DRN-3330480

The complaint

Mr P complains that Monzo Bank Ltd failed to refund transactions that he didn't recognise.

What happened

Mr P received a notification on his Monzo banking app that a payment had just been made which he didn't recognise. Mr P blocked his own card and then noticed a second purchase had been made with his card a little earlier that day.

Mr P contacted Monzo about the situation and explained how he was sitting at his desk at the time with his debit card in his possession when the notification came into his phone. Monzo investigated what had happened and initially refunded one of the transactions, which they later confirmed was a mistake. Monzo's system data showed the two payments were made with Mr P's genuine card and used the contactless system when the payments were taken at both merchants.

Because Mr P's genuine card had been used, Monzo declined to refund the two disputed transactions, they also took back the earlier refund they'd made to Mr P. A complaint was lodged by Mr P who stressed that the transactions couldn't have used his card because he still had it in his possession at the time. Mr P sought CCTV evidence from one of the merchants and contacted Action Fraud about the situation. After assessing the information Mr P had passed to them, they (Action Fraud) took no further action.

Monzo again looked into Mr P's situation and maintained their position that the payments were made using Mr P's genuine card and not a cloned one as Mr P thought may have happened. Mr P remained unhappy with Monzo's handling of his situation and brought his complaint to the Financial Ombudsman Service for an independent review.

Mr P's complaint was looked into by one of our investigators who asked both parties for information about what had happened. Mr P confirmed his version of the events, he explained that he was in his office at the time of the transactions and the CCTV would show it wasn't him using the card. Monzo supplied audit information about the payment.

Our investigator thought the evidence showed it was Mr P's genuine card that was used to make both disputed transactions and it was reasonable for Monzo to hold Mr P liable for both of the transactions.

Mr P disagreed with the outcome and asked for a further review of his complaint. He maintained that he had his genuine card in his possession at the time and was some miles away from where the payments were made. Mr P thought that card cloning was the reason behind the two transactions.

The complaint has now 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.

Refund

Firstly, I'd like to comment on the refund received by Mr P. Monzo have explained that their system mistakenly issued a temporary refund to Mr P, which is why they later took it back. Mr P would have been under the impression at the time that he was going to receive full refunds for both transactions after seeing the first one refunded. This was an error by Monzo and whilst they could have provided better service to Mr P, their decision to retrieve the refund was based on the belief that Mr P authorised both transactions. Under normal circumstances, Monzo wouldn't have issued a refund and I think it was reasonable for them to take it back.

Authorisation

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Monzo can hold Mr P liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Monzo can only refuse to refund unauthorised payments if it can prove Mr P authorised the transactions, but Monzo cannot say that the use of the contactless card conclusively proves that the payments were authorised.

Unless Monzo can show that consent has been given, it has no authority to make the payment or to debit Mr P's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr P.

Mr P believes that his card was cloned because he was in possession of it some miles from where the transactions took place. Monzo rely on their audit data to demonstrate it was the genuine card that was used. It's not our role to say exactly what happened, but to decide whether Monzo can reasonably hold Mr P liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

The audit evidence provided by Monzo shows it was Mr P's genuine card that was used to make these transactions. It's generally accepted that cards containing a Chip can't be cloned, although the magnetic strip can be. But, if Mr P's card was cloned using the magnetic strip – the audit data would show that. The information recorded during transactions includes the means of the payment – here that the Chip on the card was "read" by the terminal it was used with. That's why Monzo are able to show it was a contactless transaction.

I'd also note that both transactions were for relatively small amounts of money – well within the contactless limit. I appreciate Mr P said he was in possession of his card at the time, but I'm satisfied the evidence shows that whoever used the card did so with Mr P's genuine card.

Even though it's unlikely that it was Mr P himself that made these transactions, he'd still be liable for them unless his card was taken without his authority – but Mr P stated he still had his card with him – not that it had been stolen.

If Mr P's card had been taken without his permission (stolen) then I'd probably uphold his complaint because the payments would likely not have been authorised – but here Mr P has explained that he still had it in his possession and hasn't said it was stolen.

The pattern of transactions also doesn't support a case that the card was being used without permission, that's because the two transactions took place about an hour apart. Usually, such cards are used as quickly as possible before the owner blocks them or reports them stolen. Notification of payments to the account holders is a common feature of such cards and an unauthorised user would most likely know that. The whole point of stealing a card is to use it to gain as much money/goods as quickly as possible. Waiting almost an hour to use it again is an unusual way for the card to be used by a thief.

What that means here is that the version of events given by Mr P isn't supported by the audit evidence supplied by Monzo. The card couldn't have been both in Mr P's wallet and being used to make the disputed transactions at the same time. So, when I take everything into account, I can't say that the card was used without some form of authority and that means I think that Mr P was more likely than not responsible for these transactions. I think it was reasonable for Monzo to hold Mr P liable for the two transactions and I won't be upholding this complaint.

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 P to accept or reject my decision before 22 July 2022.

David Perry
Ombudsman