

The complaint

Miss P complains that Monzo Bank Ltd did not refund a payment she says she did not authorise.

What happened

Miss P advertised her sofa for sale on a website and received interest from a potential buyer. The buyer sent Miss P a link and explained she would receive the funds to her debit card and a courier would be in touch to arrange collection.

Miss P says the link asked for her card details, which she entered. It then asked for her personal identification number (PIN) and she became suspicious. She declined to carry on with the sale and instead insisted they use PayPal. Before she could continue, a payment of £1,140.59 was taken out of her Monzo current account without her authority. Miss P raised a disputed transaction claim with Monzo for the transaction.

Monzo issued a final response letter in which it explained that payment disputes are a voluntary scheme for banks, and they aren't obliged to raise a dispute for a consumer. In this case, based on the information available to them, they had decided not to pursue a dispute.

Miss P referred her complaint to our service. She reiterated that she did not make the transaction, which appeared to have occurred in Ukraine.

Our investigator looked into the complaint and upheld it. They explained that it appeared the buyer, who I will refer to as the scammer, used the card details Miss P entered to add her card to a Google Pay wallet. They said that while Miss P has said she didn't approve the transaction, it's more likely she would have approved for her card to be added to the Google Pay wallet. But that she did so under the false impression she was approving for a payment to be sent to her for the sofa. While this may have been careless, they did not feel it amounted to the high bar of gross negligence.

Monzo did not accept the outcome of the investigator. They felt that the information provided did not support that Miss P was the victim of a scam. As Miss P had denied entering her PIN in the Monzo app to approve the Google Pay token (which would allow her card to be added to the scammers Google Pay wallet), Monzo were unwilling to consider Miss P's claim.

As an informal agreement could not be reached, the complaint has been passed to me for a final 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.

Having done so, I uphold this complaint and direct Monzo to refund Miss P the disputed transaction of £1,140.59. I'll set out my reasoning.

The first thing I've considered is whether the payment itself was authorised by Miss P. Generally, the starting point is that Monzo is able to hold Miss P liable for the disputed transaction if the evidence suggests it's more likely than not that she made or authorised it herself. This position is confirmed in the Payment Service Regulations 2017 (PSRs) and the terms and conditions of her account.

In this case, Monzo has shown that the payment was made using Miss P's genuine card details, but this isn't enough on its own to say Miss P is liable for the transaction as this does not necessarily show she made or authorised the transaction herself. The transaction was approved via a Google Pay wallet on a separate device to Miss P's phone. Miss P has confirmed that she entered her card details after she clicked a link sent by the scammer, and this would explain how they came to have her card details to add to the Google Pay wallet. I therefore think Miss P did not make or otherwise authorise the individual payment of £1,140.59 and this was instead authorised by the scammer.

Monzo has shown that in order for Miss P's card to be added to the Google Pay wallet, Miss P would have had to approve this using her Monzo app. This is the point at which there is a disagreement over what has happened. Monzo has said Miss P has denied approving a request for the card details to be added to a Google Pay wallet. But that this is the only way her card could have been added to the wallet, and as a result, they feel Miss P is purposefully lying. When we asked Miss P about this, she said she didn't recall anything like that happening, but she could not be sure.

Where there is a disagreement over what happened, I have to consider all of the evidence to determine what I think is *more likely* in the circumstances. Miss P provided screenshots of the text exchange with the scammer. I can see that the scammer said they had sent the money and Miss P had to click on the link to confirm the order and receive the money for the sale. They also said that Miss P would have to 'confirm something' and she would then be credited with the money for the sofa. Shortly after that point, Miss P became suspicious and said she would only accept PayPal to process the sale. This part of the conversation occurred between 12:09 and 12:25. And the card was set up on the e-wallet at 12:11.

Based on the evidence above, I think the more likely scenario is that Miss P entered her Monzo card details onto the fake link and then approved for the card to be added via the Monzo app on her phone, thinking that she was approving for a payment to be received into her Monzo account. The timing of the conversation and the adding of the card to the wallet supports this, as does the nature of the scam that has evolved. I appreciate Monzo has said it would have been clear Miss P was approving for a her card to be added to an e-wallet, but I have to consider that she was expecting at that moment to be receiving funds on a website she had not used before and was unfamiliar with. And she was not expecting to be scammed or for her debit card to be added to an e-wallet. So, I can understand how she could mistakenly authorise the Google Pay token.

I think it therefore follows that while Miss P's actions may have led to her debit card being added to an e-wallet on the scammer's device, she did not do so knowingly. But most importantly, following that moment, I do not think Miss P then gave her authority for her debit card to be used to make the purchase of £1,140.59. As she did not make or otherwise give her authority for the individual payment, as per the PSRs, Monzo is unable to hold her liable for it.

Monzo have said that Miss P's actions were grossly negligent when she approved the request for her card details to be added to the e-wallet. However, the relevant regulation here is section 77(4)(d) of the PSRs. This sets out that, except where a payer has acted fraudulently, they aren't liable for unauthorised transactions where the payment instrument has been used in connection with a distance contract (other than an excepted contract).

A distance contract is a transaction that is completed without the merchant or consumer being physically present. Here, the transaction was made via an e-wallet for goods in Ukraine. So I'm persuaded that Miss P's debit card was used in connection with a distance contract and I've seen nothing to suggest that it's an excepted contract.

As I've explained, section 77(4) establishes that Miss P is only liable for unauthorised transactions in connection with a distance contract where she's acted fraudulently. Based on what I've seen, there's no indication that Miss P has acted fraudulently here. I note Monzo feels she has not been truthful about what she remembers when she approved for the debit card to be added to the e-wallet via the app. But I don't think any possible misremembering about what happened when Miss P added the debit card to the e-wallet is then relevant to the following unauthorised transaction that occurred later. So, taking everything into account, I'm satisfied this was an unauthorised transaction, where Miss P's debit card was used in connection with a distance contract (that wasn't an excepted contract). And I therefore do not have to consider if she was grossly negligent in the circumstances.

Based on my findings above, I uphold this complaint and direct Monzo to refund the £1,140.59 and pay 8% simple interest from the date of the transactions to the date of settlement.

My final decision

I uphold this complaint and direct Monzo Bank Ltd to refund Miss P the £1,140.59 and pay 8% simple interest from the date of the transactions to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 16 December 2022.

Rebecca Norris
Ombudsman