

The complaint

Mr A is unhappy Monzo Bank Ltd (“Monzo”) hasn’t refunded him the money he lost after falling victim to an authorised push payment (“APP”), social media, investment scam.

What happened

The details of this case have been clearly set out by our Investigator. As such, the facts are well-known to both parties, so I don’t need to repeat them at length here. In summary, Mr A fell victim to a social media investment scam.

In early April 2021, Mr A was in hospital. While in hospital, Mr A found a social media account of someone claiming to be involved in trading. This person claimed they generated high returns for their clients, and they took a 20% commission having a 90% success rate.

Mr A says the person had a lot of followers (13,000) and there seemed to be success stories posted on the social media profile. Mr A got in touch with the person and then, through an alternative social media platform, enquired about investing. Unfortunately all of this had been set up by a fraudster and Mr A was not dealing with a genuine party.

Mr A was told that he could invest upwards of £600 and that such an amount would generate a guaranteed minimum return of £3,000 within one to four hours and was payable the same day. And, as a first-time trader, if the trade collapsed, Mr A would be entitled to receive a full refund.

Mr A asked some questions, such as whether the supposed ‘trader’ was an affiliate of a company whom I’ll refer to as “Company E” (which was shown on the images on the social media platform), how long had they worked for that company, and whether it was FCA regulated. The scammer confirmed they did work for Company E and had been working for two years and that it was FCA regulated.

Mr A also asked if he would receive any agreement. The scammer advised they had been trading for so long they had stopped doing agreements, explaining that clients get paid out quickly and were paid before any agreements could be read and signed.

Mr A went on to make a payment of £800 on the evening of 5 April 2021 via a bank transfer from his Monzo account to the account details provided by the fraudster. Mr A asked the scammer why he was paying a personal account with the scammer advising that it was the ‘managers’ personal account due to Covid and working from home, and that it took too long to access the company accounts.

The scammer advised Mr A that they had invested £600 and that it had already started going up, with the scammer then ‘investing’ the remaining £200. Within hours the scammer advised that Mr A’s investment was returning nearly £6,000. The scammer advised that when the markets had closed the trade was on £9,358 and they would continue with the trade at 09:00am the following day.

The next morning, the scammer got in touch to say that Mr A’s trade was successful and had

gone up to nearly £16,000. The scammer advised that commission / release fee for the funds was £3,183.80. Ultimately Mr A went on to make the payment to the scammer.

Having made the payment, Mr A didn't hear from the scammer. Mr A contacted Monzo to report what had happened the following day. Monzo contacted the bank the money had been sent to, but unfortunately no funds remained and so there was nothing to return to Mr A.

Monzo also considered whether Mr A was due a refund. Monzo considered the case under the Contingent Reimbursement Model Code ("CRM Code"). This is a voluntary code and while Monzo has not signed up to it, it has agreed to abide by the principles of the CRM Code. 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 of the exceptions in the CRM Code applies, in that it believes Mr A didn't have a reasonable basis for believing the purpose of his payments was legitimate. And so it said it wouldn't refund him under the CRM Code.

Mr A was unhappy with Monzo's response and so brought his complaint to this service. One of our Investigator's considered it but said that Monzo had acted fairly and reasonably. She agreed that Mr A had acted without a reasonable basis for belief and so Monzo had fairly declined his claim under the CRM Code.

She also discussed Mr A's situation at the time of making the payments, as he was in hospital. The Investigator sympathised with Mr A, but still concluded that Mr A could reasonably have done more to ensure it was a legitimate investment.

Mr A didn't accept the Investigator's recommendations and so the complaint has been passed to me for a final decision.

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.

I'm sorry to disappoint Mr A but I'm not upholding his complaint. I know he's been the victim of a cruel scam and I don't doubt that these events have had a significant impact on him financially, mentally, and emotionally. But I don't believe Monzo has acted unfairly or unreasonably in its answering of the complaint.

There's no dispute that Mr A authorised the payments that are the subject of this complaint, even though he did so as a result of being deceived by fraudsters. Broadly speaking, under the account terms and conditions and the Payment Service Regulations 2017, he would normally be liable for them. But that isn't the end of the story.

Where a customer has been the victim of a scam it may be appropriate for the bank to reimburse the customer, even though payments have been properly authorised. Of particular relevance to the question of what is fair and reasonable in this case is the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code), which Monzo has agreed to abide by the principles of.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Mr A. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish that a customer failed to meet their requisite level of care, as set out in the CRM Code.

One such circumstance – and the one particularly highlighted by Monzo – might be when it can be demonstrated that the customer made the 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.

In considering these points, all of the circumstances of the case should be taken account of, including the characteristics of the customer and the complexity of the scam.

I've thought carefully about whether this exception to reimbursement applies in Mr A's case. And so I must ask if he made the payments he did whilst having a reasonable basis for belief that all was genuine. I'm afraid I don't find that's the case.

Having looked at the images of the social media account, I find it should have given Mr A cause for concern about its legitimacy. The supposed trader posted pictures seemingly of their bank accounts and cryptocurrency accounts showing vast amounts of sums and having made customers nearly 10 to 12 times profit in short spaces of time.

