

The complaint

Ms W complains that Monzo Bank Plc has declined to refund a payment that was made as part of a scam.

What happened

Ms W says that on 18 February 2023 she fell victim to a scam. She's explained she was in Hong Kong with a friend who was helping her sell an item through a re-sale app. A potential buyer messaged her directly and her friend shared Ms W's card details thinking this was how Ms W would be paid. Ms W thought her friend was corresponding in Cantonese so didn't look at the screen but was aware of what her friend was doing and why.

Ms W opened her mobile banking app thinking this was to approve the receipt of the payment and gave it to her friend. Her friend confirmed the payment which she later realised was a payment *from* the account for £419.69. Ms W says they'd assumed they were selling the running vest for 500 Hong Kong dollars, but the payment was in US dollars.

Monzo declined to provide a refund on the basis that the payment was authorised. It said the payment was approved using Ms W's mobile banking app on her genuine device. It then said she had been negligent in allowing her friend to use her mobile banking app in breach of the account terms and conditions.

When Ms W complained to our service, the investigator upheld the complaint. They said they thought the payment was unauthorised as Ms W hadn't made the payment and when it was approved in the app she (and her friend) had thought this was to receive a payment. The investigator said that as this was an online card payment to a company it appeared to be "distance contract" – this meant that under the relevant regulations Monzo couldn't hold Ms W liable on the basis that it thought she had been grossly negligent. They recommended Monzo provide a refund of the disputed payment and pay 8% simple interest to Ms W.

Ms W accepted the investigators outcome, but Monzo didn't agree. It said that the payments approval page would have looked the same as when Ms W had made payments in the past. It reiterated that the payment was authorised in Ms W's banking app and that she had breached her account terms by allowing her friend access.

The matter was passed to me for a decision by an ombudsman. I asked Monzo to provide evidence of what it would have looked like on Ms W's app, including whether there was a warning or anything to make it clear that the payment being approved was outgoing rather than incoming, but it hasn't responded by the deadline provided.

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 the complaint for much the same reasons as the investigator.

I don't think it was fair for Monzo to treat the payment as authorised in the circumstances for the following reasons:

- It isn't in dispute that Ms W has been the victim of a scam.
- Ms W was with her friend the entire time and aware of her actions, so I'm persuaded that it's more likely than not Ms W would have taken the same steps herself had her friend passed over the matter to her once the buyer (scammer) was in contact.
- Under the relevant Payment Services Regulations (2017), to authorise a payment consent must be given in the form and procedure agreed between the payment service provider and payment service user. Here that's set out in the terms and conditions applicable to Ms W's account.
- The disputed payment appears to be an online card payment to a third-party merchant. The relevant account terms explain what information a merchant may need in order to take such a payment.
- Neither Ms W nor her friend shared Ms W's card information / address with the scammer for the purpose of making a payment. Based on the information available, it doesn't appear they gave this information to the merchant directly either.
- The terms and conditions also list how a customer can give consent which includes confirming it in the Monzo banking app.
- Ms W says neither she or her friend could differentiate in the app whether she was being asked to approve a debit or a credit payment. Both Ms W and her friend thought the payment was crediting her account.
- Monzo hasn't provided any evidence of what Ms W or her friend would have seen at the time in order for me to consider how clear this would have been.
- So, given Ms W (and her friend) didn't take the steps with the merchant to make a payment or know they were approving an outgoing payment in Ms W's app, I don't think it would be fair to conclude that the payment was authorised in the circumstances.

Having concluded the payment was unauthorised, the starting point under the relevant regulations is that Ms W is entitled to a full refund.

The payment was made to an online merchant and so it's likely (on the evidence available) that it was used to purchase something. Without information or evidence to the contrary, I think it's more likely than not that this was a "distance contract". As such, under the relevant regulations, there are no further "tests" to apply to determine whether Ms W is entitled to a refund.

Monzo has said it thinks Ms W has acted negligently, but this is not something the relevant regulations include as a reason not to provide Ms W with a refund in the circumstances.

I appreciate Ms W likely breached her account terms and conditions by giving her phone to her friend with her Monzo banking app open. But I've explained above why I don't think that has affected how the events unfolded. So, I don't think it would be fair in the circumstances to depart from the relevant regulations and override Monzo's obligation to provide a refund.

So, I think Monzo should provide Ms W with a refund and pay her interest at 8% simple to

recognise the time she's been without these funds.

My final decision

My final decision is that I uphold this complaint and that Monzo Bank Ltd should do the following:

1. Refund the disputed payment to Ms W.
2. Apply W 8% simple interest on this amount (in point 1) from the date the payment was made to the date of settlement and pay this to Ms W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 6 November 2023.

Stephanie Mitchell
Ombudsman