

The complaint

Mr C complains Monzo Bank Ltd will not refund some disputed transactions.

What happened

Mr C explained he had been at a party on the night of 7th February through to the morning of 8th February 2020. He thinks his drinks had been spiked because he has a vague recollection of being arrested by police officers, being taken to a police station and then being released just after 11.30 pm on 8th February.

The following day he discovered transactions had been made on his Monzo card which he didn't recall making. His card was missing too.

When he first spoke to Monzo, he disputed transactions and attempted transactions from earlier on in the day – but having made enquiries himself with one of the retailers (A), he realised he had in fact made the earlier transactions and his arrest by officers must have been later in the day.

However, subsequent CCTV footage at another retailer (B) showed two unknown males using Mr C's card – the same two males who Mr C says could be seen standing very close to him and looking over his shoulder as he was using his card in shop A.

Monzo rejected Mr C's complaint about the transactions. But it offered £25 for the delay in dealing with his complaint – so Mr C came to this service.

Our investigator thought Monzo should refund the disputed transactions to Mr C. She thought the evidence showed Mr C was in fact in police custody during the relevant time and so could not have made the transactions himself. From the evidence available, she did not think he had authorised anyone else to make the transactions either – and did not think he had been grossly negligent in failing to keep his PIN and card safe.

Monzo did not agree. In response to the investigators' view, it accepted Mr C had not made the payments himself – but it insisted he had acted with gross negligence by giving his PIN away.

The matter was then passed to me for a 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.

I should say from the outset that I intend to uphold this complaint.

The starting point for consideration is authorisation. If it appears to me that it is more likely than not that Mr C did not authorise these transactions, then I must uphold his complaint. I also remind myself that it is for Monzo to show Mr C authorised these payments – and not for Mr C to show he did not.

Authority is a two-stage test – Monzo needs to show the transactions were authenticated as well as showing Mr C consented to them.

I can see from the evidence the payments were authenticated – and by this, I mean Mr C ‘s genuine card and PIN were used. However, I am not satisfied Mr C consented to the payments.

Everyone agrees Mr C didn’t carry out the transactions himself – and I’ve seen the CCTV images of two males using the card in shop B. Mr C was unable to provide the CCTV from shop A because they refused to provide him with a copy. So, I rely on Mr C’s account of what he saw on that footage. I find him to be a credible witness and so accept what he says. I accept he saw the same two males in shop A standing close to him and I accept that this was the point at which his PIN may have been compromised. I also accept he did not know either of them and did not knowingly share his PIN or card with them.

The term “consent” is not defined in law, so I am applying the normal meaning which is to *give permission for something to happen*.

I don’t think Monzo has been able to show Mr C consented to these payments – and so it follows, it cannot hold him liable for them.

Turning then to Monzo’s submissions Mr C was grossly negligent in that he gave these fraudsters his PIN. I don’t think that’s right. Gross negligent is a high bar. It goes beyond alleging Mr C failed to exercise reasonable care. According to the FCA’s guidance on the PSR’s 2017, he must be shown to have exercised a very *significant* degree of carelessness.

I am not satisfied Mr C was grossly negligent. I don’t think he gave his PIN and card the fraudsters. I think they were able to take the card from his possession having watched him enter his PIN in shop A.

Finally, I’ve looked at whether I think £25 is a fair offer for the poor service in this case as well as the distress and inconvenience caused- and I don’t think it is. I think the compensation should be increased by £100 – so £125 in total.

Putting things right

To put things right, Monzo Bank Ltd:

- should refund the disputed transactions amounting to £563.29
- pay interest on this amount at the rate of 8% from the date of the transaction until the date of settlement;
- pay Mr C £125 in total for the distress and inconvenience caused

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 9 December 2020.

Shazia Ahmed
Ombudsman