

The complaint

Mr A complains that Monzo Bank Ltd are holding him liable for a transaction he says he didn't authorise.

What happened

In November 2021, Mr A's Monzo card was used to make a purchase which Mr A says he didn't authorise. The transaction was made using Apple Pay on a device secondary to Mr A's trusted device registered with Monzo.

Mr A received a notification on his phone to approve his card being registered to Apple Pay. Mr A approved this notification, aware that he had recently set up his card through Apple Pay. Following the approval, Monzo sent Mr A a text message to let him know his card had been successfully set up.

Around 25 minutes later, through Apple Pay, Mr A's card was used to make a transaction at a store. Mr A received a notification confirming the transaction so decided to freeze his card. A few minutes after this, Mr A reported the transaction with Monzo.

Monzo held Mr A liable for the transaction – they explained their technical evidence suggested that it wasn't possible for the transaction to be authorised by anybody other than Mr A. Our investigator reviewed things and didn't agree. In summary, he said there were a few transactions in the lead up to the disputed transaction where Mr A's card details could have been compromised. And he didn't think Mr A had been grossly negligent when approving the Apple Pay notification, as he did so in good faith knowing he'd recently set up Apple Pay through his own phone. On balance, the investigator didn't feel there was enough evidence to hold Mr A liable.

Monzo disagreed and asked for an ombudsman to review things. Therefore, the complaint has been passed to me.

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.

This is a finely balanced case and I won't be able to say what happened for certain – I'll need to make my findings based on what I think to have most likely happened in the circumstances.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Monzo can hold Mr A liable for the disputed payment if the evidence suggests that it's more likely than not that he made it or authorised it. If Mr A made the disputed transaction himself, it wouldn't be fair to ask Monzo to refund it. But Mr A says he wasn't responsible for the payment in dispute. So, the key question for me to consider is whether Monzo has provided enough evidence to hold Mr A responsible.

Monzo can only refuse to refund the unauthorised payment if they can prove Mr A authorised the transaction, but it's not enough for Monzo to say that the use of Apple Pay conclusively proves that the payment was authorised. Unless Monzo can show that consent has been given, they have no authority to make the payment or to debit Mr 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 transaction. It shows that the transaction was authenticated using Apple Pay – which Mr A admits to approving a short while before the transaction was made. In summary, Monzo say they can hold Mr A responsible because there's no plausible explanation for how the payment was made without Mr A's involvement. They contend that it's unlikely that anyone other than him could have used his phone to authorise the Apple Pay transactions and as he wasn't under pressure from a scammer; and there's no clear evidence when his card details were compromised he must have been involved.

I've seen Monzo's internal notes which clearly confirms the circumstances of this complaint relates to a likely Apple Pay scam. I don't think it's fair or reasonable to hold Mr A liable for the transaction on the basis that he can't pin-point when his card details were compromised. I appreciate this makes things difficult – it would be simpler of course if Mr A recalled being 'scammed'. However, as scams are becoming more sophisticated, it isn't unusual for victims to be unaware of when they are being tricked into giving information. Therefore, this point alone, doesn't persuade me that Mr A's card details weren't compromised – and as the investigator has rightly pointed out, they could have been compromised without Mr A's knowledge at all through data linked to transactions he did authorise leading up to the transaction in question. It's also not for Mr A to prove when his card details were compromised or when he was scammed; but instead, it's up to Monzo to provide the evidence to show Mr A knowingly consented to the payment.

Mr A confirms he approved the Apple Pay notification he received on his phone to set up the Apple Pay on a secondary device. While I recognise this in itself puts Mr A in a vulnerable position, Mr A has provided a plausible and consistent story as to why he approved the notification. Mr A has explained he thought the approval pop up related to him setting up Apple Pay recently on his own phone; and didn't think anything untoward. I've thought carefully about Monzo's response to this – they say as Mr A wasn't under pressure from a scammer he should have thought carefully about the notification and not approved it. I think Monzo are setting a high bar here – when deciding cases such as this, it's important to recognise the full circumstances of what had happened. And I don't think it's unreasonable for somebody to think a notification relating to an activity they did set up themselves a short while before needed approving. I appreciate a warning message was also displayed – but as Mr A set up Apple Pay himself beforehand, I don't find his story unrealistic. I also haven't seen anything to show that Mr A would have been aware from the notification that he was setting up his card on a second Apple Pay wallet – if this message was more prominent, I could understand Monzo's approach better. Therefore, I don't think Mr A approving a notification on his own device, which he genuinely thought was for something he had already approved on his own device, persuades me that Mr A authorised and consented to the transaction in question or the setup of Apple Pay on a secondary device unbeknown to him.

Mr A also took the actions I'd expect him to when he found out about the disputed transaction. He immediately froze his card, and contacted Monzo within minutes to dispute the transaction – this would therefore avoid any further transactions being made without Mr A's consent which again, doesn't bring me to believe that Mr A was involved in the fraud himself as it was a relatively small transaction which was carried out.

I accept this is not a clear-cut case and Monzo have rightly raised several points that could suggest Mr A authorised the transaction himself. However, having considered Mr A's version

of events, and the circumstances of this complaint alone, I'm satisfied that it's more likely than not Mr A didn't authorise the disputed transaction. And therefore, I think Monzo should reimburse Mr A for the disputed amount.

I don't consider Monzo are entitled to make any deductions to the refunds for contributory negligence. Contributory negligence carries a high bar and I haven't seen evidence to persuade me that Mr A is at fault for the circumstances of this complaint.

Putting things right

In summary, I haven't seen enough evidence to satisfy me that Mr A consented to the payment in question being made. I'm more persuaded by Mr A's version of events and therefore don't find that he should be held liable for the transaction. So, Monzo should refund the amount of £299.95 and pay interest at 8% simple interest to recognise the loss of use of the funds.

My final decision

For the reasons I've explained above, I uphold this complaint. To put things right, Monzo Bank Ltd should:

- Refund Mr A £299.95.
- Pay interest at 8% simple per year on this amount. Monzo should calculate this from the date the disputed transaction was made and up until the date they refund it to Mr A.
- HM Revenue & Customs requires Monzo Bank Ltd to withhold income tax from the above-mentioned interest. Monzo should give Mr A a certificate showing how much tax is taken off if Mr A asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 October 2022.

Hayley West
Ombudsman