

The complaint

Mr H is unhappy because Monzo Bank Ltd (“Monzo”) declined to refund £750 which he lost as the result of a scam.

What happened

The details of this complaint are well known to both parties, so I will not go into every detail of what happened here. But, in summary, both parties accept that in April - May 2021, Mr H was tricked into sending two payments in the belief he was sending them to secure the purchase of a puppy.

Mr H was looking to get a puppy so searched on a well-known pet classified advert website. He found an advert for the kind of puppy he was interested in getting, so messaged the breeder. He spoke with the breeder, asking lots of questions about their dog and its health. They told him that their dog was not yet pregnant, but they were aiming to get her pregnant when she next came into season, following advice from a vet as she had suffered with a ‘phantom pregnancy’ after her last season. He was told that they had a stud dog lined up, and he said he was given the details of this dog too.

After messaging for some time, the breeders agreed to meet him at their address so he could meet them and their dog, and they could check his suitability to own one of their puppies. Mr H sent a holding deposit of £200 before meeting them, as he wanted to show he was serious about buying the puppy. He met them in their home and walked their dog with them. The breeders added him to their social media, and shared their driving licence and council tax documentation with him too. He was satisfied that the photos of their home and their dog matched with what he saw in real life. Believing things to be legitimate he sent the second payment of £550 as a down payment to secure a puppy when one should be born. He was told he was one of three people that they had chosen to have a puppy, but that he could get his money back should a puppy not become available.

The scam came to light when the breeders stopped communicating with him, following on from making excuses as to why there was not yet a puppy. Mr H raised the matter with Monzo. Monzo investigated his complaint and issued its final response in August 2021, not upholding the complaint. In summary, they did not accept liability because they said that Mr H could have done more to check he was dealing with a legitimate breeder who was going to sell him a puppy.

Unhappy with Monzo’s response, Mr H brought his complaint to our service and one of our investigators looked into what had happened. They recommended that the complaint should be upheld, and that Monzo should refund the money that Mr H had lost, along with interest. In summary, our investigator thought this was a sophisticated scam and very believable to Mr H, so he had a reasonable basis for believing that he was making a payment to get a puppy.

Monzo didn’t agree with our investigator’s opinion on Mr H’s complaint. In summary, they maintained that he did not do sufficient checks to ensure he was genuinely talking to a legitimate breeder who had a puppy to sell him because:

- The puppy he was paying to purchase was fictitious – he had been informed that the dog was not pregnant but the deposit would guarantee a puppy if one were to come

about;

- No paperwork was involved and the only basis for trust appeared to be meeting the breeder face to face – so there was no misleading paperwork involved in the scam;
- They accept our investigator's point that there were no red flags in the conversation between Mr H and the breeder, but said that it does not mitigate his negligence as scammers do not begin their messages with *"this is a scam, but..."*;
- Whilst Mr H met the scammer in person, scams can happen in person or remotely. Ultimately, meeting them did not prove they were legitimate, it just proved they had a dog;
- Whilst the scammer told him elaborate stories about why the dog was being bred, this is not unusual for scammers to do to convince their victims of things;
- They could not see any reference to the stud dog in the screenshots they had been provided so were unable to comment on whether Mr H spoke with the breeder about this;
- In response to Monzo's earlier point that Mr H was paying for something knowing it did not yet exist, our investigator had pointed out that it was not unusual for people to pay for things that did not yet exist – for example paying for a bespoke cake prior to an event. They said that this was not comparable to paying for the '*manifestation of a dog*' as with the cake you would provide details of what you wanted and it would be made to order. Whereas here, Mr H was paying for the potential of a new puppy coming into existence. Paying for a puppy that did not yet exist was negligent; and
- The price was a reasonable price for a puppy, but not a reasonable deposit for a non-existent creature.

As agreement could not be reached, it has come to me to decide.

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

When thinking about what is fair and reasonable in this case, I have considered whether Monzo should reimburse some or all of the money Mr H lost 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 H from the possibility of financial harm from fraud. There is no dispute here that Mr H was tricked into making the payments. But this is not enough, in and of itself, for Mr H to receive a refund of the money under the CRM Code. The Code places a level of care on Mr H too.

The CRM Code

Monzo isn't a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances, but has agreed to apply its principles. Monzo say exceptions to reimbursement apply in this case. It says that Mr H didn't have a reasonable basis for believing the person he transacted with was legitimate or that they would ever have a puppy to sell him. 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.

