

## **The complaint**

Mr K is unhappy that Monzo Bank Ltd (“Monzo”) will not refund the money he lost after paying for an item he did not receive.

## **What happened**

Mr K wanted to buy a games console for a family member for Christmas. He went online and found the profile of someone selling the console he wanted to buy on a selling page of a social network site. The console in question was sold out on other websites online. The profile Mr K found was a number of years old and appeared to have been used to sell electrical items before and received good reviews.

Mr K sent a direct message to the seller who he later spoke with on the telephone. The seller showed him pictures of the console and provided a copy of their passport to prove their identity. Mr K and the seller agreed on a price of £415 but Mr K didn't have the whole amount so it was agreed that he would transfer £100 and then a further £315 the next day. Once the seller had received the payment, they would send the console to Mr K.

Mr K initially asked the seller if he could pay via Paypal but the seller told him they didn't have an account but would accept a bank transfer. The seller provided their bank account details which matched the name on their social media profile. And so Mr K made the transfers from his Monzo account online.

Once Mr K had made the payment, the communication with the seller stopped and Mr K didn't receive the console - so he contacted Monzo for help. Mr K explained that he thought he had been the victim of a scam and explained what had happened.

Monzo went on to consider whether it should refund Mr K for his loss. But it turned down his claim for a refund and said he didn't take enough steps to check who he was paying and what he was for were legitimate. When Mr K complained, Monzo said it had acted in line with its internal procedures and regulatory guidelines.

Mr K brought his complaint to our service as he wasn't happy with the bank's decision.

One of our Investigators looked into the complaint and recommended it be upheld. They noted that Monzo is not a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) but has agreed to adhere to it regardless. This means Monzo has made a commitment to reimburse customers who are victims of authorised push payment scams except in limited circumstances. Our Investigator didn't think any of those circumstances applied here.

The investigator said Monzo had not been able to establish that Mr K did not have a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods and/or that the person he was transacting with was legitimate. In reaching that position, they placed weight on the social media selling platform

as a recognised and informal selling site. They pointed out that the profile in question had been established for a number of years and appeared to have sold electrical items successfully before. He thought the price requested was reasonable for a second-hand console like the one in question and that Mr K had taken some steps to verify the sellers identity – in reviewing the sellers passport and confirming it matched the name of the person he was speaking to. For these reasons, our investigator thought Monzo should have fully reimbursed Mr K's loss.

Monzo disagreed. It said the price of the console was 'too good to be true' and it pointed to some adverts it had found online which showed the cost of the console ranged from £523 to £654. Monzo said the cost of the console should've been of concern to Mr K. It also pointed to some best practice standards set out by the social networking site itself which said users should use Paypal and not electronic transfer when making purchases through the site. Monzo didn't think Mr K had taken heed of this. It also pointed out that profiles on the site were easily faked and shouldn't be relied on as factual. Ultimately, Monzo was of the opinion that the site used was not a 'trusted selling platform' and it thought Mr K should have done more due diligence before making the payment. Specifically, Monzo said Mr K should've questioned why the console was being sold for a below average price when it was sold-out elsewhere.

Our Investigator wasn't minded to change their view of the complaint. They acknowledged that the price was lower than the average price found by Monzo but although cheaper, this didn't mean that the price should be considered too good to be true on this occasion, especially as the item would be considered second-hand. They pointed out that Mr K had been told that he could not pay via Paypal as the seller didn't have an account and he pointed out that the very nature of the sight meant it was geared towards informal private sales and so they didn't think that the seller not having a Paypal account was concerning given the circumstances of the sale.

Monzo did not agree. It maintained the view that Mr K did not have a reasonable basis for belief when making this payment. It thought he had sent the payment to an unknown individual online without proper basis for trusting them and reiterated the points it had made previously. Monzo maintained that it had no obligation to refund the loss when correctly applying the CRM Code.

As no agreement could be reached, the complaint has been referred to me.

### **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.

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 K in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Mr K from the possibility of financial harm from fraud.

There's no dispute here that Mr K was tricked into making the payment. He thought he would receive a games console in exchange for his money and the seller did not keep to their side of that bargain. But this isn't enough, in and of itself, for Mr K to receive a refund of the money under the CRM Code. The Code also places a level of care on Mr K.

### *The CRM Code*

Monzo has agreed to adhere to the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) 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.

