

## **The complaint**

Mr H has complained that Monzo Bank Limited unreasonably refused to refund him £4,477 that was taken from his bank account without his authority or permission.

## **What happened**

On 6 April 2022 Mr H said he was contacted by someone who said they were from Monzo who said she was cancelling a payment made from his account as it looked like unusual activity. She was also going to freeze his card.

She explained he would have a notification appearing on the Monzo app to accept Apple or Google Pay. That notification duly arrived and Mr H then noticed it was Apple Pay when he only had an Android phone. He said he panicked at the time and just accepted it. He was comforted by the fact he wasn't asked to download anything or open any links.

On 8 April 2022 Mr H said he received another phone call taking about something similar on another account with another bank. He asked Mr H a security question concerning his present balance in that account. And he advised Mr H to transfer money to his Monzo account as it would be more secure. Then 20 minutes later Mr H saw that a payment of £4,477 had been made from his Monzo account using Apple Pay.

It is this transaction that Mr H is complaining about.

He reported all this to Monzo who decided he had been grossly negligent with the security on his account and therefore it wouldn't be refunding this payment back to him.

It acknowledged it was an Apple Pay scam. But it felt the initial call pretending to be from Monzo was too short to create trust. It felt Mr H should have questioned why he was receiving Apple Pay when he had an android phone. The number was one digit out from Monzo's number which it felt Mr H should have noticed. It thought Mr H should have asked more questions on the second scam call concerning his other bank account with another bank. It said given the two days between both calls Mr H should have initiated some checks so as to prevent the transfer happening. He also made no attempts to confirm it was Monzo making the first call to him.

Mr H then brought his complaint to us. The investigator was of the view that although Mr H had been careless, she didn't think this amounted to the high bar that is gross negligence and therefore she felt Monzo should refund the payment of £4,477 plus interest.

As Monzo didn't agree, Mr H's complaint has been passed to me to decide.

## **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'm upholding this complaint. I'll now explain why.

It's accepted that Mr H didn't authorise this payment himself – so the starting position under the Payment Services Regulations (PSRs) is that he shouldn't be held liable for it. However, section 77 of these regulations allows Monzo to hold Mr H liable if they can demonstrate he failed to keep his personalised security credential safe, either with intent or gross negligence.

What constitutes gross negligence isn't specifically defined in the regulations. However, as Monzo is aware this service considers it to be a lack of care that goes significantly beyond what we would expect from a reasonable person. So, the test is what would be a reasonable consumer have done in the same or similar circumstances.

The Financial Conduct Authority also agrees that the interpretation of gross negligence is significantly higher than the common law definition of negligence in liability cases too. Case law has said the conduct must be undertaken with actual (I would say demonstrable) appreciation of the risk involved, or a serious (I would say almost wilful here too) disregard or indifference to an obvious risk. The word 'obvious' being very important.

And it is for the business as in Monzo here, to prove Mr H acted with gross negligence, it's not for Mr H to prove he didn't. So, the burden of proving Mr H was grossly negligent lies with Monzo.

I don't think Monzo has discharged this burden of proof sufficiently. It was clear in both calls Mr H thought he was speaking first to Monzo and secondly to the other bank.

The length of the call isn't the only thing which can create sufficient trust in my view as what they say and ask you to do not to do is also designed to create trust too. These fraudsters are skilful and well-practised. Mr H felt he had some understanding of how fraudsters might work and it's clear from his testimony that he was relieved he wasn't been asked to download anything or open any links. That gave him some comfort just as it was probably designed to do by the fraudsters.

I think nothing at all turns on the fact the phone number used was one digit out from Monzo's phone number. I have no expectation that any consumer knows their bank's phone number that well.

Mr H said the fraudster told him either Apple Pay or Google Pay would be set up. Apple Pay was set up which Mr H accepted despite the fact he had an Android phone. Mr H said he panicked and accepted it. Given he's just been told something was amiss in a payment and the person he was talking to was seeking to safeguard his account, he was supposed to be worried, so panicking isn't unreasonable reaction. I would call that level of behaviour from Mr H possibly careless but not grossly negligent. I don't consider there is any or any sufficient evidence to show me that Mr H at this stage had appreciated the risk that he was being scammed as in his view that should include being asked to download something or open links. And I don't consider there was a serious or gross indifference on Mr H's part to this being a risk.

And for me all this shows most likely that adequate trust had been achieved between the fraudster and Mr H.

I also agree with the investigator's view that since this is a IT tech issue, many consumers may not have a clear understanding of such issues since they all change so rapidly and keeping right up to date is difficult so may tend to believe the 'tech expert' namely the

fraudster pretending to be Monzo as happened here. Most likely had Google Pay been set up the fraud would have happened in any event.

Therefore, on balance given the evidence available to me, I don't consider Monzo has proved Mr H was grossly negligent here. He was naïve and clearly thought he had a better understanding of what fraudsters use to scam consumers such as him, but I'm not of the view this amounts to gross negligence. So, the disputed transactions should now be refunded to Mr H with interest.

### **My final decision**

So, for these reasons, it's my final decision that I'm upholding this complaint.

I now require Monzo Bank Ltd to do the following:

- Refund Mr H the sum of £4,477 to his account.
- Add interest of 8% simple per year from the date the payment went out of his account to the date it refunds it. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr H for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 June 2023.

Rona Doyle  
**Ombudsman**