DRN-3038298

The complaint

Mr S is unhappy that Monzo Bank Ltd won't refund him after he lost money to a purchase scam.

What happened

I issued my provisional decision on this complaint on 25 August 2021. The background and circumstances of the case and the reasons why I was minded to not uphold it were set out in that decision. I have reproduced the provisional decision in italics below:

Mr S says that in July 2020, he was looking to purchase an electronic scooter (e-scooter) to avoid using public transport during the pandemic. He saw an advertisement for a used e-scooter being sold on a social media app and decided to buy the item. Unbeknownst to Mr S at the time, the 'seller' was in fact a scammer.

Mr S has explained that his friend had purchased items from the same person in the past, so this reassured Mr S that the seller was genuine. He sent £200 to the fraudster by faster payment at 11:43 and agreed to meet the fraudster locally to receive the e-scooter.

When the fraudster didn't provide him with the scooter, Mr S realised he'd been the victim of a scam and contacted Monzo to report the incident. Monzo investigated his fraud claim and was able to recover £69.01 from the beneficiary bank.

Monzo went on to consider its obligations to provide Mr S with a refund. Monzo has committed to follow the Lending Standards Board Contingent Reimbursement Model (CRM) Code, despite not being a signatory of it. The CRM Code requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Monzo says one or more of those exceptions applies in this case.

Monzo said Mr S didn't have a reasonable basis for believing the seller he was purchasing from was legitimate and ought to have carried out more checks before making the payment. It also said Mr S had been the victim of a similar scam previously on a different online platform.

Mr S disagreed with Monzo so brought the complaint to our service. One of our investigators considered the case and thought it ought to be upheld, with Monzo providing a full refund. He thought Mr S had a reasonable basis for belief because:

- *He disagreed with Monzo's argument that the app Mr S purchased from isn't a legitimate platform from which to buy and sell goods*
- *He didn't consider the price Mr S paid was "too good to be true" and should've alerted Mr S to the fact that this was a scam*
- *The investigator thought Mr S would've been understandably reassured that his friend had successfully purchased from the scammer before*
- *Mr S saw pictures and videos of the e-scooter he was intending to buy*

- *While Mr S had recently fallen victim to a similar scam, the investigator thought that Mr S still had a good reason to believe this sale was legitimate, based on the sales platform being different and Mr S's previous positive experiences of purchasing through this platform.*

Monzo didn't agree with the investigator's recommendation. It said that:

- *There is no mention on the social media app's website that it is a commerce platform and while Mr S may have had prior positive experiences, Monzo didn't think this should give him confidence when making future purchases.*
- *It doesn't consider that word of mouth fulfils the Code's requirement for a customer to satisfy themselves that a person they transact with is legitimate.*
- *Pictures or videos of an item don't demonstrate an intention of selling.*
- *If an individual is scammed, your overall level of confidence would be reduced, not just your confidence in that single platform.*

The case has been referred to me for a 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.

Having done so I don't intend to uphold this complaint. I'll explain why.

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 Mr S under the provisions of the CRM Code and whether it ought to have done more to protect Mr S from the possibility of financial harm from fraud. The Code places a level of care on Mr S too, so I've considered whether he met this.
The CRM Code

As I've mentioned, Monzo has committed to follow the Lending Standards Board Contingent Reimbursement Model (the CRM Code) although they aren't a Code signatory, which 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 Monzo 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 bank may choose not to reimburse a customer if it can establish that:*

- *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

**Further exceptions outlined in the CRM Code do not apply to this case.*

In the particular circumstances of this case, I don't think there is enough evidence to conclude that Mr S had a reasonable basis for believing the payment he made was legitimate, so I don't think Monzo has acted unfairly by relying on this exception to not reimburse him under the provisions of the CRM Code. I think there are inconsistencies within the information I've been provided and as a result I'm not persuaded Mr S had a reasonable basis for belief when making the payment. I've set out my reasoning below.

Mr S has been unable to provide a copy of the initial advertisement for the e-scooter, or the initial conversation he had with the seller about the purchase. In the absence of available evidence, it makes it difficult to establish what exactly did happen for this scam to unfold, whether Mr S did have a reasonable basis for believing the seller was legitimate, or whether he should have carried out further checks before making the payment. Because of the lack of available evidence, I'm only able to rely on the later part of the conversation Mr S had with the scammer that he's been able to evidence, as well as Mr S's recollections of the scam.

Having reviewed the evidence from both Mr S and Monzo, I think Mr S's recollections of the scam are inconsistent.

Mr S first contacted Monzo by online chat at 11:57 to report the fraudulent transaction – so just over ten minutes after he made the payment – and was called shortly after by a Monzo representative. During this call Mr S said:

"I think I made a mistake sending money to somebody on my account because I changed… it was the wrong account number"

When asked if the account holder's name is correct Mr S replied:

"I didn't spell it right and also one of the numbers is off"

When asked if he knows the person he was sending money to, or if the account number was just entered incorrectly, Mr S replied:

"It was just a missed number".

When speaking again through Monzo chat the same day Mr S confirmed "the person completely sent me the wrong details but now I don't want to sent him the money" and "he sent me the wrong details and I found out he's a fraud". He also explained "He told me to send it to that account but now he sent me another account detail and someone told me a fraud"

However, when Mr S brought the complaint to us he explained to the investigator that he sent the funds to the fraudster, but he knew something was suspicious so immediately contacted Monzo to put a caution on the payment. Mr S provided copies of the messages between him and the scammer after he had made the payment. While these messages aren't time stamped, they show the scammer suggested they meet at 4:30, followed by Mr S chasing the scammer up, calling multiple times and ending by saying "you said 4:30".

