

The complaint

Mr O complains that Monzo Bank Ltd ('Monzo') hasn't refunded a payment he says he didn't make or otherwise authorise.

What happened

Mr O says that on 13 and 14 March 2022 he received two calls from individuals who said they were from Monzo but he now knows were scammers. The callers discussed a recent registration for Apple Pay and a registration and subsequent order from a food delivery service – neither of which Mr O recognised. But Mr O says he saw a declined payment of around £94 on his app at the time.

Mr O was told Monzo would send him a new card and his account needed to be re-set. To re-set the account Mr O was required to move all the funds in his Monzo pots to his current account. After he'd done this, Mr O was told to delete the Monzo app. A few days later Mr O says he saw a payment to Apple for £1,450 he didn't recognise and reported the matter to Monzo. Mr O is unhappy that Monzo hasn't provided him with a refund and has referred to the difficulties the loss of these funds has caused him. He maintains he didn't approve the transaction.

Monzo say it's unable to provide Mr O with a refund because he didn't take enough steps to check who he was speaking to or what he was being asked to do.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in full together with interest. She was satisfied that Mr O didn't authorise the payment and that he wasn't alert to an obvious risk or significantly careless. The investigator concluded that Mr O thought he received a call from Monzo and unwittingly set up Apple Pay without realising it gave the fraudster access to his account before the unauthorised transaction was made.

Mr O accepted the investigator's findings and referred to further evidence that he said showed Monzo wasn't keeping his account secure. Monzo didn't agree and said:

- Mr O uses an Android device so there was no reason to set up Apple Pay. The app application was clear that Apple Pay was being set up and when Mr O approved the Apple Pay token he received a text message confirming Apple Pay was set up, giving Mr O an opportunity to recognise he was being scammed.
- There was no evidence of the fraudulent payments the scammer told Mr O about.
- Mr O reported fraud to Monzo in July 2021 and received a message which said that Monzo would never call to say his money wasn't safe or ask for his PIN.
- Overall, Mr O acted with gross negligence by failing to keep his phone and card details secure and activating an Apple Pay token over the phone to someone claiming to be from Monzo.

The complaint has been passed to me to issue 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.

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 O liable for the disputed payment if the evidence suggests that it's more likely than not that he made it or authorised it.

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 it can't hold Mr O liable and any such transaction must be regarded as unauthorised. So, whilst Monzo has provided technical evidence that shows the transaction was authenticated using Apple Pay, this doesn't mean Mr O consented to the payment.

Monzo has explained to this service that Mr O's card details must have been compromised before the scam (perhaps because of a response to a phishing email or text) took place as they were used to set up Apple Pay. There's no evidence to suggest Mr O willingly provided these details. To complete the Apple Pay set up process all Mr O was required to do was to approve the token. Monzo has provided evidence which shows that this approval happened during Mr O's first call with the scammer.

Whilst I accept Mr O approved the Apple Pay token, I'm not persuaded he did so intentionally. Mr O has explained that he saw a declined payment in his app at the time of the call when he was under the spell of a persuasive scammer and had concerns about the safety of his money. In the circumstances it's understandable that he may not have been thinking clearly and entered his PIN without appreciating that in doing so he approved the token.

Monzo has referred to the fact that Mr O received a text message to confirm that Apple Pay had been set up so should have been aware of this. But I'm mindful of the fact that Mr O was on a call to a scammer at the time this happened and so was unlikely to see a text.

On balance, whilst Mr O may have enabled the Apple Pay set-up, that doesn't mean he consented to the transaction being made via Apple Pay. This means I'm persuaded the disputed transaction wasn't authorised.

I also don't think Mr O failed with intent or that he was grossly negligent. As I've said above, I'm satisfied that Mr O didn't approve the token intentionally and so he did so without realising that the safety of his account would be compromised.

The standard for gross negligence is whether Mr O was significantly careless. So I need to consider whether Mr O acted well below the standard expected of a reasonable person or seriously disregarded an obvious risk. Given the circumstances Mr O has explained I'm not satisfied this was the case. He received a call that he believed was from his bank from a closely spoofed number and transferred funds between pots before deleting his Monzo app. In doing so, Mr O thought he was protecting his funds. And given that I'm satisfied Mr O approved the Apple Pay token inadvertently, it follows that I don't think he acted with gross negligence.

Overall, I don't think it's fair and reasonable for Monzo to hold Mr O liable for the disputed transaction and to put things right it should refund the transaction and pay interest as set out below.

My final decision

I require Monzo Bank Ltd to:

- Refund Mr O £1,450;
- Pay interest on the above amount at the rate of 8% simple per year from the date of

the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 February 2023.

Jay Hadfield
Ombudsman