

## **The complaint**

T says Starling Bank Limited (“Starling”) have only partially refunded it for the disputed transactions on its account and it would like it to refund the rest.

## **What happened**

There is no dispute here that the transactions T complained about after losing its phone were unauthorised. Both parties agree on this so this doesn’t need to be investigated further.

Starling has refunded the disputed transactions which took place on 9 November 2023. However, it has refused to refund the disputed transactions which took place on 10 November 2023, as it says T was grossly negligent in delaying informing it that its account had been compromised.

T says although it had been aware the phone was missing on 9 November 2023 it was not aware that its Starling account had been affected until it was able to check the app on 10 November 2023. And immediately upon realising, T contacted Starling.

Our investigator considered this complaint and upheld it in favour of T. Starling didn’t agree so the complaint has been passed to me for 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 am upholding this complaint, and I’ll explain why.

The starting position under the Payment Services Regulations 2017 (PSRs) is that T is liable for authorised payments and Starling would be liable for unauthorised payments. Both parties agree these transactions were unauthorised, but Starling asserts T was grossly negligent in failing to report the theft of the phone immediately.

Gross negligence is a much higher standard than normal negligence – it involves serious recklessness. T reported the phone as stolen to the police and made attempts to block the phone as soon as it realised the third party in possession of the device had no intention of returning it. And although T was aware that this third party had access to the phone it didn’t think they would be able to access the Starling app as it was protected by a passcode - which it had not shared with anyone else or written down on the phone anywhere. As far T was aware at this point, its Starling debit card was safe and the app was protected by a secure passcode. Furthermore, T believed that the third party would no longer have access to the device as it had contacted the mobile phone provider to block it immediately.

Starling has said that T informed another bank of this theft on 9 November 2023, so it must have been aware its accounts had been compromised and it should have also informed Starling. But T has explained that its debit card for the other bank was kept together in the phone case of the stolen device, so it was worried the fraudster would try and use the debit

card. T maintains that it believed it's account with Starling had not been affected, and it was the next day when T regained access to it's Starling banking app that it discovered the disputed transactions.

The test for gross negligence is an objective test and having thought about what a reasonable person might have done in these circumstances I'm satisfied that a reasonable person would have done what T did by reporting the stolen phone to the police and blocking the device via the mobile phone provider. It follows I don't think T acted with gross negligence.

### **Putting things right**

So, considering everything I've seen I've decided to uphold this complaint. To put things right Starling Bank Limited should refund T the remaining disputed transactions together with 8% simple interest from the date the transactions occurred until the transactions are refunded. Starling Bank Limited should also pay T £100 in compensation for the distress and inconvenience caused.

### **My final decision**

I am upholding the complaint and Starling Bank Limited should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 10 September 2024.

Sienna Mahboobani  
**Ombudsman**