mr W when setting up the account, and the PIN has remained the same since. Our investigator also explained the PIN can be accessed in the app should Mr W need it. Our investigator concluded the actions weren't of a typical fraudster as there were no balance enquiries prior to the transaction which suggests the individual knew there were enough funds in the account.

Mr W disagreed and although our investigator asked further questions and wanted to know specifically why he disagreed Mr W wasn't forthcoming. But as Mr W disagreed the case was passed to me for a 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.

The relevant regulations here – the Payment Services Regulations 2017 – say that generally a consumer won't be held liable for any transactions made on their account that they didn't

authorise, except in limited circumstances. In this case the most important question I need to answer is whether I think it's more likely than not Mr W, or someone acting on his behalf, carried out the transactions.

I've seen internal records from Starling to show that Mr W only held one card at the time of the disputed transaction, so I'm persuaded this is the card that was used. I've also seen evidence that Mr W's chip and PIN was used for the payment to C, so I'm persuaded this is how the transaction was authenticated.

Mr W has provided conflicting information as to whether his PIN was written down. I've listened to the call when Mr W reported his card to Starling as being lost or stolen. The advisor asks whether he had the PIN written down and Mr W confirmed that he didn't.

I've also looked at messages sent between Mr W and Starling shortly after the event where he is asked again whether the PIN is recorded, and he confirms it isn't. Seeing as this was the answer Mr W gave at the time when events were fresh in his mind, like the investigator I think it's more likely than not that the PIN wasn't written down.

I have taken into account that Mr W told our service the PIN was written down but this was much later after the event in question. Moreover, Mr W's explanation for having the PIN written down isn't persuasive.

I say this because Mr W told our investigator he had the PIN written down as he had a new card and needed to set it up. But Starling have said that their process is that customers choose their PIN when they order their card during sign up so I think it's more likely than not that Mr W would have selected the PIN himself to begin with.

Starling have also said the PIN hasn't been changed since and I've seen no evidence to suggest that it has, nor has Mr W disputed this. I've seen evidence that Mr W had used the PIN prior to the disputed transaction for a cash machine withdrawal on 9 January 2024 so I don't think it's likely he'd have needed to keep a record of this in his wallet. Furthermore, Starling have said the PIN would also be accessible in the app, which Mr W has also confirmed so again there wouldn't be a reason to have the PIN written down. So overall, I don't find Mr W's testimony regarding his PIN very plausible. And working on the basis that the PIN wasn't written down, it's hard to see where the point of compromise would have been.

Starling have provided our service with records of the transactions that took place on the day of the disputed transaction (1 February 2024), which were mainly Apple Pay transactions except a contactless transaction. I can see that there weren't any other chip and PIN transactions (except the transaction to C) so I don't think it's likely someone oversaw Mr W's PIN and took his card to carry out the transaction in question. Mr W has also confirmed that no one else knew his PIN and that he would shield this in any event. So again, it is difficult to see where the point of compromise has arisen.

Furthermore, as explained above, the last time Mr W used his PIN appears to have been on 9 January 2024, so I think the chances of someone overseeing his PIN on this date and stealing his card on 1 February 2024 is quite remote.

Mr W told our service that his wallet contained store cards, another bank card, and his provisional driving licence. Mr W confirmed there were no disputed transactions on his other bank card as this account didn't have any funds in it. Our service asked Mr W for evidence of him replacing the above items to support his version of events but unfortunately, he was unable to do so.

Although I appreciate Mr W said given Starling wouldn't refund the disputed transaction, he couldn't afford to get his licence replaced, I would have expected him to be able to provide some form of proof that he had to re-order (or received) a new bank card or store cards so I find it unusual he's been unable to provide anything to support his testimony.

Mr W said he realised his card was missing when he went into a shop and wanted to use his card at around midday. He says he wanted to use his card as the transaction value was fairly high and that this is the pattern on his statements. But having looked at his statements, Mr W mainly uses his Apple pay rather than debit card and the only time he likely uses his card and pin would be for cash machine withdrawals, so I'm not inclined to agree with Mr W here.

The call evidence provided by Starling shows Mr W didn't report the card as lost/stolen until 16:50 on 1 February 2024, nearly five hours after Mr W says he realised his wallet was missing. I find this unusual especially given that Mr W said his PIN was written down in his wallet which was stored with his card, so he'd have likely known the chances of someone finding his wallet and using his account were fairly high. Although as I've explained above, I'm not persuaded by his testimony regarding this.