This leads me on to the investment and the returns promised. I find that the offering itself was too good to be true from the outset and to the extent that it ought to have raised significant doubt on Mr A's part. The suggestion that £800 could be turned into a minimum guaranteed return of £3,000 doesn't sound feasible, particularly when the timeframe given was one of only a few hours. And I think it was also questionable that returns were guaranteed, as if the investment carried no element of risk.

These features ought to have led to Mr A questioning the proposed opportunity and checks ought to have been carried out. But it doesn't appear any actual checks were carried out with Mr A asking some questions, but seemingly simply taking the scammer's word or answers at face value.

Mr A did ask some questions of the scammer such as who they worked for, how long they had worked there and whether Company E was FCA regulated. However I am mindful that if Mr A was aware of companies being FCA regulated, then had he conducted a search of Company E at the time on the FCA website, he would have seen the were warnings advising that fraudsters were impersonating the Company and had been for some time.

Mr A also asked for an agreement from the scammer – but was told that they had been trading for so long, and the profits were generated so quickly, that they no longer continued with agreements. In essence, there wasn't anything formal that Mr A received other than communication through a social media platform. This to my mind was another flag that should have given Mr A cause for concern.

I can see that the account details given to Mr A are in the name of an individual. Mr A was told that it was the managers personal account as a result of Covid and working from home and that it took too long to access the investment companies account. This doesn't sound realistic or something that any genuine investment firm would do, and I believe it's fair and reasonable to say this was another warning sign.

There are other elements of the proposition that also stand out as suspicious. The fact that all investments seemed to be being managed through a social media platform; the way messages were written by the scammer, in terms of professionalism; and that other client's profits seem to have been displayed / shared online are all concerning features.

I appreciate the social media platform may have had followers and what looked like success stories. But given the nature of the platform used, it wasn't really possible for Mr A to verify what he was seeing. I don't find it was reasonable to rely on these features to judge the investment as genuine, at least not in the face of the other concerning elements present.

In the communication between Mr A and the scammer, Mr A said he also traded. Given Mr A was aware of and asked about whether Company E was FCA regulated, it is reasonable to suggest that Mr A could have carried out more checks than he did. But even if Mr A didn't have experience in investing, it doesn't remove the need to carry out reasonable checks and to have a reasonable basis for belief before making a payment.

Much of my reasoning here really applies to the first payment, though much does carry through to the second payment too. But it's also relevant for me to say that I don't find a reasonable basis for belief is established for the second payment Mr A made. That's because having made an £800 payment the day before, Mr A's £800 investment had increased 20-fold, to nearly £16,000 by the following morning. This type of return is unfortunately wholly unrealistic and so Mr A should have had a real concern that things were not as they seemed and should have had concerns prior to making the second payment to release the funds. I appreciate when Mr A made the second payment says he saw what he thought was a company name under the payee name – which he felt added to the legitimacy of things, but that name was the name of the bank where the funds were being sent. I don't think this in itself is enough to say Mr A had a reasonable basis of belief in making the payment, in light of all the other concerning features I've mentioned.

With all of this in mind I don't find that Mr A had a reasonable basis for believing he was making a legitimate investment, and so Monzo has fairly declined his claim under the CRM Code.

Is there any other reason Monzo ought to refund Mr A?

I've thought about whether Monzo did enough to protect Mr A 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 CRM 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 A made this payment, Monzo should fairly and reasonably 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).

The payments made by Mr A were not so remarkable that Monzo ought to have believed there was a scam risk. The amounts sent each time weren't particularly large or unusual, though I appreciate they represent a significant loss for Mr A. I am also mindful the second payment was made to the same destination as the first. And nor were there other concerning features – in terms of the payments – to put Monzo on notice. And so, I don't believe Monzo needed to do more than it did, in terms of providing warnings about making payments.

Mr A has described his condition that he was suffering with and that resulted in him being in hospital at the time the payments were made. The CRM Code talks about customers being reimbursed, despite any exceptions applying, if the individual was vulnerable to the extent that they were unable to protect themselves from the scam.

From what I've seen I don't think this applies to Mr A. At the time, Mr A had sought out the investment himself, rather than being cold-called or pressured into the arrangement. Mr A was also able to ask lots of questions of the scammer which unfortunately he took at face value rather than conducting further enquiries. So, I don't find it would be fair and reasonable to conclude that Mr A was vulnerable to an extent that he was unable to protect himself from this type of scam as set out by the CRM Code.

The final consideration I have to make is whether Monzo did all it could to try and recover the money Mr A lost. Monzo was limited in terms of what it could do here; it could only ask the receiving bank to return any money that remained in the recipient account. It needed to make enquiries quickly for the best chance of recovery. The evidence I've seen persuades me Monzo did act quickly. Unfortunately, it is common for fraudsters to withdraw or move the money on as quickly as possible. As Mr A reported the matter to Monzo the following day, when the receiving bank replied – it was to say that no funds remained, so there was nothing more Monzo could do.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 January 2022.

Matthew Horner
Ombudsman