When asked for clarification about what happened after he made the payment to the fraudster, Mr S told our investigator that when he sent the money, he was already near the agreed location the fraudster had suggested meeting, so he went there to meet him, but the *fraudster stopped answering his messages – he therefore immediately contacted Monzo. Mr S said that no one had told him that this was fraud – and he wasn't told to send money a different account – and he knew it was a scam when the fraudster didn't arrive with the scooter.*

Overall, I don't think Mr S's recollections of how the scam occurred are consistent – he initially told Monzo he had inputted a wrong digit on the account number, then that he'd been given new account details to send more funds to and had been told by someone this was fraud. When bringing the complaint to us he said this wasn't the case – that he realised he'd been the victim of a scam when he went to meet the fraudster at an agreed location but the fraudster didn't arrive.

However, even considering Mr S's recollections he provided to us, I think there are inconsistencies. The fraudster said to Mr S he would meet him at 4:30, yet Mr S contacted Monzo at 11:57 – so before the fraudster had even agreed to meet him. Mr S had said he became suspicious when the fraudster stopped communicating with him, but there was only around ten minutes between making the payment, agreeing to meet and Mr S contacting Monzo – I don't think it's likely that it was this period of time without contact that led Mr S to believe he was the victim of a scam – particularly when Mr S had been told by the fraudster to meet later that day. From the messages I've seen it also seems Mr S was still in contact with the fraudster past 4:30 – as he specifically tells him "you said 4.30". This suggests to me that at this time, Mr S still was still waiting for the fraudster to arrive. Mr S has said he had been reassured the seller was genuine as his friend had successfully purchased from him before – but after around ten minutes without contact, Mr S seemed satisfied that this was a scam.

Mr S was also talking to the fraudster on both social media and text messaging, yet the fraudster's name on the social media app differed to where Mr S sent the money and the name Mr S seems to have saved on his phone was again entirely different to both. When asked why there were multiple names for the scammer, Mr S said sometimes on social media people will use different names to their real names. He said despite knowing this, he found the name difference on social media suspicious and questioned this with the fraudster. He says he was told the fraudster's social media account is in his middle name. He hasn't clarified why the scammer's name on his phone was different.

In summary as Mr S has not been able to provide evidence of how the scam unfolded, I have to rely on the evidence I do have from later in the scam and Mr S's own recollections. As these aren't consistent, I'm satisfied that it's more likely than not that Monzo has been able to establish Mr S made the payment without a reasonable basis for belief – because there isn't persuasive evidence to support an alternative conclusion. Mr S hasn't provided persuasive submissions as to why he reported the scam so quickly – there's no clear evidence as to what happened in the ten minute period after making the payment – so I think in the absence of evidence it's more likely than not that Mr S had reservations about the legitimacy of the seller when making the payment. Despite questioning Mr S on these points, I don't think he's been able to satisfactorily explain the inconsistencies.

For these reasons, I'm therefore not persuaded by the evidence currently available that Mr S met his requisite level of care under the CRM code that would require Monzo to reimburse him.

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

I've thought about whether Monzo did enough to protect Mr S from financial harm.

The CRM Code says that where firms identify APP scam risks in a payment journey, they *should 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.*

I am also mindful that when Mr S made this payment, 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 (among other things).

I've considered the payment Mr S made to the scammer and I don't think it stood out enough for Monzo to have been concerned he may have been at risk of financial fraud at the time he made it, so I don't think Monzo should've done more than it did when processing the payment.

I understand Mr S doesn't think Monzo reported the scam soon enough to the beneficiary bank in order to retrieve his money and that had it acted sooner, further funds could've been recoverable.

I agree that Monzo didn't contact the beneficiary bank in the timeframes I would expect. I've therefore thought about what would've happened had Monzo acted sooner. We've been provided with evidence from the receiving bank that Mr S's funds were removed by the fraudster at 12:27 on the same day Mr S made the payment – so around 30 minutes after Mr S made the payment. At 12:27, Monzo was still in the process of collecting information about the scam from Mr S – a process it would need to complete in order to raise a fraud case with the beneficiary bank. The beneficiary bank would then also need a reasonable period of time to review the allegation and take action. I therefore don't think, even if Monzo had acted immediately, that any further funds of Mr S's would've been recoverable – so I don't think it would be fair or reasonable to hold Monzo liable for the remaining funds Mr S lost.

Overall, I'm satisfied that Monzo's position on Mr S's fraud claim, and its assessment under the CRM Code, is fair and reasonable in all of the circumstances and that Monzo shouldn't be held liable for Mr S's losses. And so I don't intend to make an award to Mr S.

I appreciate this isn't the outcome Mr S will have been hoping for – but the circumstances of the case and the evidence available lead me to find I'm unable to uphold this complaint.

In my provisional decision I asked both parties to send me any further evidence or arguments that they wanted me to consider by 8 September 2021. Neither party provided any further submissions.

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.

As neither party has provided any additional evidence or arguments, I see no reason to depart from my provisional findings, and I remain of the view that this complaint should not be upheld for the reasons set out in my provisional decision.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 October 2021.

Kirsty Upton
Ombudsman