

Complaint

Mr W is unhappy that Monzo didn't do more to help him when he was the victim of a scam.

Background

Mr W wanted to sell his sofa. He placed an advert on an online market place. A prospective buyer contacted him and agreed to pay £1,700. The buyer asked if they could pay him using a third-party payment system which Mr W agreed to accept. Unfortunately, the person who had contacted him didn't intend to buy Mr W's sofa, but merely wanted to create the conditions to allow him to perpetrate a scam.

Mr W was sent several emails which appeared to be from that third party. These emails explained to Mr W that his buyer had overpaid him. It asked him to make a bank transfer to correct this overpayment, after which he would receive the proceeds of the sale of his sofa. Mr W made payments from his account with Monzo and an account he holds with a different bank. From his Monzo account, he made two payments for £510 and £260.

Once he realised that he'd fallen victim to a scam, he contacted Monzo to let it know. It contacted the receiving bank which was able to recover £2.01 of Mr W's funds. Unfortunately, the rest had been moved out of the receiving account by the scammer.

Monzo declined to refund these two payments. It considered whether it needed to do so if it applied the terms of the Contingent Reimbursement Model (CRM) code and decided that Mr W hadn't had a reasonable basis of belief that this payment request was genuine and should've proceeded with caution. If he had carried out further enquiries directly with the third party, he'd have quickly uncovered that this request couldn't have been a genuine one.

Mr W was unhappy with Monzo's response and so he referred a complaint to this service. It was looked at by an Investigator who upheld it. The Investigator found that Mr W did have a reasonable basis for believing the payment request to be genuine. She said that the emails were plausibly from the third party given their visual presentation and, although to the experienced reader there were clear warning signs that this might be a scam, she didn't think the typical customer would've recognised them. To do so would've required a reasonably good base of knowledge about the most common scams.

Monzo had argued that it was illogical for Mr W to be asked to make a payment in order to receive funds from his buyer. The Investigator didn't think it would seem so to a customer who was unfamiliar with advance-fee scams such as this one and, since he'd appeared to receive the request from a legitimate business, he would've had no reason to doubt its authenticity.

Monzo also argued that Mr W should've checked his account with the third party to see if the frozen funds were shown in his recent account activity. But the Investigator didn't think this would necessarily have dissuaded Mr W from following the instructions of the scammer. He'd been told that his funds were "*being held*" and so he wouldn't automatically have expected to see them appear in his recent transactions.

Monzo disagreed with the Investigator's opinion. In addition to the arguments it had already made, it added that:

- Mr W should be expected to carry out due diligence before transferring money to someone they didn't know, particularly where he's anticipating the receipt of funds rather than being expected to pay for something himself.
- Mr W should've recognised that it was unusual for him to be asked to make the payment by bank transfer.

Because Monzo disagreed with the Investigator, the complaint has been passed to me to consider and come to a final decision.

Findings

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.

The Lending Standards Board's Contingent Reimbursement Model (CRM) Code sets out that, as a starting point, a customer should receive a refund if they fall victim to an APP scam such as this one. A business is free to decline to pay a refund if it can show that one of the exceptions in the code applies. I've considered whether Monzo should have reimbursed Mr W in line with the provisions of the CRM Code and whether it ought to have done more to protect him from the risk of financial harm from fraud.

There's no dispute here that Mr W was tricked into making the payments. He thought it was necessary for him to make these payments in order to receive the payment for the goods he'd sold online. But even though he was a victim of a scam, he's not entitled to a refund if Monzo can establish that he failed to meet his requisite level of care under one or more of the exceptions set out in the code.

Monzo hasn't argued that Mr W ignored an '*effective warning*' before making these payments. And in any event, these payments were relatively small and so I don't think its obligation to display a warning was engaged here. However, it can fairly and reasonably decline to pay a refund if *"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."*

I've considered this point carefully and I'm satisfied that Mr W did have a reasonable basis for believing that the payments he was making were in response to legitimate requests from the third party.

The emails he received are visually similar to legitimate emails that it would've sent. They included the official company logo and convincingly displayed details of the payment he believed he'd received and an official ID number associated with the transaction. Overall, I don't think there was anything immediately apparent in terms of the presentation of the emails that would've been a cause for concern for Mr W.

The point Monzo makes about the illogic of making a payment in order to receive funds is well made. But erroneous overpayments are a common occurrence in the world of online payments and the idea that his buyer might have paid too much is not an implausible one. I don't think it would be unreasonable for Mr W to have simply assumed that the third party was protecting his buyer from the risk that Mr W might take advantage of an accidental overpayment.

The fact that he was asked to correct the overpayment by making a bank transfer (and therefore taking him outside of the third party's payment system) would seem very unusual to a customer who's experienced with sending and receiving money through that system. But that doesn't apply to Mr W – he's told us that he'd made only limited use of the third party in the past.

I recognise that if Mr W had contacted the third party directly or spent some time researching this request on its website, there's a chance he might have found something that dispelled the notion that this request was a genuine one. But from his perspective, this appeared to be a legitimate request. The emails he received were effectively indistinguishable from genuine ones and so he didn't identify any need to carry out further research before making the payments.

Overall, I'm satisfied that Mr W made these payments with a reasonable basis for believing them to be genuine and so it follows that Monzo can't rely on the exception described above to decline to pay him a refund.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mr W accepts my final decision, Monzo Bank Ltd should:

- refund him the two payments he made to the scammer, less the funds it was able to recover from the receiving account.
- It should also add 8% simple interest per annum on these payments from the date Mr W made them until the date it pays a settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 March 2022.

James Kimmitt
Ombudsman