

The complaint

Miss F complains that Monzo Bank Ltd (“Monzo”) won’t refund payments sent from her account which she didn’t make or otherwise authorise.

What happened

The full details of this complaint are well known to both parties, so I won’t repeat them again here. Instead, I’ll recap the key points and focus on giving my reasons for my decision.

- On 28 May 2022, Miss F received a text from an unknown number which said her Apple Pay had been suspended. It included a link to ‘update’ her details. Miss F didn’t read the text immediately.
- On 29 May 2022, more than 24 hours after it had been received, Miss F read the text. She clicked on the link and entered her card details. Later that evening, Miss F received a call from an unknown number. She disputes answering the call, but a screenshot of her phone’s call log shows the call was answered and lasted six minutes. During that time, an Apple Pay token was set up (on someone else’s device).
- In the early hours of 30 May 2022, Miss F checked her Monzo account and realised that money had been stolen from her account. Four transactions totalling £279.98 had been made using Apple Pay – two were at a car garage and two were online payments to a catalogue retailer. Miss F reported the matter to Monzo immediately. It declined to provide a refund and said she didn’t take enough steps to keep her security details safe.
- Our investigator acknowledged there were gaps in what Miss F said had happened. But they weren’t persuaded she authorised the transactions or otherwise consented to them. They explained two of the payments were in connection with a distance contract, so the provision in relation to a failure with intent or gross negligence didn’t apply. As for the other payments, the investigator didn’t find that Miss F had failed with intent or gross negligence. They recommended a full refund along with interest as well as £150 compensation for the inconvenience caused by not refunding the transactions sooner.
- Miss F accepted the investigator’s recommendations, but Monzo didn’t. The complaint was then passed to me to decide. I wrote to both parties informally and explained that I intended agreeing with the investigator’s findings, but I considered an amount of £100 to be fair compensation in the circumstances. We didn’t hear back from Miss F, and Monzo said it didn’t have anything further to add.

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 for these reasons:

- It's not in dispute that Miss F didn't authorise the payments. In line with the Payment Services Regulations 2017 (PSRs), Miss F isn't liable for payments she didn't authorise, unless she failed with intent or gross negligence to comply with the terms of the account or keep her personalised security details safe.
- Under section 77(4)(d) of the PSRs, except where they have acted fraudulently, the payer isn't liable for any losses incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract (other than an excluded distance contract, also referred to as an excepted contract). That means I don't need to consider gross negligence or intent in those situations.
- In this case, the online payments went to a catalogue retailer. They're distance contracts but wouldn't be considered as excepted contracts. As I've explained, I don't need to consider gross negligence or intent in that situation. And I note there's no persuasive evidence, nor has Monzo sought to argue, that Miss F acted fraudulently. Therefore, Monzo can't hold her liable for these transactions and it needs to put that right.
- In relation to the remaining payments which were made at a garage, Miss F could still be held liable if she failed with intent or gross negligence to keep her security details safe. It hasn't been suggested that she failed with intent, and I agree. Her actions were of someone who was following instructions to continue to be able to make payments using Apple Pay.
- I agree with the investigator that there are a few gaps in Miss F's testimony. She maintains she didn't answer the scammer's call. But the available evidence suggests otherwise. And during that time, a new Apple Pay token was approved which wouldn't have been possible without the verification code that was sent to her phone. I can't say for certain whether Miss F answered the call and shared the code. But disputes like this one are only ever decided on the balance of probabilities. In other words, what's *more likely than not* to have happened.
- Having carefully considered the submissions from both parties, and what we know about how these types of scams unfold, I think it's more likely than not that Miss F did speak to the scammer after unwittingly sharing her card details through the link in the text. And somehow, during that call she ended up sharing the verification code. Reviewing Monzo's submissions to our service, I can see it also thinks that this is what's most likely to have happened here.
- Proceeding on that basis, I'm not persuaded by Monzo's arguments for why it considers Miss F was grossly negligent by clicking the link in the text and entering her card details, and by not verifying who she was speaking to. Miss F has told us she uses Apple Pay as a payment method. So, I can see why the text message wouldn't have appeared unusual to her when she received it, and why she believed it was genuine.
- I note that Miss F had made a payment using Apple Pay after she received the text but before she'd read it, which would indicate that her Apple Pay wasn't suspended. When questioned, she told us she makes payments using both Apple Pay and her contactless card and so didn't think anything about that transaction as she couldn't remember what payment method she'd used. When faced with that situation, I think

that many people who use multiple payment methods wouldn't necessarily pause to consider how they'd made their last payment. So, under the circumstances, I don't think Miss F's decision to click on the link and provide details was *significantly careless*.

- Similarly, I don't think providing information – including a verification code – amounts to gross negligence on Miss F's part if the caller would have already been aware of the earlier 'suspension' text which she'd responded to. Our service has seen several cases involving scams of this nature. Typically, a scammer requests certain information under the guise of updating the customer's details or securing their account. We've seen many people who have complied with such requests thinking they're speaking to their genuine bank, when in actual fact they're speaking to a scammer. I don't think Miss F's actions fell so far below what a reasonable person would have done in the same circumstances such that I think they amount to a serious disregard for an obvious risk. In other words, gross negligence. This means that she isn't liable for the remaining transactions in dispute either and Monzo needs to put things right for her.
- Monzo should have refunded these payments sooner, in line with the PSRs. Because it didn't, Miss F suffered added stress and worry, including having to borrow money for her friends. Having thought carefully about the circumstances of this case, and keeping in mind the financial loss she suffered, I award £100 compensation for her distress and inconvenience.

Putting things right

To put things right, Monzo Bank Ltd needs to:

- reimburse Miss F the unauthorised transactions totalling £279.98;
- pay 8% simple interest per year for each refunded transaction, calculated from the date of transaction to the date of settlement (less any tax lawfully deductible); and
- pay Miss Y £100 compensation for her distress and inconvenience.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Monzo Bank Ltd to put things right for Miss F as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 30 March 2023.

Gagandeep Singh
Ombudsman