

The complaint

Mr B is unhappy that Monzo Bank Ltd won't refund him for transactions which he says he didn't make or authorise.

What happened

On 22 September 2021, two transactions of £2,965 and £499 were debited from Mr B's current account. Mr B contacted Monzo straightaway to report the transactions as unrecognised. These transactions were contactless payments made via Apple Pay using a secondary device to that of Mr B's trusted device.

Mr B told Monzo that he didn't receive any phone calls, text messages or emails from anyone pretending to be a reputable organisation. He confirmed that no one else had access to his mobile phone, debit card or Personal Identification Number (PIN). He hadn't written his PIN anywhere and that he hadn't given any information about his account to anyone.

He explained that he received a mobile phone notification on 21 September 2021 asking approval for a transaction which he didn't recognise. He confirmed he declined this transaction, and the two disputed transactions the following day were carried out without approval or confirmation from him.

A few hours after the disputed transactions, Mr B contacted Monzo again to let them know he'd just received two calls from 0800 numbers pretending to be from them. He sent Monzo a screenshot of his call history. Monzo explained that the calls appeared legitimate and were from a different bank. They asked Mr B to confirm if he received any calls from anyone pretending to be Monzo or another bank on the morning of 22 September 2021 – Mr B confirmed he didn't.

Monzo declined Mr B's claim and explained they were unable to treat the transactions as fraudulent, so they wouldn't be reimbursing him. They said that based on the information they had available, and the timeline of transactions, it suggested it wasn't possible for these transactions to have been authorised by anyone else. Unhappy with this, Mr B referred his complaint to our service.

Our investigator said that Mr B most likely authorised the disputed transactions as he was the only person in the position to use his mobile phone and his bank card was in his possession. Mr B disagreed and asked for an ombudsman to review his complaint.

My provisional decision

I issued a provisional decision on 2 May 2023, and I made the following findings:

"Under the relevant regulations, Monzo can hold Mr B liable for the disputed transactions if the evidence suggests it's more likely than not that he made or authorised them himself.

The disputed transactions of £2,965 and £499 were authenticated using Apple Pay. Monzo have provided technical evidence which shows that only the payment tools issued to Mr B could've approved the Apple Pay token to be added to the secondary device – which was then used to make the disputed transactions shortly after.

But this alone isn't enough for Monzo to hold Mr B liable for the disputed transactions. I also need to be satisfied that based on the evidence, it's likely that Mr B himself made, or otherwise authorised the transactions.

In order for Mr B to have consented to the disputed transaction, I need to be satisfied that he disclosed his long card number, expiry date and three-digit security code to a scammer or unauthorised third party and approved the Apple Pay token to be added using his banking app.

I've not seen any evidence to suggest that Mr B willingly disclosed all the card details required for a scammer or unauthorised third party to add the Apple Pay token to their device. I don't think it's improbable and nor can I rule out the possibility that Mr B's card details may have been compromised somehow without his involvement. For example, through data linked to transactions he authorised leading up to the disputed transactions.

I'm persuaded that this was most likely the case, given that there was an attempted transaction for £4,748 on 21 September 2021 at around 7.30pm which Mr B declined as he didn't make or recognise it.

Although Mr B doesn't admit to approving the Apple Pay token, I think the evidence points to him doing so. I say this because, he's confirmed he was in possession of his mobile phone, and he has accepted he was using his banking app at the time the Apple Pay token was set up. He was also the only person that had access to his card details and PIN which would've also been required to approve the Apple Pay token.

But that doesn't mean Mr B consented to the disputed transactions. I've looked at the screenshots Monzo have provided which shows the process Mr B would've followed to approve the Apple Pay token. I don't think it would've been clear to Mr B that he was approving his card details to be set up on a secondary device. And I think it's plausible that Mr B completed this process unknowingly and without the understanding that he was granting someone else access to make transactions using his card.

Based on what I've seen, I don't think there's enough evidence to show that Mr B, or someone with his permission, completed both the steps required to have consented to the Apple Pay token being added to a secondary device – meaning the disputed transactions weren't authorised.

I also don't think Mr B failed with intent or that he was grossly negligent. As explained, I don't think Mr B intentionally approved the Apple Pay token to be added to the secondary device. And I think he likely did so without realising that the safety of his account would be compromised. So, I'm satisfied Mr B didn't fail with intent.

