

The complaint

Miss O is unhappy Monzo Bank Ltd won't refund a payment she didn't make.

What happened

Miss O was contacted by someone who pretended to be from someone she banks with. They convinced her to move her money into her Monzo account to keep it safe. That day, a payment was made using Apple Pay for £680.

Miss O raised this with Monzo who declined to refund her. It said she didn't do enough to keep her details safe. Unhappy, Miss O brought her complaint to our service to investigate.

During our investigation, it came to light there had been another call between Miss O and someone pretending to be from Monzo a few days before the payment. This coincided with when Apple Pay was set up on the fraudster's device, which was later used to make the disputed payment.

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've reached the same outcome as our investigator for these reasons:

- In line with the Payment Services Regulations 2017 (PSRs), Miss O isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe.
- I've firstly considered whether Miss O authorised the payment. The PSRs explain a payment is to be regarded as authorised if she consented to it – and that consent must have been given in the form, and in accordance with the procedure, agreed between Monzo and Miss O.
- Monzo submit that Miss O must have approved the request to set up Apple Pay – and when she did this, she consented to any payment from the fraudster's device. But looking at the relevant terms and conditions, they suggest Miss O consents to making a card payment in person (which I understand this was) by tapping her device. I'm not persuaded she did this – she provided evidence to show she was in a different location. It follows that I'm not persuaded Miss O consented to this payment in accordance with the agreed form or procedure, meaning it's unauthorised.
- As well as suggesting Miss O authorised this payment, Monzo has submitted she failed with gross negligence to comply with the terms of the account and to keep her personalised security details safe. Having considered the circumstances carefully, I don't think Monzo have shown that's the case. I'll explain why.
- Miss O remembered she was called by someone who said they from Monzo – this

was before the disputed payment and around the time Apple Pay was set up. Monzo has questioned why this conversation only came to light when our service became involved. I've noted its investigation focused on what happened during the later call with the fraudster posing as another bank. And given Miss O believed this call was genuine, I can see why it didn't come up sooner. I don't believe it'd be fair to hold this against her.

- Given the time that's passed, Miss O's recollection of the call isn't detailed. It seems she was led to believe there was fraud on her account – and she recalled being asked to do something in the app, although she couldn't remember a conversation about Apple Pay.
- From our experience of dealing with scams like this, it's common the fraudster has their victim's card details already. So the purpose of the call is to convince them to approve Apple Pay through the Monzo app. We've seen several ways they'll trick someone into doing this. For example, by saying a fraudster used their card to set up Apple Pay and they need to add it to their own device to stop it; or that they'll need to add Apple Pay to their device while they send out a new card given the fraud.
- Taking this all into account, I think it's likely the caller would've used personal information about Miss O – like knowledge of who she banked with and her card details – to convince her they were genuinely from Monzo. And I'm persuaded they'd have used a similar reason to what I've described above to convince Miss O to approve Apple Pay.
- And given the steps to approve Apple Pay in Monzo's app, I'm satisfied Miss O wouldn't have recognised she was in fact setting up Apple Pay on someone else's device. There's nothing to clearly warn her and the steps are very quick to go through – she only needed to click 'Add Card' followed by her biometrics on a separate screen.
- Taking this all into account, I'm not persuaded Miss O acted with *very significant* carelessness – in order for me to conclude that she failed with gross negligence. Instead, I think this was a sophisticated scam that lots of people would, and indeed have, fallen victim too.
- Monzo also highlights that Miss O was grossly negligent during a later call with the fraudster posing as another bank – for believing she'd need to transfer money to her Monzo account to keep it safe. I don't think she seriously disregarded an obvious risk by moving money between her own accounts. But either way, the test I'm considering is whether Miss O failed with gross negligence *to keep her personalised security details safe or comply with the terms of the account*. And I've not been persuaded that transferring money between her own accounts meant she didn't keep her personalised security details safe or was in breach of Monzo's terms. Instead, it seems this was merely a ruse so she'd funds available.
- It follows that I don't think Monzo has shown that Miss O failed with gross negligence. So I conclude she isn't liable for the transaction and Monzo needs to put things right – by refunding her losses from this unauthorised transaction alongside interest to compensate her for the time she's been out of pocket.
- Monzo should've have refunded this much sooner. Because they didn't, Miss O struggled to meet her and children's needs. So I agree with our investigator's award of £100 to reflect her distress and inconvenience. This is in addition to the £30

Monzo paid for its unclear communication.

My final decision

For the reasons I've explained, I uphold Miss O's complaint. Monzo Bank Ltd must:

- Pay Miss O the total of the unauthorised transaction, less any amount recovered or already refunded – I understand this to be £680.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transactions to the date of settlement (less any tax lawfully deductible).
- Pay a further £100 for Miss O's distress and inconvenience, in addition to the £30 that I understand has already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 14 March 2023.

Emma Szkolar
Ombudsman