The complaint

Mr A complains that Monzo Bank Ltd won't refund payments he didn't authorise from his account.

What happened

Mr A reported payments from his business account as fraudulent to Monzo. These were made through a mobile payment service ('Apple Pay') on his phone. Three payments totalling over £1,250 were made from his business account in this way on 9 October 2020. He says he was abroad then with two business partners and was sharing a room. He was tired and went to sleep and says that they brought back two females from a bar and who must have been able to access his mobile phone to make the payments. He is unhappy that Monzo did not refund the money and told him that it would be closing both his business and personal accounts.

Monzo said it wouldn't be refunding the money as the payments were made securely using his phone and which had remained in Mr A's possession. It said it had decided to close the accounts under the terms and conditions.

Our investigator didn't recommend that the complaint be upheld. He provided a detailed list of transactions that evening both from Mr A's personal account and then the business account. Transactions to the same merchant had been made from both accounts – the merchant category code was the broad one of 'drinking places' and included bars and nightclubs. Transactions had started from Mr A's personal account at 20:14 that evening and continued until 21:04. These had been funded by transfers from his 'savings pot'. The specific ones in dispute here from the business account had started at 21:11 and the last one was at 22.39. Those payments had been funded by separate transfers from an account at a different financial business a matter of minutes before each one. He had contacted that business and it told him that these used 'touch ID' as security. Mr A told him he hadn't pursued these as fraud as he was concentrating on the payments on from Monzo.

Mr A said he had Face ID set up for his mobile phone payments and a passcode. Our investigator didn't think it likely that Face ID would have worked if Mr A had been asleep. And although Mr A said his passcode then was his date of birth and could be seen in his passport in his room it seemed unlikely this could have been guessed and used. The payments were spread out, started soon after Mr A had seemed to make genuine payments from his account and didn't seem likely to be the actions of a fraudster.

Mr A didn't agree and wanted his complaint to be reviewed. He was unhappy that everything he had said was considered to be a lie. If he had authorised the payments he said he would have taken responsibility for them. And no consideration of his medical condition had been made at all.

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 understand Mr A is distressed by what happened. And I've seen a letter from his doctor dated 3 December 2019 setting out that he had some prior mental health issues linked to financial problems. I don't doubt from what he says that these have continued, and he has been significantly affected by the consequences of the payments he disputes here.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Mr A wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the phone and security details used for these payments?
- Did Mr A authorise the payments on the account?
- Did Monzo act reasonably?

I'm satisfied the payments were authenticated using the security information on his mobile payment service. It isn't possible to say whether that was his Face ID or the passcode, but the audit reports held by Monzo show that the correct verification codes were recorded.

The issue is whether Mr A consented to them. I know he is adamant that he didn't. I need here to evaluate his explanation of what happened which is that he knew nothing of them to the extent that he was asleep at the time. So, I'm not looking at a scenario say where he was tricked into making these payments.

Our investigator asked Mr A about the pattern of both personal and business payments to this merchant to see what he could say about them. He said that he didn't remember much about what was happening but that he was *'shocked and disgusted'* and he now knew a first attempted payment was declined. While the focus of this complaint has been the business payments the preceding ones from his personal account are relevant context and I can't safely assume Mr A accepts those either even if he hasn't officially pursued them with Monzo.

The first payment from his personal account was for £49.92 and this used chip and the PIN on his card for verification. While the first attempt was declined it was tried again and authorised. This was at 20:14 that evening. The next payments from his personal account used the mobile payment service from his phone provider and as these were all under £45 they came within the contactless limit and may not have needed separate verification.

Mr A is clear he had gone back to his room and was asleep at the time of the payments he disputes. Looking specifically at the business payments the first was at 21:11 for £86.60 and followed a transfer of £150 that same minute from his account at a different financial business.

Mr A hasn't said how far his room was from the bar, but on his account I'd need to think that the fraudsters had accompanied his business partners and almost immediately started using his phone with a mobile processing terminal. And that the payments were for some reason spread out over 80 minutes. And they followed payments from his personal account that had started an hour before that. If the fraudsters did have free access to his account at the other financial business it is unclear why they would first transfer the money to Monzo and then not take as much money as quickly as possible - especially because if Mr A was asleep there was a risk he would wake up. Like the investigator I'm struggling to accept that Face ID would be viable to use for someone asleep or that again the fraudsters could have discovered his passcode. And if they had free access to his phone why they didn't take that and try and make further payments before his account was blocked when he contacted Monzo.

I can't know *exactly* what happened and Mr A has nothing to corroborate what he says must have happened. I'm thinking about what is *most likely* and for the reasons I've given I don't think it's most likely that a third party was able to access his account in the way he describes. So that leads me to conclude that the most likely explanation is that the payments disputed were authorised by him and which I know will be a very disappointing outcome for him. I think it was reasonable for Monzo to hold Mr A responsible for the payments.

Monzo also gave Mr A the required notice period under the terms and conditions to close the accounts. That was a commercial decision it made. And so, taking everything into consideration I don't have a basis to find that it acted unreasonably and should refund the payments to Mr A as he wants.

My final decision

My decision is that I do not uphold this complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 May 2021.

Michael Crewe
Ombudsman