

The complaint

Ms C complains that Monzo Bank Ltd (Monzo) is holding her liable for payments which she didn't authorise.

What happened

In April 2023, Ms C was selling an item via an online marketplace (D). She received an email, seemingly from D, notifying her they had found a buyer. It contained a link which appeared to take Ms C to D's platform. She was told D needed to verify her banking information, in order for her to receive payment from the buyer. D said she would receive a push notification from her bank to do this.

Ms C completed the notifications as directed, thinking she would receive a credit. Instead, two payments of £601 followed by one payment of £156 were taken.

When Ms C raised the matter with Monzo, it paid her £100 compensation for the time it took to respond to her fraud claim. But it wouldn't refund her. It said she hadn't taken enough steps to check who she was paying and what for.

Unhappy with Monzo's response, Ms C referred the matter to our service. Our investigator ultimately recommended Monzo should refund the first and second payments – but not the third. They thought the payments should be treated as unauthorised – but that, by the third payment, Ms C ought to have foreseen the risk that the payment would be taken.

Monzo has appealed the investigator's outcome so the case has been passed to me. In summary, it says the payments are considered authorised under the account terms as Ms C entered her PIN. They also say she was grossly negligent in entering the PIN for the second payment, as at point she should have realised the steps she was taking, allegedly to receive a refund, had previously caused money to be *taken*.

I note Monzo recently asked for further commentary from us, in order to review things again *before* deciding whether it requires a decision. But that's not how our process works. Monzo previously asked for a decision. And it is well past the deadline we gave it to submit any final comments or evidence. Under our powers, as it hasn't accepted the investigator's view, I'm now proceeding to issue my final decision.

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 agree with the conclusions reached by the investigator. I've decided Monzo should refund the first two payments (with interest). But I don't think it needs to refund the third payment. I'll explain how I've come to this conclusion.

The starting position under the Payment Services Regulations 2017 (PSRs) is that Ms C is liable for payments she authorises but Monzo is liable for unauthorised payments taken from her account.

To consider these payments authorised, the PSRs explain that Ms C must have given her consent to the execution of the payment transactions – and that consent must have been in the form, and in accordance with the procedure, agreed between her and Monzo.

My understanding is that, in order to make these payments, the following steps were completed: Ms C's card details were entered into the merchant's website; and then her PIN was entered in Monzo's app.

Monzo has suggested that Ms C authorised these payments as she entered her PIN in the app. I disagree. I'm not persuaded this step alone is the same as completing the full form and procedure to consent to the execution of a payment. Ms C didn't enter her card details to request a payment; this was done by the scammer, having obtained Ms C's card details under false pretences.

In the circumstances, I'm satisfied these payments were unauthorised. Ms C didn't complete all the payment steps herself, nor did she give someone else permission to complete those steps on her behalf to take payments. The step she did undertake – entering the PIN – was done on the understanding it was necessary to verify her account with D in order to *receive* payments.

Monzo argues that it's still not liable for the second and third payments under the PSRs because it thinks Ms C failed with gross negligence to comply with the terms of the account and keep her personalised security details safe.

While I agree that Ms C did, in effect, fail to keep her personalised security details safe, I'm not persuaded she did so due to a failure of gross negligence. Initially, I can see why she didn't foresee the risk. In the context of having an item for sale, it didn't seem unexpected for her to receive an email from D about an interested seller. She has shown us someone had already messaged her on D's platform to prime her to expect the email.

Ms C has provided screenshots of the chat she had with who she thought was D. It appears this was a reasonably sophisticated website impersonation. I think lots of people would have been tricked into thinking they were genuinely dealing with D. I accept Ms C didn't realise she was putting her details at risk; she thought the steps she was following were part of a genuine verification process by an established and trusted business. She hadn't sold anything on D's platform before, so didn't know this was a deviation from their process.

I understand Monzo's point that, by the time of the second payment, it seems Ms C was aware that a payment had been taken. But looking at her chat with the scammer, when she mentioned this, they told her the next notification – for the same amount – would be to refund the payment that had been taken. In the context of thinking she was dealing with an established company, and being put somewhat under pressure by the worry of the payment that had been taken, I can understand why Ms C trusted and followed the scammer's instructions.

I agree with the investigator that the payment screen Ms C would have seen, in and of itself, could be read – in the context of what Ms C had been told by the scammer – as an indication she would be receiving, rather than making, a payment. In the wider context of what was happening, I'm not persuaded it was *grossly* negligent for Ms C to trust the scammer's explanation that the second notification was a refund of the payment that had been taken.

It's important to note that the bar for gross negligence is a much higher bar than negligence. In practical terms, I'd consider it fair to conclude Ms C was grossly negligent if she acted despite an actual appreciation of the risks involved, or serious disregard to an obvious risk. I don't think Ms C foresaw the risk the second notification would result in a further payment being taken. Nor do I think she showed serious disregard.

When she went on to complete the PIN in relation to the third payment, I do think Ms C's actions amount to gross negligence. By that point she did, or ought to have, realised 'D' had lied to her about the second notification being for a refund – as well as not making it clear a payment would be taken in the first place. I think she did, or should have, realised there was an obvious risk that completing the same steps for a third time, at the instruction of someone who had clearly misled her, would result in a further payment being taken. So I agree Monzo isn't obligated to refund this payment.

My understanding is the £100 compensation paid for Ms C's distress and inconvenience isn't in dispute. So I don't think Monzo needs to pay further compensation for the non-financial impact on her. But, in line with what I've explained above, I do think it should refund her for the first two payments, in line with its obligations under the PSRs. And that it should pay interest on top of this to compensate Ms C for the loss of use of the funds.

My final decision

For the reasons given above, I uphold this complaint. To put things right, Monzo Bank Ltd must refund Ms C for the first two disputed transactions (by my calculations, this comes to £1,202) – less any amounts already recovered or refunded.

Monzo Bank Ltd should also pay 8% simple interest on this amount from the date of payment to the date of settlement, less any tax lawfully deductible.

Monzo Bank Ltd must pay this compensation within 28 days of the date on which we tell it that Ms C accepts my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 16 January 2024.

Rachel Loughlin
Ombudsman