

## **The complaint**

Mr G has complained Monzo Bank Ltd won't refund him for transactions he didn't make after his debit card was stolen.

## **What happened**

Whilst Mr G was abroad early in 2022 he had his phone stolen along with cards and his driving license. He reported this to the police and made Monzo aware of what had happened.

More than £10,000 was spent over a short period of time from Mr G's Monzo account. Monzo wouldn't refund Mr G as they believed he'd not acted with sufficient care in keeping his card and PIN safe.

Mr G brought his complaint to the ombudsman service.

Our investigator didn't believe Mr G had acted in a grossly negligent manner in keeping a note of his PIN in his phone. It was not made clear this was his Monzo PIN. She asked Monzo to refund Mr G in full.

Monzo asked what our definition of gross negligence was. Our investigator shared guidance on this from the Financial Conduct Authority along with the standard our service uses. Monzo continued to believe Mr G had acted in a grossly negligent manner. They've asked an ombudsman to consider this complaint.

## **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.

Having done so, I've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr G's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply – specifically in this type of case whether the customer was grossly negligent in looking after their card and PIN.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what Monzo and Mr G have told us.

Firstly there's been no dispute that Mr G made or authorised the 57 disputed transactions at the centre of this complaint himself. I'm also satisfied he didn't. Therefore I have gone onto to consider whether Mr G has acted with gross negligence.

Monzo specifically requested information about how we consider gross negligence. Our investigator provided this on 1 July 2022. I see no need to repeat what was said there other than to state that gross negligence is not stupidity or carelessness but a lack of care which goes beyond acting in the way a reasonable person would have done. It's worth saying this is a high bar to get over.

Monzo will also be aware that our service has completed numerous final decisions clarifying these issues.

Monzo believes the multiple factors involved in Mr G's case go to show he acted with gross negligence. These include:

- Storing his PIN in his phone notes despite having access to his PIN through his Monzo app; and
- Wandering through a tourist area whilst using his phone.

I don't dispute that it sounds most likely Mr G – who's confirmed this himself – was using his phone and this meant when this was stolen, thieves were able to access his notes without going through any security set on the phone.

Although Monzo have said this isn't the issue, it seems they believe Mr G's actions contributed to him being a victim of crime. I'm afraid I don't agree. Mr G was a victim. I don't believe his actions – checking directions on his phone in a tourist area – contributed to this.

If I apply the reasonable person test in this instance, then it's clear I believe that Mr G has acted reasonably in using his phone in public.

I appreciate Monzo believes there's no reason for Mr G to have written his PIN down. But Monzo will be well aware that there's nothing unusual in Mr G having done this. This was normally password-protected so I believe Mr G had taken steps to secure his card and PIN separately.

Mr G has asked why Monzo didn't, in fact, notice the fraud themselves. Mr G had another card stolen at the same time and the other bank contacted him and were alert to the unusual activity on his account. There's no doubt the number and variety of transactions that happened on Mr G's Monzo account did not match his normal usage. It's not my role to question the procedures Monzo have in place to detect fraud as our service is not the regulator. But I can see why Mr G may think that Monzo's actions could also be said to have contributed to what happened.

I am satisfied Mr G didn't act in a grossly negligent manner.

### **Putting things right**

In accordance with the Payment Services Regulations I am asking Monzo to refund the 57 disputed transactions that took place in January 2022. And in accordance with the approach our service takes, I'm also instructing Monzo to add 8% simple interest a year to those amounts from the date of debit.

## **My final decision**

For the reasons I've given, my final decision is to instruct Monzo Bank Ltd to:

- Refund Mr G for the amounts taken from his account in January 2022 by 57 disputed transactions; and
- Add 8% simple interest to those amounts from the date of debiting to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 October 2022.

Sandra Quinn  
**Ombudsman**