

## **The complaint**

Mr D complains that Monzo Bank Ltd ("Monzo") approved an overdraft he didn't apply for and allowed transactions to be made from his account that he didn't recognise, which they've held him liable for.

## **What happened**

### *What Mr D says*

Mr D explained that he had his unlocked phone taken from his hand whilst out shopping. Subsequently there were a number of frauds carried out on various bank accounts held by him. Mr D reported the theft to the police and a couple of days after the loss of his phone, he notified Monzo about the theft.

It was discovered that an overdraft had been applied for using Mr D's Monzo account and after being approved, those funds were transferred to another account in Mr D's name. Mr D denied making the application or sending payments to another one of his accounts and sought a refund from Monzo, which was declined. Mr D complained to them about the handling of his issue and Monzo again looked into what had happened but didn't change their position.

### *What Monzo say*

Monzo received Mr D's request for a refund after telling them his phone had been stolen. Monzo looked into what had happened and didn't think anyone else was responsible, so they held him liable for the overdraft and the subsequent transactions. Mr D had complained about several issues including a lack of refund, the approval of the overdraft, receipt of reminder messages about the overdraft repayment and the closure of the account. Monzo issued their final response which, in summary said:

- They believed the transactions weren't fraudulent.
- Lending criteria was met which resulted in the overdraft being approved.
- Reminder messages concerning the outstanding overdraft were temporarily stopped during the investigation into the claim, but they're a necessary message designed to ensure the applicant is aware of the financial situation.
- The closure of the account was made based on a commercial decision in accordance with the terms and conditions of the account.

### *The investigation so far*

Mr D was left unhappy with Monzo's treatment of his situation and brought his complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who asked both parties for information about the issue.

Mr D explained how his phone was stolen and that he'd notified the police about it. He said that he was surprised that an overdraft had been approved because he had rarely used the account since opening it several years earlier and it had a zero balance at the time. Mr D advised that he'd now repaid the full amount of the loan, but still wanted a full refund from Monzo

Monzo supplied information about the operation of the account, including details of the devices (mobile phones) registered on Mr D's account. This showed that:

- Mr D's account had two devices registered with Monzo. One device was originally registered for a short period before being removed from the account. The second device had been registered for some years and remained the only device recorded by Monzo to use the account.
- That device was the one Mr D reported as stolen.
- That same device remained active on the account and was used to report the loss by Mr D and to communicate with Monzo concerning the ongoing situation.
- The overdraft was assessed after an application was made through Mr D's phone.
- The disputed transactions were carried out by the same device reported stolen, that was later used by Mr D.

After considering the evidence, Mr D's complaint wasn't upheld. The investigator commented that:

- There's no explanation how a thief could have obtained the necessary login details for Mr D's Monzo account to make the overdraft application and subsequent disputed transactions.
- Mr D had reported the phone was never returned to him, but he used that same phone to report the loss to Monzo.
- It was thought unlikely a third party was responsible for continuing to log in to the account for a month after the transactions were made.
- Overall, the evidence indicated the overdraft application and disputed transactions were authorised.

Mr D disagreed with the investigator's outcome and said:

- Monzo were wrong about the device he used after the theft, because Mr D registered an old device to use on the account.
- He was a victim of a crime.
- He'd already received refunds from other banks who accepted he was victim of a crime.

As no agreement could be reached, the complaint has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Monzo can hold Mr D liable for the disputed payments/overdraft if the evidence suggests that it's more likely than not that he made them or authorised them.

Monzo can only refuse to refund unauthorised payments if it can prove Mr D authorised the transactions/ overdraft application, but Monzo cannot say that the use of the banking app conclusively proves that they were authorised.

Unless Monzo can show that consent has been given, it has no authority to make the payment (overdraft) or to debit M D's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr D, including the overdraft application made from his registered device. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr D responsible for the overdraft and subsequent disputed transactions or not.

It's not our role to say exactly what happened, but to decide whether Monzo can reasonably hold Mr D liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Mr D's case is that after his phone was stolen, an application for an overdraft was made and once it was approved, the subsequent transactions were sent to an account in his own name with another financial merchant, all without his knowledge or approval. Essentially, Mr D believes that a thief carried out all these actions.

Monzo don't believe anyone else is responsible, which is why they've held him liable for the overdraft.

The Monzo account operates through an app, usually installed on a mobile phone. Monzo have a record of those devices registered on Mr D's account. Monzo also record various pieces of information when the phone interacts with the account through the app.

In order to access the app, the security information known only to Mr D was required. This can either be code or Mr D's biometrics, neither of which were available to the thief who Mr D reports stole his phone. I haven't seen a plausible explanation how this information could have been obtained by anyone else.

If I was to accept that Mr D's account was somehow bypassed by the thief, it would be logical to assume they would be using Mr D's stolen phone to do it. If a thief had it, it stands to reason that Mr D couldn't also possess it. I understand Mr D believes Monzo's data is incorrect, but having examined it, it's consistent, showing the repeated use of Mr D's second device throughout the period he said his phone was stolen and the overdraft applied for, followed by the disputed transactions being sent to one of Mr D's other accounts. So, there's no evidence to suggest Mr D registered/used a different (older) device on his Monzo account after his other phone was taken. If he did, I would expect the audit data to show that. That same device (reported as stolen) continued to be used to communicate with Monzo when Mr D was challenging them about the overdraft and seeking a refund.

The evidence doesn't support Mr D's version of events here and coupled with a lack of

plausible explanation how his security information could have been obtained, I think it's more likely than not that Mr D was responsible for making the application and subsequent transactions to his own account. I think it's both fair and reasonable for Monzo to hold him liable for the overdraft (which has already been repaid) and the subsequent transactions to.

Mr D didn't specifically raise any other issues regarding his complaint when he asked for it to be further reviewed. But, I have considered the additional aspects to his complaint and there's nothing that I think warrants any further action from Monzo. That's because I've made a finding concerning the overdraft and the disputed transactions, which follows that any further messages received by Mr D concerning the outstanding balance were an appropriate response from Monzo. Monzo did pause them whilst they investigated which is a fair way for them to deal with Mr D's original claim for a refund.

Once Monzo concluded that a third party couldn't have been responsible, the decision to close the account was, I think, a reasonable next step. The terms and conditions of the account allow each party to end the relationship, depending on the specific circumstances at the time. Monzo followed the terms concerning an immediate closure based on the outcome of their investigation and I don't think this was unreasonable.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 29 December 2023.

David Perry  
**Ombudsman**