

The complaint

Mr T complains that PrePay Technologies Limited (“Monese”) failed to refund transactions he didn’t recognise after his phone was stolen.

What happened

In the early hours of 25 February 2023, Mr T said his phone was stolen outside a train station after a night out with friends. He usually used biometrics (Face ID) to access his phone. It wasn’t working at the time, so he used his personal identification number (PIN) to open his phone to use the maps function. He became aware of a group of men were standing around him and they engaged in a short chat before one of them took his phone and ran off.

Mr T made his way back to a friend’s and the following day, when he was on his way home, he checked one of his bank accounts and noticed it had much less funds than he thought it should have. Mr T borrowed his friend’s phone and started to check his various accounts where he established he was either locked out or money had already been taken.

Mr T called the police to report the theft, he also reported the loss of his phone to his phone company so they could blacklist it. Mr T said he tried several times to report the issue to Monese but couldn’t get through.

Monese said the first contact they had from Mr T was on 8 March 2023, when he reported the loss of his phone and that he’d lost most of his funds.

Monese looked into the payments taken from his account which included transfers from other accounts held by Mr T before they were spent at various other merchants between 25 and 27 February 2023.

Both parties have seen the full list of payments, so I won’t repeat them in detail here. But what is relevant is the timing of some of them. In summary, there were a total of £5,476.39 disputed transactions carried out until mid-afternoon on 26 February 2023. There were two merchant refunds linked to these which reduced the total to £3,768.39. There were several additional transactions Mr T has disputed that took place later that day and the following day.

Monese said that the email address for Mr T’s account was changed after he reported the loss of his phone. Monese didn’t think that it was plausible for these payments to have been made by a thief due to the security on Mr T’s phone and the Monese app. Monese didn’t believe his version of events and considered that Mr T had been in control of his account at all times and made the transactions himself. Monese also closed Mr T’s account.

When Mr T complained to Monese about their handling of his dispute, they again concluded that they hadn’t done anything wrong and continued to believe Mr T was responsible for the transactions.

Mr T then brought his complaint to the Financial Ombudsman Service for an independent review where it was assigned to an investigator to review.

Information was sought about the incident and Mr T was able to provide evidence that showed:

- He reported the theft to the police soon after it happened and called them when he saw the thieves (via an app) using a taxi service to have them arrested.
- He reported the loss of his phone to his phone company who blacklisted it. Evidence of a new phone purchased by Mr T was also provided.
- Shortly after arriving at his friend's house (soon after the theft) Mr T attempted to put his phone into lost mode but was unable to access it.
- Mr T tried to obtain call logs to show when he'd attempted to contact Monese (prior to 8 March) but was unsuccessful.
- There were unusual payments made by unknown third parties, including car trips and purchases at numerous locations for expensive items.
- Mr T used a friend's phone to download various apps, but his Monese app had been changed by this point and he couldn't access it.
- Evidence of some of the refunds from other accounts was provided.

Mr T explained that he kept the passwords for all his other accounts within a password section of his phone. He couldn't explain how the disputed transactions had been made but he believed that the thieves saw him input his PIN at the time his phone was stolen as one of the men was stood behind him.

Mr T was asked why he didn't contact Monese straight away and explained that he didn't realise his accounts had been emptied until he checked one of them on his way home (26 February). He said that at the time, he was just glad not to have been hurt and once he realised his funds were missing, he started to contact the banks he held accounts with. He said he didn't contact all of them due to being told by one of them that his claim wouldn't be successful, so concentrated on one of his main accounts (held with another bank I'll refer to as S), Monese and another payment company (referred to here as P). P refunded all of the disputed payments and later, S also made a refund to Mr T after finding unusual activity on their banking app.

Monese provided data about the payments made from the account and argued that some of them were authenticated by a second step requiring their app to be opened. Monese said that this happened using biometrics and couldn't have been anyone else but Mr T. They provided details of how their app worked and what happened if the biometrics were changed (on the phone). They were also adamant that passwords couldn't be used that were stored in the phone due to the way their app was designed.