The exception relevant to this case is where 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 they do not apply in this case.*

Did Mr H have a reasonable basis for believing that he was paying a legitimate payee for genuine goods or services?

I have carefully considered Monzo's representations about whether Mr H had a reasonable basis for believing that the transactions were genuine. But it does not persuade me to reach this conclusion. In particular, I am not persuaded that Mr H failed to take the requisite level of care required for Monzo to choose not to reimburse him under the terms of the CRM Code and I don't consider that Mr H lacked a reasonable basis for belief. I say this because:

- The scammers went out of their way to build trust here – meeting Mr H in person, taking him out with them and their dog for a walk, adding him on social media, and sending him copies of identification documents. I appreciate Monzo's argument that this proved nothing other than the fact the people he met had a dog. But these scammers went above and beyond what we see in a lot of scams of this kind – and I can understand why this helped satisfy Mr H, a would-be first-time dog owner, that they were legitimate. One might assume that scams in this arena involve people operating puppy farms, or people who are not who they say they are and may not even have a dog. Mr H was able to satisfy himself that neither of these were the case when he met the scammers – and I can see why it made him trust them more than an anonymous person online.
- I can also understand why the messages Mr H and the scammers exchanged, combined with the meeting and other elements mentioned above, led Mr H to believe he was dealing with a legitimate breeder. Mr H asked them the kind of questions one might be advised to ask a potential breeder around health screening and so on – and they were able to give him results that I would imagine would satisfy most members of the public. I do appreciate that scammers can come up with elaborate stories (as they did here) and that scammers don't start their messages with "I am a scammer", but I do think it is important in establishing whether Mr H had a reasonable basis for belief that the messages he exchanged with the scammers did not include any particular red flags that would alert him to the risk that he was falling victim to a scam. And the story the scammers gave him about the vet suggesting that their dog have a litter was plausible.
- Monzo have argued that he was paying to purchase a fictitious puppy as it did not exist and it may never have existed. It is not unusual for breeders to organise buyers or operate waiting lists for puppies that are yet to be conceived, and some will involve down payments to ensure the potential buyer is serious. I don't think this means that a person who makes such a payment should be considered negligent. It is my understanding that this became more prevalent between 2020-21 due to a puppy

purchasing boom. And in this case they told Mr H that there was a stud dog lined up, and this litter had been recommended by a vet so I think it added to his belief that the dog was likely to be impregnated in the near future.

- Monzo have argued that any deposit or down-payment should have been paid through the website he found the 'breeder' on, which had launched a deposit scheme in 2020. I agree that he should have done this – but it was a relatively new process and prior to this, and certainly with other puppy sales outside of this website, it would not be unusual to pay deposits directly to a breeder. So I don't think that this impacts Mr H's basis for belief.
- Monzo have also argued that the price he paid may have been reasonable for a puppy, but it was not reasonable for a deposit on a non-existent creature. I am not persuaded by this as he believed it was a deposit – and that it would be returned in the event of the puppies not coming into existence.
- There was no paperwork involved between Mr H and the scammers, and Monzo argue that this means he sent the money without any misleading paperwork involved in him falling victim to the scam. It is not unusual for formal contracts to be exchanged at the point of purchase with a puppy. Even if Mr H was unaware of this, both parties were allegedly new to the sales process for puppies so I don't think the lack of paperwork would have been a red flag to Mr H.

On balance, I am satisfied that when considering all of the circumstances, Mr H's response was not unreasonable. The scammers went out of their way to appear legitimate and credible to Mr H, and I think it is perfectly understandable that he felt he was able to trust them. It does appear that Mr H may have been aware of some types of puppy related scams, but this one did not have the common hallmarks of those scams. So after meeting the scammers, I do not believe that Mr H was alive to the possibility that he was dealing with a scammer.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code that Monzo have agreed to adhere to the principles of, I am not satisfied Monzo has been able to establish that when Mr H sent the payments he did so without a reasonable basis for belief.

Putting things right

The Code explains that where a customer has met their requisite level of care (which as I have explained, I am satisfied was the case here) they should be refunded all of the money that was lost. So I think it is fair that Monzo should:

- Refund the £750 lost as the result of the scam; and
- Pay 8% simple interest from the date they declined to refund Mr H under the CRM Code until the date of the settlement.

My final decision

For the reasons set out above, my decision is that I uphold Mr H's complaint against Monzo Bank Ltd and order it to pay the redress I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 November 2022.

Katherine Jones
Ombudsman