DRN-2712422

The complaint

Mr H is unhappy because Monzo Bank Ltd trading as Monzo (Monzo) didn't reimburse the money he lost after paying for an item he did not receive.

What happened

Mr H says he saw an advertisement for an iPhone 11 Pro Max on a well-known online marketplace. The advert said that two phones were for sale because the poster of the advert's partner's business wasn't going well. Mr H expressed an interest in one of the phones and was given the seller's mobile number to contact him directly. Mr H contacted the seller by text and found out the phone was being sold for £450. Mr H said he'd buy one later that week and contacted the seller again at the end of the week and agreed to buy one of the phones.

Mr H asked the seller if he could pay by PayPal and the seller responded that he only had business PayPal which he couldn't use for personal sales. Mr H and the seller then discussed whether Mr H could pick the phone up, but this wasn't realistic because of the distance involved so the seller suggested that Mr H transfer the funds. Mr H was reluctant to do so, saying he'd been scammed before and wouldn't risk it. He said that if the seller set up a PayPal account or used someone else's he'd be happy to buy the phone. The seller said he had no faith in PayPal other than for business use and suggested that if Mr H changed his mind, he should contact him again.

Mr H then explored if he could pay through the online marketplace the phone was advertised on. The seller referred to an error message on the site and offered to send a copy of his driving license and a certificate of incorporation of his business. At this point Mr H used Monzo's live chat to ask if he'd be covered if he transferred funds and something went wrong. Mr H then confirmed to the seller he had seen the same error message on the marketplace site and asked if the seller had any other ideas instead of a bank transfer or if there was anywhere he could pick the phone up from. The seller said Mr H might be better to leave the sale. Mr H asked if the seller would set up a personal PayPal account and said he would pay the fee for this. The seller didn't wish to do so, saying he didn't want to wait for the funds and suggested Mr H keep looking for a phone. At this point Mr H asked the seller to send him his driving license and certificate of incorporation.

Mr H says he checked the company named on the certificate of incorporation and found it was a legitimate business and the driving license was in the name of the seller. He then made the £450 payment to the seller around half an hour after his live chat query with Monzo and before he received a response. The following day Monzo confirmed that Mr H wouldn't have the same protection as he would if he used a card.

When Mr H didn't receive the phone and the seller stopped responding to his texts, he realised he'd been the victim of a scam and contacted Monzo on 27 April 2020 to report it. Monzo didn't agree to refund Mr H, as it felt that he hadn't taken steps to check who he was paying and what he was paying for. Our investigator reached the same conclusion and Mr H asked for an ombudsman to review his complaint.

Monzo isn't a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the Code) but has explained that it is committed to applying the principles set out in it. The Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Monzo says one or more of those exceptions applies in this case. It says Mr H made the payment without having a reasonable basis for believing it was a genuine payment. Monzo says Mr H ought to have done more checks to make sure the payee was legitimate.

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.

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In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

When thinking about what is fair and reasonable in this case, I've considered whether Monzo should have reimbursed Mr H under the provisions of the CRM Code and whether it ought to have done more to protect Mr H from the possibility of financial harm from fraud.

There's no dispute here that Mr H was tricked into making the payment. But this isn't enough for Mr H to receive a refund of the money under the CRM Code. The Code places a level of care on Mr H too.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning
- The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate
- The customer has been grossly negligent

**The two further exceptions outlined in the CRM Code do not apply to this case.*

Taking into account all of the circumstances of this case, including the characteristics of Mr H and the complexity of the scam, I think the concerns Monzo has raised about the legitimacy of the transaction Mr H made are enough to support its position that he failed to meet his requisite level of care under the CRM Code for the payment he made. I don't think he had a reasonable basis for believing the payment was for genuine goods or that the person he transacted with was legitimate. I'll explain why.

The advert Mr H responded to didn't mention whether the phone was new or used and this wasn't explored in Mr H's texts to the seller. The seller confirmed the price was £450. When Mr H contacted Monzo before his payment he referred to a "brand new iPhone". So for completeness, I've looked at the price of new and second-hand models of the iPhone Mr H was buying, which was released in September 2019 and was the newest model available at the time. My research, a year on from Mr H's transaction, shows that a new phone of the model he was buying costs over £1,300 and used/refurbished phones are being offered for sale from around £750. When the investigator looked in to the cost of the model of iPhone

Mr H was buying she found one with a cracked screen for £550. It's likely that the phone Mr H sought to buy will have cost more in April 2020, soon after it was released.

I'm aware that online marketplaces are an increasingly common way for private sellers to sell items they no longer want, use or need. It's possible that a private seller looking to make a quick sale might be more open to negotiate on the price or to sell an item for less than it might typically be worth. So I accept that people can and do find good deals online.

But price can be one indicator that there is potentially something untoward about the seller or the proposed deal. It seems unlikely to me that a genuine seller would be offering the model of phone Mr H sought to buy for £450, whether new or used – even taking into account the 'story' the fraudster's partner provided about his business struggling. However, as I've explained, I do accept it's possible. But given the low advertised price I think Mr H ought fairly and reasonably to have made additional enquiries prior to transferring the money.

It seems to me that Mr H did have some reservation about paying by bank transfer and so it's likely he did have some concerns about the legitimacy of the sale – whether or not this is due to the lower than expected advertised price of the phone is unknown.

