

The complaint

Mr M complained because Monzo Bank Limited refused to refund him for payments from his account, which he said he hadn't authorised.

What happened

On 1 June 2022, a payment of £1.04 debited Mr M's Monzo account, followed immediately by another for £24.26. There were further payments in June and July, all to the same recipient organisation. The total came to £165.65.

On 1 August, Mr M completed a Monzo online dispute form to report that he hadn't made the transactions. Monzo investigated. The payments had been made using a mobile payment service, using ecommerce online. Monzo replaced Mr M's card, after which there were no more disputed payments. But Monzo didn't uphold Mr M's complaint that the payments had been fraudulent, and it refused to refund him. In its final response letter, Monzo said that the decision was based on the data it had available, and the timeline of events. These suggested it wasn't possible for the transactions to have been authorised by anyone else.

Mr M didn't agree. He said he'd been out cycling at the time of some of the transactions, which he said he could prove by an app. He also said he'd asked several times to speak to Monzo, rather than use email. Monzo reopened the complaint, but still didn't uphold it. It told Mr M that a phone call would serve no purpose as he'd been through Monzo's complaint process. It gave him referral rights to this service.

Mr M wasn't satisfied and contacted this service. He set out what had happened, and said he'd lost £165.65 as a result of the fraudulent claims. He also asked for a formal apology from Monzo and acceptance it had handled his case badly.

Our investigator upheld Mr M's complaint. He said that it was likely that Mr M had been scammed into signing up to a Continuous Payment Authority, but there was no evidence that Mr M had authorised this. So he said Monzo should refund Mr M with the £165.65, plus interest at 8% simple from 1 June 2022 to the date of payment.

Monzo didn't agree. It said that the payments had been made using a mobile payment service token, which Mr M had approved from his device. And this was the only device on the account at the time, and Mr M had confirmed no-one else had access to this. The same mobile payment service token had been used for genuine transactions, so Monzo believed that Mr M had authorised the first transaction himself. The subsequent payments had been authenticated using the credentials already on file which Mr M had authorised with the first transaction.

Monzo said there was no evidence of a scam having taken place as the investigator had said. It explained that the recipient was a billing processor used for discretion by merchants providing adult services or content. If Mr M had said he'd made the first payment but didn't believe he should be charged further, Monzo would have raised a chargeback with the merchant for the later payments. But instead, Mr M had denied making any of the payments. As no-one else could have authorised the payments, Monzo said it was right to refuse to

refund Mr M. And even if it had been a Continuous Payment Authority, there was no evidence that the merchant hadn't been clear about the payment terms, nor that Mr M hadn't fully understood and consented. Monzo asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint, because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations and who authorised the payments

In my provisional decision, I explained that in these circumstances there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

Monzo provided evidence which showed that the payments were made using a mobile payment service. This uses a type of virtual card that can be used either in store or online. The technical evidence here shows that the payments from Mr M's account were made online. The payments were then approved using the device PIN or biometric security such as touch or face ID, according to what had been set up on the user's device. Monzo provided technical evidence to show that the device used for the payments was the only device which was active on Mr M's account at the time, and Mr M had confirmed that no-one else had access. The first payment was authorised in this way, and subsequent ones on the basis that the credentials were already on file. So it was hard to see how anyone other than Mr M could have authorised the transactions.

Mr M sent us app evidence to suggest he was on a bike ride at the time of one of the transactions. But there was still some doubt about whether this demonstrated that he was cycling at the time of the disputed transaction, so I wasn't persuaded by this.

So I thought it was more likely than not that Mr M authorised the transactions himself.

Continuous Payment Authority (CPA)

I went on to consider whether or not it was most likely that the subsequent payments were part of a subscription which Mr M had signed up for, ie a Continuous Payment Authority (CPA). A CPA is an agreement for a business to take regular payments from a bank account, usually for a service such as a membership, ongoing service, subscription etc. In 2012, the Office of Fair Trading (OFT) issued principles for using CPAs. The OFT doesn't exist anymore, but the Financial Conduct Authority (FCA) has said that these principles still apply.

The principles are designed to make sure customers are aware of the financial commitment, and they include requirements that when a business is setting up a CPA, it should:

- be transparent about the terms before the customer agrees;
- ensure a customer has given informed consent to the use of a CPA. This includes giving positive agreement to the amounts and frequency of the payments. Putting these in the terms and conditions, or "Opt-out" clauses, don't meet this requirement;
- give adequate notice of any changes to the amount or timing of payments;

- provide clear information about how to cancel a CPA.

If these requirements aren't met, the contract is unenforceable and the customer is entitled to a refund.

I considered these principles in relation to the circumstances of Mr M's complaint. But here, I saw no persuasive evidence that there was a CPA at all. The payments were irregular, in both amount and date. So it didn't look like, for example, a "free trial" where regular monthly payments are charged in line with terms and conditions. It looked far more like a site which the customer uses regularly, not a subscription. And Mr M himself didn't say, for example, that he'd made one payment but hadn't been properly informed about the ongoing nature of the payments. Instead he said he hadn't authorised any of the payments. I've dealt with that above, and have found that the technical evidence indicates it's likely that he did authorise them. But when Mr M denied making any of the payments, and they don't look like a CPA anyway, I could see no reason why Monzo should have considered that the payments were a CPA. So Monzo had no reason to take action appropriate for a CPA, such as raising a chargeback to find out whether what the merchant had provided to Mr M met the CPA principles or not.

So I found that nothing in the evidence indicated there was a CPA here. It followed that Monzo acted fairly in not treating the payments as such.

Monzo pointed out that the merchant name on the debit was a billing processor name, used for discretion on adult-content websites. It was possible that Mr M didn't recognise genuine transactions because he was expecting the adult-content website name, not the billing processor. But if so, I'd have expected him to have realised this when Monzo explained.

Finally, when Monzo sent its submissions to this service, it said that it noted that Mr M had requested a call back on multiple occasions, but hadn't had one. It said that it couldn't have discussed details about the rejection of his claim, but should still have followed up his request. So Monzo offered Mr M £25 as a gesture of goodwill for its failure to call him back. I found this was fair and reasonable.

Responses to my provisional decision

Monzo accepted the provisional decision.

Mr M didn't reply by the date set for responses.

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 reconsidered all the available evidence and arguments, I consider my original decision was fair and reasonable in all the circumstances of this complaint

My final decision

My final decision is that:

- I do not uphold Mr M's claim for a refund for the disputed transactions;
- Monzo offered Mr M £25 for not having phoned him back. I find this was fair and reasonable and I order Monzo Bank Limited to pay Mr M this sum.

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

Belinda Knight
Ombudsman