The standard for gross negligence is whether Mr B was significantly careless – did he act so far below what a reasonable person would've done or seriously disregarded an obvious risk. I appreciate Monzo believe that Mr B isn't giving them the full story, but this isn't a clear-cut case. And I don't believe Mr B is deliberately holding back information. Scams are becoming increasingly more sophisticated and it's not unusual for victims to be unaware when they have been tricked.

Mr B has maintained that he didn't receive any scam calls at or around the time the Apple Pay token was approved. But, he has told us about some calls he had with another bank on and around the date of the disputed transactions. He can't recall the dates or details of those calls, but he believes these calls were legitimate as they were in relation to a business account.

I think it's possible one of these calls was from a scammer and the unrecognised attempted transaction of £4,748 on 21 September may have been the start of the scam. This is also supported by Monzo acknowledging in their investigation notes they'd seen similar high value transactions attempted in these types of scams.

On balance, and taking into account the circumstances of this complaint, I don't think Mr B approving the Apple Pay token amounts to gross negligence when the notification on the banking app wasn't clear that he was agreeing to add his card details to someone else's device and putting his account at risk.

In any event, I don't think Monzo have adequately met their responsibility to protect customers from financial harm. I say this because I think Monzo should've made more enquires when Mr B declined the transaction of £4,748 on 21 September 2021. I've looked at Mr B's bank statements which shows this transaction was out of the ordinary for his spending activity. It would've also drained all the funds in his account and placed him into an overdraft.

I appreciate Monzo feel that the customer declining a payment during the authorisation stage isn't indicative of fraud or the payment being unrecognised. And they wouldn't proactively block the customer's card as a result of them declining a payment.

I don't think it's usual for a customer to decline a transaction if they'd attempted to make a purchase – and in this case in particular, as explained, the transaction should've raised Monzo's suspicions given that Mr B declined it along with the other factors such as it being a significant large amount, it wasn't usual activity for Mr B's account and would've cleared his balance.

And given that this activity was followed by an Apple Pay token being added to a secondary device, and another out of character large transaction being made within half hour of the Apple Pay token being created, should've alerted Monzo to take steps to minimise financial harm.

The onus is on Monzo to identify and detect suspicious transactions. I understand they're aware of similar patterns as seen in Mr B's complaint of reported 3DS scams from other customers. Alongside this, I think there were enough red flags which should've triggered Monzo to take action, such as placing a block on Mr B's card until they'd had an opportunity to make contact with him to verify the activity on the account.

If Monzo had done so following the transaction on 21 September 2021, I think it's likely that the compromise of Mr B's card details would've come to light before the disputed transactions took place the following day. Monzo could've taken action such as cancelling the compromised card details to prevent any further fraudulent transactions.

Alternatively, if Monzo had identified the suspicious activity on Mr B's account on 22 September 2021 (after the Apple Pay token was approved and the first disputed

transaction was attempted shortly after) and taken action, such as block or decline the transaction, then I think Mr B's funds could've been protected. I'm persuaded Mr B would've confirmed to Monzo that he didn't authorise the transaction. This is supported by the fact that Mr B contacted Monzo immediately after the transactions were carried out to report that he didn't recognise or authorise them.

All things considered, I don't think it's fair and reasonable for Monzo to hold Mr B liable for the disputed transactions and to put things right, they should:

- Refund Mr B £3,464;
- Add 8% simple interest* per annum from the date of the payment (22 September 2021) to the date of settlement.

*HM Revenue & Customs requires Monzo to deduct tax from this interest. Monzo must give Mr B a certificate showing how much tax they've taken off, if he asks for one."

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.

I invited both parties to respond to my provisional decision with any further submissions.

Mr B confirmed he didn't have anything else to add. Monzo didn't respond to us within the deadline given.

Since there isn't any further information or evidence for me to consider, I'm satisfied with the findings I reached, and I see no reason to deviate from the outcome I explained in my provisional decision.

As a reminder, to put things right, Monzo should:

- Refund Mr B £3,464;
- Add 8% simple interest* per annum from the date of the payment (22 September 2021) to the date of settlement.

*HM Revenue & Customs requires Monzo to deduct tax from this interest. Monzo must give Mr B a certificate showing how much tax they've taken off, if he asks for one.

My final decision

For the reasons explained, Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 June 2023.

Ash Weedon
Ombudsman