

The complaint

Mrs S is unhappy Monzo Bank Ltd won't refund a transaction she didn't make.

What happened

- Mrs S explained she received calls from people pretending to be from Monzo, her other bank as well as Amazon. Ultimately, it seems she was told that someone had hacked her accounts and was using her card details – she was also told she needed to move money to her Monzo account.
- As a result of these calls, she noticed her card had been used to make a £450 payment using Apple Pay in a shop in London.
- She raised this with Monzo, who declined to refund the transaction. It said she authorised the payment when she went through the steps on her app to set up Apple Pay and that, in any event, she failed with gross negligence to keep her details safe.
- On 29 March 2023, I issued my provisional findings explaining why I intended to uphold Mrs S's complaint. Monzo accepted my findings and Mrs S didn't reply by the deadline given.

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.

Given that Mrs S hasn't added anything further and Monzo accepted what I said, I see no reason to depart from my provisional decision. For completeness, I've explained my reasons again below:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that Mrs S is liable for authorised payments and Monzo is liable for unauthorised payments.
- To consider this payment authorised, the PSRs explain that Mrs S must have given her consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between her and Monzo.
- Monzo has referenced its terms and conditions that explain how she consents to making a payment: *"Either your PIN, or A security code, or Proving it's you with fingerprint or facial recognition."* It says Mrs S entered her PIN to consent to Apple Pay being set up on someone else's device and, therefore, to the payments being made from it.
- Firstly, I acknowledge Mrs S has denied she did this. When things aren't clear, I must decide what happened based on the balance of probabilities – in other words, what's more likely than not to have happened. Here, there's no other plausible or persuasive explanation for how someone could've finished setting up Apple Pay without Mrs S's

involvement in her app. That's not to say that she understood what her actions meant. Given our experience with dealing with similar scams, I find it more likely that she was tricked into taking these final steps.

- Even with this conclusion that Mrs S must have been involved, I'm not persuaded the disputed transaction was authorised. That's because I'm not convinced the steps to set up Apple Pay are the same as the steps to consent to the execution of a payment, which is what the PSRs require. After all, it's not possible to make a payment like this simply by having Apple Pay – the PIN or biometrics must have been used again on the device to approve the payment with the merchant.
- Monzo has accepted this wasn't Mrs S – the payment data shows it happened on a different device in a different location. So it follows I don't consider she went through the form or the procedure to consent to this payment. It is, therefore, unauthorised.
- Monzo submit it's still not liable for an unauthorised transaction under the PSRs because it thinks Mrs S failed with gross negligence to comply with the terms of the account and keep her personalised security details safe.
- It's not clear how fraudsters got Mrs S's card details, but there's nothing to suggest she shared them during one of these calls. So I think it's more likely they were compromised beforehand – for example, through a data leak, phishing link or malware.
- That means the key issue here is Mrs S's actions in using her app to finish setting up Apple Pay. This would've involved her pressing *'Add card'* on a screen which said *'Finish adding your card to Apple Pay'*, followed by her PIN on a separate screen.
- Having considered this carefully, I don't think Monzo has shown her actions meant she failed with gross negligence. I've considered:
 - It seems Mrs S received several calls from people posing as various trusted organisations, including Monzo. I don't think Monzo's investigation got to the bottom of what happened during these calls – and given the time that's passed, I think it'll be difficult for her to remember the details now. But ultimately, it seems she was led to believe that her details had been compromised and her accounts hacked.
 - And having looked at Mrs S's payment records, it seems like someone had attempted to use Mrs S's card shortly before Apple Pay was set up. So I can see how she would've come to trust the caller that something was wrong.
 - I accept Mrs S could've done more to check this genuine. But the test I'm considering isn't whether she did everything possible to verify the caller. Rather, it's whether her actions in the circumstances meant she acted with very significant carelessness compared to a reasonable person.
 - Overall, I don't consider that most people go to lengths to verify incoming calls. Nor do they routinely receive calls of this nature to understand how to effectively challenge them. I can, therefore, understand how Mrs S trusted the caller, particularly when she was convinced something was wrong.
 - It's not clear exactly how they convinced Mrs S to go through the steps. But, given our experience of scams like this, and that we know the context of the

calls was that her accounts had been hacked, I think it's likely she thought she was protecting her money.

- I've reflected on how quickly it would've been possible to go through these steps, particularly if you'd been primed by the caller to expect to use your app. And how there's nothing to clearly warn Mrs S that she was in fact setting up Apple Pay on someone else's device, who could use it make payments. So I can see how Mrs S might not have appreciated what she was doing and how she instead thought she was keeping her money safe.
- So, in the context of a call where she was worried about her money and trusted the caller, I don't think Monzo has shown that her actions meant she seriously disregarded an obvious risk, or fell so far below what a reasonable person would've done, to say that she failed with gross negligence. I think lots of people would've acted as Mrs S did – indeed, this is a relatively common scam which people have fallen victim to.
- In saying this, I've noted Monzo's point that she also moved money from another account to this Monzo account. But I don't think this affects my consideration of whether she failed with gross negligence to keep her personalised security details safe or comply with the terms and conditions of his account. That's because it happened after Apple Pay was set up – and it's not clear how this transfer meant she compromised her personalised security details nor has Monzo explained how this breached its terms and conditions.
- Taking this all into account, I don't think Monzo has shown Mrs S 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 ought to have refunded this much sooner. Its failure to do so led Mrs S to experience significant distress about how she would make ends meet for her and her young family. So in the circumstances, and bearing in mind the amount in dispute, I also award £150 to reflect her non-financial losses.

My final decision

For the reasons I've explained, I uphold Mrs S's complaint and order Monzo Bank Ltd to:

- Pay Mrs S the total of the unauthorised transactions, less any amount recovered or refunded – I understand this to be £450.
- 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 £150 for Mrs S's distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 May 2023.

Emma Szkolar
Ombudsman