

## **The complaint**

Miss P complains Starling Bank Limited refuses to refund her for transactions on her account she says she didn't authorise.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, transactions totalling £1,289.99 were charged to Miss P's Starling account in November 2023 which Miss P says she didn't authorise. Miss P and Starling have been unable to reach agreement about things, so Miss P referred her complaint to us. Our Investigator was unable to resolve the matter informally, so the case has been 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.

Generally speaking, Starling is required to refund any unauthorised payments made from Miss P's account. Those rules are set out in the Payment Service Regulations 2017. Miss P said she didn't carry out the transactions in dispute. So, I then must give my view on whether I think she did authorise the transactions or not.

I've seen from Starling's records that the genuine cards and PINs were used to make the transactions, so I'm satisfied they were authenticated. This is important, though not enough on its own to say Starling can hold Miss P liable for the transactions. I also need to be satisfied that based on the evidence, it's likely that Miss P herself made, or otherwise authorised the transactions.

A payment out of someone's account can only be treated as authorised if the payer has consented to it. This means the customer must have consented to a payment transaction taking place. So, I've gone on to consider here whether I think Miss P consented to the transactions and therefore whether they were authorised or not.

I've not seen any evidence to suggest that Miss P willingly disclosed her PIN number to a third-party and she has confirmed she doesn't have the PIN written down anywhere. I don't think it's improbable and nor can I rule out the possibility that Miss P's PIN may have been seen when she made the genuine retail payment on 15 November 2023. She reported her card stolen on 18 November 2023 and I note there were further attempts to withdraw money from an ATM with her card a few hours later.

As a result, I'm satisfied on balance that the most likely explanation is that Miss P made the genuine transaction with the retailer on 15 November 2023. She then either lost her card or had it taken off her without her noticing in that retailer by a third-party who was able to see her PIN when she made the genuine transaction. I'm not suggesting this is definitely what happened because I don't know. But from all the information I've seen, I think it's the most likely explanation in this case. I've considered that Miss P says she always shields her PIN

when making payments but that doesn't completely guarantee that the PIN will definitely not be seen when it's being entered.

I've also considered the manner of the transactions and the ATM requests. The card was used at an ATM forty minutes after Miss P's genuine transaction and a balance enquiry was made. However, the incorrect PIN was used twice. This suggests that the third-party saw part of Miss P's PIN but not all of it. Which supports the fact that she may have shielded her PIN but not completely and the third-party was able to guess the remaining number/s when accessing the balance enquiry at the third attempt. If Miss P had authorised a third party to make the withdrawal and provided her PIN to them then I don't think it's likely the PIN would've been entered incorrectly twice.

Withdrawals were then made from the account from an ATM three days in a row with the exact same pattern - £250 followed by £50 - which shows someone trying to get hold of as much cash from the machine as possible. There was then a disputed payment with a retailer who have confirmed the person that made the transactions doesn't match the description of Miss P. There was then a further attempt to make a payment at the same retailer that was declined due to insufficient funds and then there were a variety of ATM withdrawals attempted before Miss P reported the card lost the next day. There were then further attempts to withdraw money from an ATM after the card had been reported missing.

As a result of the above, this persuades me that it wasn't Miss P who authorised the payments here nor did she consent to them. I appreciate these cases are finely balanced, but I think the evidence suggests that - more likely than not – a third-party saw Miss P's PIN or part of it, managed to take the card without her knowing and then proceeded to take as much money from the account via ATMs and a retailer transaction.

I also don't think Miss P failed with intent or that she was grossly negligent. As explained, I don't think she intentionally revealed her PIN or gave a third-party access to her card. So, I'm satisfied Miss P didn't act grossly negligent here.

Miss P was unhappy with the way Starling handled this matter. Starling agreed and paid Miss P £200. The investigator felt this was reasonable in the circumstances and I agree and for similar reasons. So, I'm not going to ask Starling to increase its award here.

### **My final decision**

My final decision is that I uphold this complaint and I direct Starling Bank Limited to;

- Refund Miss P £1,289.99 and
- Add 8% simple interest per year to this amount from the date of the transactions to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 24 April 2025.

Mark Dobson  
**Ombudsman**