

The complaint

A company, T, complains VIVAWALLET.COM trading as Viva.com ("Viva") won't refund transactions made from the company's account which it says it didn't make or authorise.

T is represented by one of its directors, Mr F.

What happened

Mr F says his phone was stolen in the early hours of 30 June 2024. Following this, eight transactions were made from T's account totalling £13,241. Mr F says he didn't make or authorise these transactions.

T reported the transactions to Viva. It said it wouldn't refund them because they were made via Apple Pay using a card registered to Mr W, the other director of T. They had been made on a device that the card had previously been tokenised to and it couldn't see how that could have been accessed by an unauthorised party. Following a complaint, Viva still refused to refund the transactions, so T referred the complaint to our service.

An Investigator considered the circumstances. In summary, she said she didn't think the payments were authorised and she didn't think T had failed with intent, or gross negligence, to keep its security details safe. She noted £3,649 had already been refunded, but she recommended the complaint was upheld and the remaining disputed amount of £9,592 should be refunded and that Viva should pay 8% interest on the full amount of the disputed transactions, between the date they debited the account and the date of the refund.

T accepted the Investigator's findings. But Viva didn't, it said it wasn't liable to refund the transactions because Mr W had failed to comply with the terms of the account by allowing Mr F to tokenise the card details to his phone. They also said Mr F's delay in reporting the transactions was undue, and if he was observed entering his phone passcode then he'd been grossly negligent.

As Viva didn't agree, the complaint's been passed to me to decide.

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.

Under the Payment Services Regulations 2017 (PSRs), generally, Viva can hold T liable for the disputed transactions if the evidence suggests that T made or authorised them. Viva also doesn't have to refund any transactions if the evidence shows T failed, either intentionally or with gross negligence, to comply with its obligations under the PSRs or the terms and conditions of the account. Among other things, the PSRs say that account holders must take all reasonable steps to keep their security information – like passwords or Personal Identification Numbers (PINs), safe.

I understand some of the transactions, totalling £3,649, have already been refunded following disputes raised with the merchants, which leaves a disputed amount of £9,952 outstanding.

All parties agree the disputed transactions were made via Apple Pay using a card that had been issued to Mr W, the account holder, though it had been embossed with Mr F's name. The evidence shows this card had been tokenised to Mr F's device on 5 December 2023. Viva has said it shouldn't be responsible for the loss because Mr W has failed with intent to comply with the terms and conditions of the account by giving Mr F access to a card, when he was not an authorised user of the account. However, that action is not what's caused the loss in this case so I don't think it makes a difference to the overall outcome.

To make the transactions via Apple Pay, FaceID, TouchID or passcode would have been needed.

Mr F has said he was on a night out, waiting for a taxi when his phone was snatched from his hand at about 1.00am. He believes he may have been observed entering his phone passcode prior to the theft. Viva says Mr F hasn't been consistent about this, but I can't see that it questioned him, or Mr W, in any detail about the circumstances of the theft based on the evidence provided by Viva showing its contact with them. So it's unsurprising that further detail has been provided in response to our Investigator's questioning later on. I find Mr F's testimony about the theft of his phone to be plausible and persuasive, particularly since he's provided evidence of other similarly affected accounts held with other financial providers and he reported the matter to the police.

Based on everything I've seen, I don't think T authorised the disputed transactions.

Viva says if Mr F was observed entering his phone passcode in this way, that would mean he'd been grossly negligent in failing to keep his phone's passcode safe. They also said Mr F's delay in reporting the transactions means T's breached its obligations under the terms of the account by not reporting the transactions promptly enough.

To find Mr F had been grossly negligent, I would need to be persuaded he had acted with a significant degree of carelessness. Having considered the circumstances of this case, I'm not persuaded that Mr F entering his passcode into his phone in a public place, and being observed doing so, means he's been grossly negligent. I say this because Mr F's phone passcode isn't solely a payment device, it's a device which performs many other functions – so it's quite usual to enter a passcode into a phone for other things that don't carry the same risks.

Turning to the alleged delay in reporting matters, Mr F says his phone was stolen at about 1.00am on 30 June 2024. He says he went to replace it at a retailer the following morning at 11.00am, and when he'd done so he found he couldn't access his emails as his password had been changed. Upon gaining access to his emails, he then noted the disputed transactions on this account, among several others, and began contacting the financial businesses involved. Based on the chat screens I've seen from Viva, T's first contact with Viva about the disputed transactions was on 30 June 2024 at 5.17pm, which is about 20 minutes after the last disputed transaction took place. Viva has highlighted this as a "coincidence".

Given Mr F discovered several compromised accounts, with multiple disputed payments, and didn't have a new device until after 11.00am, I don't think Mr F's explanation about this is unreasonable and explains why he didn't contact Viva immediately. This would also explain why Mr F didn't disable his phone remotely. So I don't find there was an undue delay in reporting the theft.

As I haven't found there's any basis on which T can be held liable for the transactions its disputing, I require Viva to refund them and pay 8% interest on that amount.

I also note our Investigator recommended that Viva pay 8% interest on the transactions recovered via the chargeback scheme. Generally speaking, it's not a requirement for a business to award interest on transactions recovered in this way. However, in the overall circumstances of this complaint, considering the impact this had on T, I find it fair and reasonable.

My final decision

For the reasons I've explained, I uphold T's complaint.

To put things right, I require VIVAWALLET.COM trading as Viva.com to:

- Refund T the remaining disputed amount of £9,592.
- Pay 8% per year simple interest on £9,592 from the date it debited the account to the date of settlement.
- Pay 8% per year simple interest on £3,649 from 30 June 2024 to 5 September 2024.

If VIVAWALLET.COM trading as Viva.com considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell T how much it's taken off. It should also give T a tax deduction certificate if it asks for one, so it can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 17 July 2025.

Eleanor Rippengale
Ombudsman