It is for Monzo to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code if it believes its customer should not receive a refund of the amount lost. In this case, Monzo has explained its key concern is whether Mr K made the payment without a reasonable basis for believing that the payee was the person he was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom she transacted was legitimate. There are further exceptions within the CRM Code, but they do not apply in this case.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am not persuaded the concerns Monzo has raised about the legitimacy of the transaction Mr K was making are enough to support its position that he failed to meet his requisite level of care under the CRM Code. It follows that I do not think Monzo has been able to establish that it may choose not to reimburse Mr K under the terms of the CRM Code.

Having thought about what both sides have said and provided, I consider Mr K had a reasonable basis for believing the payment he was making was for genuine goods and that the person he was transacting with was legitimate. In reaching that conclusion, I have thought carefully about what it is realistic to have expected Mr K to do when he was looking to spend a total of £415 online.

The screenshots provided show the sellers profile had been established for a number of years and had sold electrical items previously – with apparent success. The seller was able to provide a copy of a passport which mirrored the name on the profile and Mr K was able to see pictures of the console in question. The profile appeared to be that a private individual who posted regularly.

Having looked at this information, I don't think there was anything obviously untoward about the seller. I think all of this information when taken together would have lulled Mr K into a false sense of security at the time he made the payment. And I'm not satisfied that Monzo has placed enough weight on the fact that this appeared to be a private sale between two individuals and so it is difficult to see what more Mr K could've done to establish that the seller was who they said they were. I don't think it was unreasonable for Mr K to have believed the seller was who they said they were and from what Mr K recalls that he saw, he had no reason to think the seller would not keep to their side of the bargain on this occasion.

I've thought about the price Mr K paid thinking he was getting a second-hand but sold out console. Monzo feels that the price offered by the seller at the time the console was purchased was not feasible and it has pointed to adverts showing a higher purchase cost. It says Mr K should have reflected on whether this was too good to be true. But I don't think the price the seller gave was such that Mr K ought to have questioned it more in his own mind when viewed in the context of the overall situation he found himself in. People can and do find good deals online. The console was second-hand and this was a private sale between two private individuals. The seller may have had reasons for selling the console that meant they were happy to take a slightly lower price. I note that the majority of the examples provided by Monzo in this case relate to the sale of the console by online retailers - which are more likely to sell at the recommended retail price. And so, whilst I accept that the cost of the item was slightly lower than expected, I'm not persuaded that it was so low that it should've caused Mr K concern.

Even though Monzo has highlighted there was more Mr K could have done to assure himself that he could trust the seller, I am not persuaded Mr K needed to make such extensive enquiries in the particular circumstances of this case. I've thought carefully about the price of the item Mr K wanted to buy and the fact that this was a private sale. Whilst the situation is finely balanced, I think Mr K's actions and assessment of the situation was appropriate and proportionate to a relatively unremarkable payment of £415.00.

Finally, I don't agree that the site used is not a 'trusted selling platform'. The site in question is a well-established site used primarily for the purpose of private second-hand sales between private individuals – such as the one Mr K entered into. Whilst I acknowledge that the best practice guidance on the site itself directs potential buyers to purchase via Paypal, it does not preclude the sale of items via bank transfer as Monzo says it does. In fact, it directs customers who are paying via transfer to ensure they do so via logging into their account and not clicking on external links.

Weighing everything up, I don't think it would have been evident to Mr K that there was a considerable degree of risk associated with this purchase. The seller appeared to have a well-established profile and the price wasn't so low that it should've appeared unrealistic. I am not persuaded it did occur to him that there was a possibility he wouldn't receive the item or that it might not be genuine. Fraudsters are masterful at building trust and confidence and it is not realistic to expect Mr K to have the same awareness of what scams like this can look and feel like as the bank does. Mr K had successfully bought items from sellers on this site before and has told us that he wasn't aware of the prevalence of such scams.

I think Mr K took enough care with a relatively modest purchase of £415.00 to say that he had a reasonable basis for believing he was buying genuine goods from a legitimate seller. I don't believe he took a calculated chance by going ahead with the purchase in the circumstances he did.

Overall, I don't think Mr K's actions fell below the level of care expected of him in this situation. I think Monzo ought to have fully refunded Mr K at the time he reported the loss and so it should fairly and reasonably compensate Mr K by refunding that loss now.

### **Putting things right**

The Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost.

So I think it's fair that Monzo refunds the £415.00 Mr K lost, along with 8% simple interest from the date Monzo declined his claim until the date the funds are returned.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to pay the settlement as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 March 2022.

Emly Hanley  
**Ombudsman**