Mr W has also said that he didn't even make the transaction he'd intended to make at around midday as he was more worried about cancelling his card. Given he had such concerns, and understandably so, I would have expected him to report this much sooner rather than leaving a delay of nearly five hours. So again, I'm not persuaded by what Mr W has told our service.

Starling have provided evidence that shows Mr W's card was re-added to an Apple Wallet at 15.42 on 1 February 2024. Unfortunately, Starling haven't been able to confirm the exact device and method used to provision the card, but I think it's more likely than not it was Mr W (or someone acting on his behalf) that re-added his Starling card to his Apple Wallet (or a wallet he gave consent to).

I say this because Mr W only had one card for his account at the time of the disputed transaction which is the one that was added to the Apple Wallet. Based on the transaction history on 1 February, this shows there was further spending via Apple Pay after 15.42. There was a transaction to a mobile phone company which in the call to Starling, Mr W said he made (although I realise he's subsequently told our service he disputed this payment).

Furthermore, I can see there were transactions in US Dollars for \$0 which Starling have said would have been Mr W's card being re-added to the Apple Wallet and the evidence provided supports this. When our service asked Mr W about this, Mr W said he had made these transactions and that he wasn't disputing these which would suggest it was Mr W re-adding the card he says was lost/stolen to his Apple Wallet.

However, I do appreciate there may have been some confusion here as Mr W said these were for in app purchases – but as I've explained above, the amounts were for zero and therefore didn't debit the account.

I find the timing of the above unusual given that Mr W says he realised his card was missing at midday so rather than reporting this as lost/stolen, he seems to have re-added his card to an Apple Wallet instead.

But even if I put the above evidence regarding the Apple Wallet to one side, for the reasons I've outlined I still don't think Starling needs to refund the transaction to C.

Starling has said there weren't any balance enquiries prior to the transaction to C so it seems that whoever carried out the transaction was aware there were sufficient funds in the account for it to be approved.

Starling's internal records suggest there were no further attempts to use the card itself for unauthorised transactions after the transaction to C on 1 February 2024 despite there being funds available. This isn't typical fraudster behaviour as they'd usually try to drain the account as quickly as possible (although I have addressed the mobile phone transaction below).

And once the card had been cancelled it seems there were no further attempts to use it physically. This suggests that the person who had the card was aware they would no longer be able to use it. So overall I find this pattern unusual.

I understand Mr W has had other fraud on this account but he has asked for this complaint to only focus on the transaction to 'C' – which Starling have addressed in their final response. So I have only considered this one transaction (the transaction to C) under this reference.

However, I have noticed Mr W recently told our investigator he disputed a transaction to a mobile phone company and that he was told this was subsequently refunded. But in the call to Starling when Mr W reported his card as lost/stolen, he clearly says he made these transactions and is only disputing the one to C. So although the other transactions don't form part of the complaint, having listened to the call, this casts further doubt over Mr W's testimony again.

Gross negligence

I also have to consider whether Mr W acted with "gross negligence". The Payment Services Regulations 2017 says a consumer (such as Mr W) should take all reasonable steps to keep safe personalised security credentials relating to a payment instrument. Our service would consider gross negligence to be a lack of care that goes significantly beyond what we would expect from a reasonable person.

Mr W has told our service that he took his card and PIN out of his home but as I've explained above this isn't what he initially told Starling. Although I don't think Mr W did have his PIN written down, I have gone on to consider what this would mean for his complaint if he did.

Even if I accepted Mr W had a written record of his PIN, this would have allowed a fraudster to carry out the transaction to C. In addition to this Mr W waited nearly five hours from realising he didn't have his card and PIN until he reported this to Starling. However, it was the action of Mr W recording the PIN together with his card which would have been grossly negligent. And having the card and PIN together which fell into the wrong hands would have been reasonably foreseeable.

So it follows that Mr W's lack of care goes significantly beyond ordinary negligence or carelessness and is therefore grossly negligent. As a result this would still mean Mr W ought to be held liable for the transaction to C.

conclusion

Taking everything into account I don't think it's unreasonable that Starling have held Mr W liable for the disputed transaction. It follows that I won't be asking them to provide him with a refund.

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 W to accept or reject my decision before 12 December 2024.

Marie Camenzuli
Ombudsman