DRN-3025180

The complaint

Miss M complains that Monzo Bank Ltd won't refund the money she lost when she was the victim of a scam.

What happened

In September 2020, Miss M was looking for a rental property as the tenancy at her existing property was coming to an end. She'd been speaking with an estate agent who had shown her a number of properties. But after her applications for several properties were turned down due to her poor credit history, the estate agent told Miss M he could refer her to a private landlord who dealt with tenants who struggle with credit. The estate agent passed Miss M's details to this private landlord, who then contacted her saying he had a property she could move in to.

Miss M sent a £700 payment to the landlord on 22 September 2020 as a holding deposit. Then, after exchanging emails, seeing photos of the property and agreeing a move-in date, she sent a further £750 payment for the first months' rent on 28 September 2020. It was agreed she would sign the contract and move in on 29 September 2020 but, on that morning, the landlord messaged Miss M saying he had Covid symptoms so had to cancel the appointment. He said he'd try to get someone else to let her in later in the day but then didn't respond to any of Miss M's further messages. Miss M then received a message the following afternoon saying the landlord was in hospital and someone would be in touch later that day, but then received no further responses to her messages over the following days. Miss M also tried contacting the original estate agent, but didn't get any further contact from the landlord, so reported the payments to Monzo as a scam on 14 October 2020.

Monzo isn't a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code) but has explained it is committed to applying the principles set out in it. The CRM code requires firms to reimburse customers who have been the victims of authorised push payments scams, except in limited circumstances. Monzo investigated Miss M's case but said one or more of the exceptions applied, so it didn't agree to refund her. It said Miss M hadn't taken enough steps to check who she was paying and so had made the payments without a having a reasonable basis for believing they were legitimate. Monzo also contacted the bank the payments had been sent to, but was told there was no money left in the recipients account. So there was nothing more it could do to help recover the money. Miss M wasn't satisfied with Monzo's response, so brought a complaint to our service.

One of our investigators looked at Miss M's complaint and felt it should be upheld. They didn't think any of the exceptions to the CRM code applied, as they didn't think Monzo had provided an effective warning when the payments were requested or that Monzo had established that Miss M had made the payments without a reasonable basis for believing they were legitimate. As Miss M had discussed the move-in date, signing the contract and picking up the keys and had been sent photos of the property, the investigator thought she did have a reasonable basis for believing the payments were legitimate. So they recommended Monzo refund the payments to Miss M, plus interest.

Monzo disagreed, saying Miss M made no effort to verify that the landlord was genuine or that the property existed, and had ignored a warning that the registered name on the account she was paying didn't match what she had entered. It also said it was unreasonable to expect it to tailor the warnings it gave to each individual scam and that Miss M had either not read or ignored guidance on scams its warning linked to. So the complaint has been passed to me to review.

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, I think Monzo should refund the money Miss M lost as a result of this scam. I'll explain why below.

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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I've considered whether Monzo should have reimbursed Miss M under the provisions of the CRM code and whether it ought to have done more to protect Miss M from the possibility of financial harm from fraud. The CRM code places a level of care on Miss M too, so I've considered whether she met this.

The CRM code

As I mentioned above, Monzo has committed to follow the Lending Standards Board Contingent Reimbursement Model (the CRM code) although it isn't a signatory. The CRM code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances. And it is for the firm to establish that a customer failed to meet their requisite level of care under one of the listed exceptions set out in the CRM code.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without 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

There are further exceptions within the CRM code, but these don't apply here.

Did Miss M have a reasonable basis for belief?

Under the CRM code, Monzo can choose not to refund Miss M if it doesn't believe she took the requisite level of care to ensure she had a reasonable basis for belief that the person she was paying was legitimate and the payment was for genuine goods or services. It isn't enough for Miss M to believe she was paying a legitimate person for genuine goods or services, she had to have a reasonable basis for that belief.

Miss M was referred to the landlord by an estate agent she had been dealing with. I think it's understandable that Monzo has questioned how reputable the estate agent was, given that they passed Miss M's details to a landlord we now know to be a scammer. But the estate agent had taken Miss M to view several other properties, so I think it's reasonable that Miss M thought they were legitimate and so, by association, thought the landlord was legitimate too. I'm also not aware of any simple checks Miss M could have carried out to independently verify the landlord she thought she was dealing with, as she was told they were a private landlord and so not connected to any agent or company she could check.

Miss M had exchanged a number of messages with the landlord, through both email and text message. She'd been given the address of the property, arranged a time to pick up the keys and sign the contract and been asked to provide photo ID and a recent utility bill. And I think all of this would have felt like part of a legitimate renting process, particularly one done on short notice with a private landlord who may not have as defined processes as a commercial estate agent.

Miss M didn't view the property in person before sending either of the payments and Monzo has suggested this was unreasonable. But while the government restrictions in place at the time in response to the global pandemic didn't prevent property viewings, I don't think it would have necessarily felt unusual for viewings to have still been limited. Miss M was sent a number of photos of the property and thought it was normal to view a property virtually at the time, as other estate agents had been doing this and her sister had recently moved in somewhere after only viewing it online. And Miss M was having to find a property at very short notice, as her existing tenancy was ending and a property she'd found earlier had fallen through. So I don't think Miss M not viewing the property before sending the payments meant she shouldn't have had a reasonable basis for believing the property was legitimate in these circumstances.

Monzo has also sent us evidence showing that, for both payments, Miss M would've been shown a warning that the details she'd entered for the account she was sending money to didn't match those registered on that account. Miss M has said she didn't see these warnings. But, in any event, I don't think these warnings were clear about the possible consequences of the details not matching. And, as Miss M was under pressure to find a property at short notice and the rest of the process had seemed legitimate, I don't think it's unreasonable that these warnings didn't cause her more concern. So I don't think the warnings mean that Miss M didn't have a reasonable basis for belief in the payments.

Taking all this into account and considering her individual circumstances, I think Miss M had a reasonable basis for believing the landlord was legitimate and the property was genuine.

Did Miss M ignore an effective warning?

Monzo hasn't been clear about whether it thinks Miss M ignored an effective warning. But it has made arguments suggesting so, so I've considered whether I think she did.

The CRM code sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.

But the new payee warning that Monzo has shown would have been displayed when Miss M set up the first payment, focuses on her having doubts about the payment. So it would only be effective if Miss M already thought it could be a scam or had pre-existing doubts. And this was clearly a sophisticated and convincing scam, and Miss M said she didn't have any doubts at the time. So I don't think this warning was effective.

And the other warnings Monzo has shown were displayed were generic and not specific to the type of situation and scam Miss M was falling victim to. So I don't think these were effective either.

I appreciate that, due to the value of the payments involved here, Monzo likely didn't need to provide a warning. But, in any event, I don't think Miss M ignored an effective warning.

So overall, I don't think any of the exceptions to reimbursement under the CRM code apply, and Monzo should have refunded the money Miss M lost.

Putting things right

Monzo Bank Ltd should:

- Refund Miss M the £1,450 she lost
- Pay Miss M 8% interest on that amount from 14 October 2020 until the date of settlement

My final decision

For the reasons given above, I uphold Miss M's complaint and require Monzo Bank Ltd to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 December 2021.
Alan Millward
Ombudsman