After reviewing the evidence, the investigator concluded that Mr T hadn't authorised the payments himself and nor was he grossly negligent with how he dealt with the notifications to the various banks. Mr T's complaint was upheld.

Monese disagreed with the investigator's outcome and asked for a further review of the complaint. They made several points they wished to be taken into consideration:

- They cast doubt on Mr T's report to the police.
- They thought the delay in reporting the loss of his phone was unusual and there was no

explanation why he couldn't have borrowed his friends phone after the event.

- They doubted his version of events about his reason for not contacting some of his banks (that he'd been told by one of them he'd be unsuccessful).
- They said Mr T could have logged into his account.
- Monese didn't think it was plausible that other passwords were accessed through a security glitch on Mr T's phone.
- Monese were of the opinion that their security couldn't be bypassed, and their app showed Mr T using biometric security to access it which could only have been him. Later uses of the PIN were also recorded.
- Monese believed that an anti-fraud marker lodged against Mr T by another bank was relevant.
- They said that whoever was using the phone carried out a number of "mundane" operations including closing the account down. They argued that a thief would just throw the phone away.
- They thought that a thief who had access to the device and the accounts wouldn't use it to make low amount transactions over a two-day period.
- Monese didn't think that Mr T had written his passwords down anywhere on his phone.

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

As part of my own investigation, I wanted to understand more detail from both parties. Mr T said:

- He left several voice mails with Monese but couldn't confirm when he first made them.
- He tried to access his online account on 27 February but couldn't log in.

In response to further questions, Monese said:

- "There is no functionality for pre-filling a passcode via the keychain since this feature does not exist in our system."
- Their system would default to the passcode if the biometrics had been changed.

I issued my provisional findings on the merits of Mr T's complaint on 17 June 2024. In my provisional findings, I explained why I intended to uphold Mr T's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

"What I've provisionally 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.

Whilst I've read and considered the whole file, I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on

board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 (PSRs). The basic position is that Monese can hold Mr T liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but Monese cannot say that the use of Apple Pay or the accounts details for online purchases conclusively proves that the payments were authorised.

Unless Monese can show that consent has been given, it has no authority to make the payment or to debit Mr T'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 they were authenticated using the payment tools issued to Mr T.

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

I've given careful thought to this complaint and acknowledge that it's finely balanced. It's unfortunate that Mr T can't evidence when he first tried to contact Monese about the loss of his phone. There's a general lack of evidence that he tried to contact some of the other organisations at the time of his loss (or shortly afterwards), but overall Mr T's evidence points to his phone being stolen after a night out.

Monese's view that he didn't contact the police at the time isn't supported by the evidence. Mr T provided evidence that he registered the theft with them. Also, Monese's opinion that Mr T hadn't written down his passwords is contradicted by Mr T's evidence. He confirmed he had recorded various other accounts details within his phone and I've no reason to doubt him about this.

Monese's also said that Mr T could have logged into his account, but it was also evidenced that the email address had been changed. If Mr T was unaware of the email address change then surely he couldn't then complete the necessary details to log in? At the time, Mr T was away from home and the only access he had to his account and email was his phone. As it was reported stolen, he was relying on his friend's device. He's said he attempted to block the phone (but was unsuccessful) and downloaded some apps to get into his accounts. So, the picture here is that Mr T was trying to access various other accounts using his friend's phone, but couldn't get through to the Monese app. Although app access wasn't possible, he could have called Monese using his friend's phone (and ensured he got through to them).

Monese referred to a fraud marker lodged against Mr T by another firm. They closed his account when they found out about this, but they've also used it to support their position that they think Mr T is responsible. The marker was looked into by our service and there's some doubt over the details, so as far as this complaint is concerned, I've not given it any weight.

Whilst I've thought about Monese's point that their app can't be accessed in the way Mr T has suggested, I'm not convinced that their position is representative of the real-world possibilities surrounding app security.

