

The complaint

Mr S complains that Monzo Bank Ltd (“Monzo”) won’t refund transactions of £1,196 made from his account that he says he didn’t authorise.

What happened

Mr S says he received a phone call from someone on a withheld number on 30 January 2022 claiming to be from Monzo, asking if he had set up two direct debits. He says he declined to talk to the caller as he knew Monzo does not call its customers. Mr S says that between 17:55 and 18:00 he was called several times again by the caller and eventually answered, where he was then asked about Apple Pay and told that he could receive notifications for this. Mr S says he again declined and hung up the phone. After ending the call, he says he opened his Monzo app to check his account, where he discovered a notification to use Apple Pay, which he said he didn’t have set up on his device.

After restarting his phone, Mr S says he discovered that two transactions had been made from his account for £1,196 that he didn’t authorise, along with a further two attempted transactions that failed due to a lack of funds. Mr S reported the unauthorised transactions to Monzo, but it declined to refund the money as it said he hadn’t taken care of his account details.

Mr S complained that this was unfair as he says he didn’t click on any links or share any of his security credentials, but he had no explanation for how his account came to be compromised.

Our investigator didn’t uphold the complaint. As Mr S said he had not shared any of his security details, she didn’t think there was enough evidence to determine that a scam had actually taken place, as there was no plausible explanation for how his details had otherwise been compromised. So she thought they had most likely been authorised by him. Mr S disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided not to uphold it.

When considering what’s fair and reasonable, I am required to take into account relevant law and regulations; the regulator’s rules, guidance and standards, the codes of practice; and, where relevant, what I consider to have been good industry practice at the relevant time.

The disputed transactions complained about took place in January 2022, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the one made from Mr S’s account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the payment transaction in question were authorised by the customer.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it is more likely than not that Mr S authorised the transactions. In other words, I need to decide whether Mr S made the transactions himself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments.

In this instance, the disputed transactions were contactless payments facilitated by Apple Pay which had been set up on Mr S's account the day the transactions were made. However, Mr S said he did not set this up himself. But having considered the evidence, I'm satisfied the more likely explanation is that he authorised the use of Apple Pay and the subsequent transactions it was used to pay for. I'll explain why.

The testimony Mr S has provided does not correlate with the sequence of events as shown by the evidence. He said he received a phone call from a scammer pretending to be from Monzo at 5:56PM which his call log shows lasted for 51 seconds. He said they spoke to him about Apple Pay, but that he didn't receive any texts or emails about it, and that the first he saw any mention of Apple Pay was after the call when he opened his Monzo app and received a notification about Apple Pay.

However, I can see that Mr S *did* receive a text message from Monzo informing him that his card had been successfully set up for Apple Pay at 5:23PM, i.e. *before* any of the scam calls took place. Further, the first transaction made via Apple Pay was completed at 17:56 – the time Mr S says he picked up the call to the scammer – so it seems more likely than not that Apple Pay had been set up and authenticated before Mr S said he received a call about it. However, no explanation has been offered by Mr S about this discrepancy.

Mr S says he did not share any of his details or approve any Apple Pay requests. But this form of payment could have only been made if he had either set up Apple Pay himself, or shared his card details or PIN with someone else in order to facilitate it being set up on another device.

Mr S has maintained that no one else had access to his device or account details, and that he did not enter his details in response to any text messages or emails. However, there's nothing to suggest that remote access was gained of his device, and there's seemingly no other explanation as to how his details came to be compromised. The evidence provided by Monzo in the form of its mobile banking logs also does not suggest that anyone else was able to gain access to his banking app to authorise the use of Apple Pay, as it shows that all logins were made using the same fingerprint ID.

So, given Mr S didn't share his details or device with anyone else, the only plausible conclusion is that either Mr S set up Apple Pay on his account and made the transactions himself, or gave his details to somebody else, thereby giving his consent and authority for payments to be made on his behalf. I appreciate that Mr S disputes this but given no one else had access to his details or device, there is no other more plausible explanation for how

the payments could have otherwise been made.

I understand that Mr S received calls from a potential scammer pretending to be Monzo, but that does not explain how Apply pay came to be linked to his account for the payments to then be made. He has not said that he was tricked into sharing his security details for example, so it seems unlikely that anyone else could have set up this payment method in these circumstances.

As a result, there isn't enough evidence to suggest that a scam has taken place here, so I don't consider Monzo has acted unfairly by declining to refund the disputed transactions, as I consider they were more likely than not to have been authorised by Mr S. I appreciate this will likely come as a disappointment to Mr S, but I won't be asking Monzo to take any further action.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 January 2023.

Jack Ferris
Ombudsman