DRN-3483813

The complaint

Miss A complains that Monzo Bank Ltd failed to refund transactions she didn't recognise and closed her account.

What happened

Miss A noticed two payments to a merchant who I'll refer to as V. These payments were made using a newly issued debit card from Monzo. The details from the card, including the name, long number and security code (CVV) were used to make two online transactions.

Miss A had experienced other fraudulent uses of her account which Monzo had refunded. Miss A had also had replacement cards issued to her.

Miss A told Monzo that no one else had her card details or access to her account (through the app on her phone), but she later found out that a close family member who I'll refer to as B had used her card to make the two transactions with V.

At the time of Miss A's notification to Monzo, she wasn't aware of who had carried out these transactions and asked Monzo for a refund. Monzo concluded that Miss A was responsible for making these transactions after two transfers were made into her account the day before to "fund" the disputed transactions. The disputed transactions couldn't have been made without the two transfers because the account didn't have enough funds available.

Monzo declined to make a refund and decided to close Miss A's account and issued a two-month closure notice to her. Miss was unhappy with how Monzo had dealt with her claim and made a complaint which was investigated by Monzo's complaint team. They didn't change their position and told Miss A that they wouldn't refund the two transactions.

Miss remained unhappy with her issue and brought her complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our adjudicators who asked both parties for information about the complaint. Miss A explained that B had regular access to her phone and knew where she kept her Monzo debit card. Miss A confirmed she hadn't notified the police because she didn't want to get B into trouble. Miss A said she'd transferred money into her account to pay another merchant, although this never happened.

Monzo provided evidence of the transaction and their reasoning why they held Miss A responsible. Monzo also explained that Miss A had been active on her banking app when the disputed transaction was made.

Our adjudicator thought that the evidence showed it was Miss A who was responsible for making these transactions. He also thought it was reasonable for Monzo to close Miss A's account and didn't uphold her complaint.

Miss A disagreed with the outcome and explained that she'd been experiencing medical difficulties at the time. Miss A provided evidence that she was under medical supervision when the disputed transactions took place. Miss A asked for a further review of her complaint.

Miss A's 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.

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

Monzo can only refuse to refund unauthorised payments if it can prove Miss A authorised the transactions, but Monzo cannot say that the use of the card details and CVV 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 Miss A'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 Miss A. But, I'll now need to consider if sufficient evidence has been provided to show that Miss A consented to the transactions.

It's Miss A's case that B was responsible for taking her card and using it to make two disputed transactions. Miss A described how B had regular access to her phone and her card. Miss A said she kept the card in her room which B was able to enter.

Miss A also had several other claims about disputed transactions that were refunded, some by Monzo and one by a merchant. Monzo provided evidence of an earlier claim made by Miss A which shows all the purchases being delivered to her home address – which B also lives at. So, it's apparent that there were numerous fraudulent uses of Miss A's card and at least some of them show the items were delivered to the address where Miss A lives at.

Monzo stated that Miss A had used the app on her phone at the time of the first disputed transaction which took place early in the morning. They went on to say that Miss A was active in the app for a few minutes, but no further action was taken (for example notifying Monzo about the unrecognised payment or freezing the card using the app).

Miss A said her card details were found on B's phone and she hadn't been given any authority to use it. It was further explained that B had obtained the new card details, including obtaining the CVV, even though the card had only been renewed in the last few days.

Determining who made these payments here isn't straight forwards, that's because the card details themselves were used, rather than a payment using the app (which would require further security steps to access). Monzo confirmed that no additional payment steps were needed by the merchant before they accepted the two transactions. So – because it was only the card details used – I have to make my decision using the other factors available to me.

One of which is the activity on Miss A's banking app at the time of the disputed transactions – which took place very early in the morning. I can't know if B was using the card details at that time in the morning, but B isn't very old and whilst they could have been awake, I'm doubtful they would have been using the card details at the same time Miss A was awake using the banking app on her phone.

Both Monzo and our adjudicator referred to the funding payments that were transferred into the account the day before the two disputed transactions – which Miss A said was to pay a bill with another merchant. No payment was made from the account to that merchant either on the day the transfer was made or at any time over the next few months. The statements show there were considerable sums transferred into the account, so presumably they could have been used to pay the merchant, but nothing is shown as leaving this account.

So, taking everything into account, my objective review of the evidence leads me to the conclusion that I think Miss A was more likely than not responsible for making these payments or allowing others to make them on her behalf.

Even if I thought it was B making these transactions, I still think Miss A would have been responsible due to the ease with which B seemed able to obtain the card details of numerous debit cards. This included the new card details which were received within the last few days. Miss A is under an obligation to keep her card details from being used fraudulently and the repeated use of her card by B – seems to me to indicate that Miss A wasn't meeting this obligation. I also think that it would be unfair to instruct Monzo to refund Miss A because she wasn't prepared to report the issue to the police (although Miss A said she'd reported it to Action Fraud). Whilst I understand she wouldn't want to get B into trouble – I don't think Monzo should be the ones to pay for that.

Medical Supervision

I've also reviewed Miss A's position that she was under medical supervision at the time of these two disputed transactions. I accept the evidence she's produced which shows that several months earlier Miss A was receiving treatment, and this continued at home. But, I've also reviewed her use of her account and the chat history between her and Monzo. What this shows is that Miss A was active on her account, moving funds into and out of it on a regular basis after returning home. She was also able to raise several other issues she was having with her account with Monzo – and didn't mention her condition.

I don't underestimate the difficulties Miss A was going through. But, the evidence indicates that she was able to carry out her usual banking activities and engage with Monzo about other issues she was having, I don't think this was reason to think the disputed transactions were affected by this situation.

Account closure

Monzo decided to close Miss A's account which she considered was unfair. The terms and conditions of the account allow both parties to end their relationship with each other. There are various steps required to be followed depending on the reasons for closing the account. Here Monzo gave Miss A two months' notice that the account was to be close which enabled alternative arrangements to be made.

This was in line with the accounts terms and I don't think Monzo were unfair when they issued this notice. I understand it would seem as such on the back of the disputed transactions being refused, but as Monzo followed the appropriate process , which gave sufficient time to find alternative banking, I won't be asking them to do change anything.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 22 July 2022.

David Perry
Ombudsman