Monese have argued that their app was accessed through Face ID which couldn't be changed (without their system responding). Whilst I understand what they're trying to say, I have to take the overall evidence into account which points to Mr T being a victim of a crime. There's a large amount of evidence that, on balance, supports his assertion that his funds were stolen, including:

- access to his phone whilst he was unlocking it (making the PIN visible to the thieves).
- Once the PIN was known, stored passwords for any other account were available.
- Apple Pay was available on the phone once the PIN was known.
- The unusual movement of funds.
- The spending pattern that took place including expensive items (probably for resale).
- The unknown third parties used a money exchange firm to receive funds from Mr T's account. It's likely this was to obtain cash. They couldn't obtain cash from an ATM because they only had his phone and not his physical card.

So, whilst Monese have argued a specific technical point regarding access to their app, I'm currently more convinced by the overall picture.

So, based on a fair and reasonable test, I currently think the overall evidence supports that, on balance, Mr T's phone was stolen and the transactions he's disputed are unauthorised. But, I also wanted to consider what Mr T did once he found out there was a problem with his accounts.

Should Mr T be responsible for some of the losses?

Whilst I'm minded to think that Mr T didn't authorise the transactions he's disputed, I do think he failed to act once he was aware one of his accounts had been used and funds spent.

Gross negligence is a concept relevant to this complaint. It means there are occasions when a business might be able to hold a consumer liable for some of the transactions they didn't make or authorise. That's if they've failed with gross negligence to comply with their obligations as a payment service user (account holder).

The relevant section of the PSRs says:

Obligations of the payment service user in relation to payment instruments and personalised security credentials.

*72.—(1) A payment service user to whom a payment instrument has been issued must—
(a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and*

(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

The terms of the Monese account explain that:

2.33 What happens if your card is lost / stolen / damaged or someone steals from your account?

When you become aware of the loss, theft, fraud or unauthorised use of your Monese Card or Monese Account, you must let us know us as soon as possible, either through your Monese App or by contacting our Customer Services.

This is so that we can block your Monese Card and/or suspend your Monese Account. This paragraph should be read in conjunction with the “Your Responsibilities” section below which explains what your responsibilities are in the event of your Monese Card being lost or stolen.

Which then goes on to say:

9.2

You will be responsible for all the losses you experience as a result of an unauthorised payment from your Monese Account if you:

have acted fraudulently; or

intentionally or carelessly fail to let us know about your lost or stolen Monese Card or keep your security details or Monese Card safe. For example, you share your PIN with someone else.

S 72 and Monese’s terms put the onus on the account holder to notify them once they become aware of the loss of their payment instrument (mobile phone). Whilst I accept that initially Mr T was unaware of the damage being caused to his various accounts, I think that once he realised one of his bank accounts was much lower than he expected, he should have notified Monese about the loss of his phone.

Gross negligence is generally assessed as a lack of care that goes significantly beyond what we would expect from a reasonable person. The Financial Conduct Authority (FCA) define gross negligence as showing a “...*very significant degree of carelessness.*”

My current thoughts are that Mr T had enough information following the theft of his phone and the understanding that one of his accounts had been virtually emptied to then check all his other accounts. It’s what I’d expect most people to do at that point and I was surprised he didn’t notify Monese much earlier than he did. I understand Mr T said he couldn’t get through, but there’s no evidence to support that. There’s also some doubt about whether he contacted his other account providers at the time.

Because the available evidence shows Mr T didn’t get in touch with Monese until well after he realised his accounts had been emptied, I think it’s unreasonable to expect them to refund all of Mr T’s losses. The failure to notify them when he checked his other account meant that Monese were unable to protect it. If notified, Monese would have most likely blocked all access to the account and stopped the use of any cards associated with it, preventing further losses.

So, I’m currently minded to recommend that Monese make a refund up to the point at which Mr T checked his bank account which as far as I’m aware is about five pm on 26 February 2023.

As listed above, that would be a refund of £3,768.39 and I’m intending to instruct Monese to make that payment, including interest at 8% (simple) from the date of loss to the date of repayment because Mr T has lost use of that money.