Having reviewed Mr H's bank statements for the period before the scam it's clear he used PayPal on a regular basis, so it's likely he was aware of the buyer protection this method of payment afforded, which is perhaps why PayPal was Mr H's first suggestion. But the seller explained he only had PayPal for business and so couldn't use this method. Mr H then explored picking the phone up in person. The seller confirmed where he lived and said Mr H could pay in to his account and he'd send the phone. Mr H responded by saying,

"Don't be offended but I've been scammed via bank transfer before so wouldn't risk it, if you set up a PayPal account or use someone else's I'd be more than happy to buy it if you can post Monday."

The seller didn't agree to using PayPal and suggested that Mr H contact him if he changed his mind. Mr H replied,

"*Could I pay through [online marketplace] where I saw the phone advertised? Just so I'm covered?"*

But it appears there were problems with making a payment using this site, as both the seller and Mr H referred to them in their text exchange. The seller offered to send Mr H a copy of his driving license and certificate of incorporation.

Despite the seller offering to send Mr H a copy of his driving license and certificate of incorporation, Mr H then contacted Monzo to see if he'd have protection if he made a bank transfer. So it seems that it's more likely than not Mr H had some concerns about the legitimacy of the sale. Mr H wrote,

"Hi. I'm looking to transfer some money to someone's [sic] for a brand new iPhone, would I be covered if something went wrong?"

Mr H then asked the seller,

"…do you have any other ideas instead of bank transfer? Or anywhere else I could pick the phone up from?"

The seller confirmed he didn't have other ideas and suggested Mr H might be better to leave it.

Whilst Mr H says he hasn't been scammed before (despite telling the fraudster he had been) and there is no evidence that a previous scam was reported to Monzo, it's clear Mr H tried very hard to avoid paying by bank transfer. I'm persuaded he did so because he had concerns about whether the phone and the seller were legitimate and recognised there was a risk associated with paying for the phone by bank transfer. When the seller suggested that Mr H leave the sale, Mr H went on to ask if the seller could create a personal PayPal account and even offered to pay the fee. After Mr H had explored all payment methods but before he received a response from Monzo he chose to do a bank transfer

The seller didn't put any pressure on Mr H to make a quick payment and tried to walk away from the arrangement several times when Mr H explored different methods of payment. But I consider that Mr H wanted to buy the phone and in making the transfer took the risk that he wasn't protected if anything went wrong.

The Code allows Monzo not to refund if it establishes Mr H didn't have a reasonable basis for believing the transaction was genuine. I think it has done so in this case. For the reasons I've explained, I'm persuaded Mr H knew there was a risk associated with the purchase. It seems to me Mr H had genuine concerns he might not be dealing with a legitimate seller or that the payment was for genuine goods. Mr H preferred a number of other payment options in order to protect himself and while he made those suggestions to the seller, I think the seller's reluctance to take up any of those suggestions ought to have caused Mr H concern rather than provide him with any reassurance.

In reaching this conclusion I have taken into account that Mr H saw the seller's driving licence showing his name and address and also a certificate of incorporation for his business, which he checked was registered with Companies House. But I don't consider that seeing these documents went far enough in all the circumstances of this complaint. I'm also mindful Mr H made enquiries with Monzo after the fraudster had offered to send him these documents, so I'm persuaded Mr H recognised that this documentation wasn't enough to prove the sale was legitimate. In addition, the evidence provided showed that the person selling the phones was a director of a company, and the fact the advert said the phones were being sold because of difficulties faced by a business, leads me to question why the seller wouldn't use his business PayPal account. I've also considered the fact that the advert for the phone was placed by someone who had 20 five-star reviews and had sold five items. But the ratings didn't apply to the seller's partner who was selling the phone.

Should Monzo have done more to try to prevent the scam and protect Mr H?

The CRM Code says that where firms identify authorised push payment scam risks in a payment journey, they should take reasonable steps to provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

In the particular circumstances of this case I don't think Monzo should've provided Mr H with an effective warning. Mr H was making a payment of £450 to a new payee. Making payments to a new payee can indicate that there is a greater risk of the payment being fraudulent than if the payment is made to an existing payee – but at the same time it's important to recognise that most payments to new payees are legitimate and not a cause for concern. So I've thought about whether there was anything else about the payment that ought to have alerted Monzo to a scam risk. Other than the fact the payment of £450 was being sent to a new payee it was unremarkable. For example, it wasn't significantly out of keeping with how Mr H tended to operate his account, the payment didn't clear the balance of his account, and there wasn't anything about the recipient account that I think Monzo ought to have been concerned about either.

I'm also mindful that when Mr H made these payments, Monzo should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud. So I've also considered whether the payment Mr H made was unusual or suspicious. But for the same reasons I've set out above, the payment Mr H was making was unremarkable so I don't think it stood out enough for Monzo to have been concerned that Mr H might have been at risk of financial harm from fraud at the time he made it. Mr H had made legitimate payments for similar amounts before.

I've also considered Monzo's actions once it was made aware of the scam. Mr H reported the scam on 27 April 2020 but Monzo didn't contact the receiving bank until 8 May 2020. I consider that Monzo should have done so before this, but that even if it had it wouldn't have made a difference. I say that because the receiving bank has confirmed that all funds were used up on 25 April 2020, before the scam was reported.

Overall

I consider Mr H didn't have a reasonable basis for believing he was making a payment for a genuine phone and/or the seller of the phone was legitimate. I'm sorry to have to disappoint Mr H, but I can't fairly say Monzo should have done more or that it should refund the money that he has lost.

My final decision

For the reasons I've explained I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 June 2021.

Jay Hadfield
Ombudsman