

The complaint

Mr J and Mr O have complained that Monzo Bank Ltd won't refund a transaction they say they didn't make or otherwise authorise.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

Mr J's card details were used to register for Apple Pay. Someone then used this Apple Pay token to attempt several online payments and one payment in person in a shop. There was only enough money for one of the online payments to go through, which was for £175. The other payments were declined.

Mr J reported the payment after paying some money in later that day. Mr J and Mr O have explained they were both at work at the time, hours away from the shop where the in-person payment was attempted. Only they had access to their respective phones, which were protected by their biometrics. Mr J's card was in his wallet, which was with him at all times and didn't go missing. He hadn't clicked any suspicious links, downloaded any new software, received any suspicious communication, or been asked to set up Apple Pay around that time. Their security details were not written down, no one else knew them, and they'd not been tricked into giving them out.

Monzo held them liable for the payment in dispute, on the basis that the Apple Pay token had been approved in Mr J's app on his phone.

Our investigator looked into things independently and didn't uphold the complaint. Mr J and Mr O didn't agree, so the complaint's been passed to me to decide.

I sent Monzo, Mr J, and Mr O a provisional decision on 26 September 2023, to explain why I didn't think the complaint should be upheld. In that decision, I said:

First, I do understand why Mr J and Mr O would like a breakdown of the technical data and the various codes involved. But the data is extensive, complex, requires proper knowledge and experience to appropriately interpret, and involves commercially sensitive information about things like fraud and security systems. So it would not be reasonable for us (or Monzo) to train Mr J and Mr O on how to interpret the data, or to explain things down to individual lines of code. It's also worth bearing in mind that we're here to resolve disputes more quickly and informally than the courts. So I will instead focus my decision on what I've found to be the key points of the case, and I'll explain in plainer terms what I've found in the evidence.

In response to Mr J and Mr O's queries, I will clarify that once you set up Apple Pay on a device (i.e. set up a "token") you don't need to go through the full setup security process again for every single payment. And while the records say "MasterCard", that's just because Mr J's card was a MasterCard type of card (as opposed to, say, Visa or American Express) and it was Mr J's card which was registered to the Apple Pay token.

Broadly speaking, Monzo can hold Mr J and Mr O liable for the payment in dispute if the evidence suggests that it was authorised. I should clarify that this is not a criminal case, so Monzo does not need to prove things beyond reasonable doubt, as Mr J and Mr O suggested. We're just looking at what's most likely.

In order to register Mr J's card for Apple Pay, the person doing so needed his full card details. Mr J then needed to approve this new Apple Pay token on his Monzo app using either his PIN or biometrics. According to the technical evidence, this token was approved on Mr J's phone, at his IP address – the same phone and IP address which Mr J used for genuine activity both before and after. This phone was the only active device on the account at the time, and Mr J confirmed it was protected by his biometrics, it didn't go missing, and only he had access to it. So we can be reasonably satisfied that it was Mr J who approved the setting up of the Apple Pay token which was used here.

The data doesn't detail whether it was Mr J's PIN or biometrics that were used to set up Apple Pay – we just know it was one of the two. But only Mr J could reasonably use his own biometrics. And Mr J confirmed only he knew his PIN and it wasn't recorded anywhere. There's no indication in the evidence that Mr J was hacked, no other device was involved, and from what Mr J and Mr O have told us there wasn't a likely way they could've been hacked. So there doesn't seem to be a likely or plausible way that someone could've set up this Apple Pay token without Mr J's permission.

A text was sent to Mr J's number to confirm that he'd set up Apple Pay, and from the screenshot Mr J sent I can see he received it. But he didn't tell Monzo anything was wrong at that time. This also indicates that the Apple Pay token was set up with Mr J's consent.

Now, I do accept that Mr J and Mr O were not present in the shop where the in-person payment was attempted. Their workplaces have confirmed that they were both at work at the time, some hours away in a different part of the country. But even if I accept that Mr J and Mr O didn't physically try to make the payments themselves, it was still possible for them to have given someone else permission to make them. And given that Mr J's card was registered for Apple Pay in a way that only Mr J could've realistically approved, it's much more likely that the disputed payment was made by someone he'd given his permission to, as opposed to it being unauthorised.

I can't say for certain why Mr J might've authorised someone else to use his card with Apple Pay. There have been cases where people gave a friend or family member permission to use their card, or where they were scammed and were too embarrassed to say so, or where they authorised a fraudster's attempted activity because they were distracted and didn't pay attention to what they were authorising, and so on. The point is that there are many reasons why Mr J may have authorised someone to use his card details for Apple Pay. And based on what I've seen so far, it's not likely or plausible that anyone other than Mr J approved the setting up of this Apple Pay token.

In summary, Mr J's card details, phone, app, and security credentials were used to add his card to this Apple Pay token and then make the disputed payment. There isn't a likely or plausible way this could've been done without his consent. So I'm reasonably satisfied that Mr J consented to setting up this Apple Pay token with his card details – even if perhaps he didn't realise that's what he'd done. This meant that he effectively gave someone permission to use his card details and make payments on his behalf, in such a way that to Monzo's system it would have looked like it was Mr J himself authorising them. And I'm afraid that means Mr J and Mr O (as the joint account holder) are liable for the disputed payment, rather than Monzo. This is a difficult message for me to give, and I know it's a difficult message for Mr J and Mr O to receive. But given what both sides have sent so far, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So based on everything I've seen so far, I currently think it's fair for Monzo to decline a refund in this case.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 10 October 2023. But neither side sent me anything new to consider.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

My final decision

I don't uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mr O to accept or reject my decision before 9 November 2023.

Adam Charles

Ombudsman