Conduct of the investigation

I wanted to acknowledge the theft of a phone in the circumstances Mr T described would no doubt have been stressful for him. Mr T complained he’d had difficulty contacting Monese about the complaint and suffered delays as a result. It’s been difficult to establish the actual amount of contact between the two parties because Monese have no earlier record of contact from Mr T, and he’s been unable to show when he called (prior to 8 March 2023).

Having looked through the correspondence between the parties, I can't see anything that would lead me to conclude that Monese overly delayed their investigation.

I did think about additional redress, but I'm not currently intending to recommend any further payments to Mr T. That's because Monese were unaware of the situation until Mr T told them, so couldn't have done anything to protect the account. The loss of his funds is directly related to a theft and Monese carried out an investigation into the matter.

Whilst I currently think they wrongly concluded that Mr T was responsible, I don't think they're approach was unreasonable based on the evidence available to them at the time. So, I currently don't think that Monese should need to make any further payments to him.

My provisional decision

I'm currently intending to uphold this complaint against as explained above."

I invited Mr T and Monese to give me any more evidence and information they wanted me to consider before issuing my final decision. Mr T didn't have anything further to add about his complaint. Monese made further arguments concerning their belief that Mr T was responsible for the disputed transactions. In summary they argued:

- That the fraud originated with other banks, so the complaint should have been made to those businesses.
- The Monese App "cannot be tricked" and evidence presented demonstrates this.
- It's gross negligence to store passwords in a password section of a phone.
- Monese argued that Mr T would have been aware of the threat to his personal accounts following the loss of his phone and should have reported them earlier.

Following Monese's assertion that their app is essentially untrickable, I asked them to provide further evidence to show what happened at the time of the logins related to Mr T's phone (in relation to the operation of their biometric process) and additional questions concerning the operation of their app.

They were unable to provide anything further but maintained that the app would revert to using the PIN if it didn't recognise the genuine users identity.

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, and as neither party had anything further to add that would change my earlier assessment of this complaint, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I wanted to thank both parties for their continued assistance and patience whilst I've considered this complaint. Monese made further comments which I've carefully considered, and I'll explain my reasons for not changing my original assessment. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

In relation to whether Mr T complained to the correct bank or not – Mr T made a complaint about the unauthorised use of his Monese account, so that's what I've considered. There's no obligation on him to raise complaints with other banks before he can raise one with Monese. It's also the case that Mr T did raise a complaint with at least one other bank (S) and received a refund. He was also in receipt of refunds from P after notifying them about the theft of his phone.

Monese continued to argue their app cannot be tricked. But, they were unable to provide additional evidence to substantiate their specific claim relating to the biometric operation of it. Having considered their position and without any clear evidence to the contrary, I remain more persuaded by the overall set of facts (on a fair and reasonable basis) than I do about Monese's specific argument.

I've already made a finding on the issue of gross negligence relating to the timing of notification. But, I'm not persuaded that Monese's additional point here could be considered gross negligence – Mr T has stated he stored his password in the "keychain" (although Monese have argued that this isn't possible) and Monese believe this is grossly negligent.

What Mr T has said is that he used his phone, which is secured by a PIN and a separate section of his device used to store sensitive information to keep his Monese security details. That device, under normal use would be protected from unauthorised access by the usual security features enabled on the phone. It was only possible to access that information because, as Mr T believes, thieves "shoulder surfed" him to obtain the PIN code for his phone. I don't think it would be reasonable to consider such use as grossly negligent in these circumstances. Mr T took reasonable steps to hold his information securely and it was protected by the security features enabled on his phone.

I also thought about Monese's comments regarding when they feel Mr T should have reported the loss to them. I've already made a finding regarding the reduction of the refund based on when I think it was reasonable for Mr T to have reported the loss of his phone, and I haven't seen anything in Monese's further comments that would change my earlier opinion about the situation.

My final decision

My final decision is that I uphold this complaint against PrePay Technologies Limited, and they're instructed to:

- Make a refund of £3,768.39 to Mr T.
- Pay interest at 8% (simple) from the date of loss to the date of repayment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 September 2024.

David Perry
Ombudsman