

The complaint

Mr A is unhappy because Monzo Bank Ltd (“Monzo”) declined to refund £3,600 which he lost as the result of a scam.

What happened

The details of the complaint are well known to both parties, so I won’t go into every detail of what happened here. But in summary, both parties accept that in October 2021, Mr A was tricked into sending funds in the belief he was sending them to secure a rental property he had organised to look around.

Mr A was looking to rent a property with his cousins on a large and well-known letting website which connects private landlords with tenants. His cousin found a property that appeared to meet their requirements, and showed Mr A the advert. Mr A’s cousin then liaised with the landlord about it over the phone and a messaging application. Believing things to be genuine, and believing that the website they were using offered protections if things went wrong, they agreed to sign a contract and pay a holding deposit and one month rent to secure the property, totalling £3,600. Mr A made this payment via his online banking on his Monzo application.

The scam came to light when they organised to view the property and were never able to view it, and the person they were speaking to cut off all contact with them. Mr A raised the matter with Monzo. Monzo investigated Mr A’s complaint and issued its final response in January 2022, not upholding his complaint. In summary, they did not accept liability as they did not think Mr A had done enough to check he was dealing with a legitimate party who had the rights to rent the property out. They contacted the receiving account, who returned the remaining balance of the receiving account which was £13.35 to Mr A’s account.

Unhappy with Monzo’s response, Mr A brought his complaint to our service and one of our investigators looked into what happened. They recommended that the complaint should be upheld, and that Monzo should refund the money that Mr A had lost, along with interest. In summary, our investigator didn’t consider that Mr A had ignored any genuinely impactful warnings and they thought this was a sophisticated scam and very believable to Mr A, so he had a reasonable basis for believing that he was making a payment to secure a property.

Monzo did not agree with our investigator’s opinion on Mr A’s complaint and asked them to reconsider. In summary, they said:

- Whilst the warning they gave was not specific to the scam Mr A fell for, the warning was shown because Mr A selected that he was making a payment to a ‘safe account’. This meant Monzo could not give Mr A an effective warning. But the warning was not the reason that Mr A’s claim was declined. It was because he did not perform adequate checks to ensure he was sending the funds to a legitimate payee, and for legitimate purposes.
- Mr A’s cousin took the conversation about the property away from the website and onto the phone and messaging application. This meant that the protection and support offered by the website normally was not available to Mr A’s payment.
- Monzo provided links to parts of the website that show how the process is supposed to work, which they say Mr A or his cousin did not follow, which says

that users should:

- view the property before signing contracts or making payments;
 - pay deposits via card payment through their website;
 - sign contracts through the website directly.
- He took no steps to verify the payments himself – he had seen the advert but otherwise he relied fully on his cousin. Whilst they were due to share the property, Monzo did not think it was reasonable for Mr A to have done no checks himself.

As agreement couldn't be reached the complaint has now been passed to me for a 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.

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 A 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 A from the possibility of financial harm from fraud.

There is no dispute here that Mr A was tricked into making the payment. But this is not enough, in and of itself, for Mr A to receive a refund of the money under the CRM Code. The Code places a level of care on Mr A 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 A didn't have a reasonable basis for believing the person he transacted with was legitimate or was providing a legitimate service.

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.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made;
- 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 A ignore an effective warning in relation to the payment being made?

Under the provisions of the CRM Code, as a minimum any 'effective warning' needs to be understandable, clear, timely, impactful and specific. It must also provide information that gives customers a better chance to protect themselves against being defrauded and should include appropriate actions for customers to take to protect themselves from APP scams. In short – the warning needs to be capable of countering the typical features of the generic scam type identified during the payment journey.

When making the payment, Mr A was asked 'What is this payment for?'. Mr A selected the option to say he was sending the payment to a 'safe account' rather than 'paying for goods or services' or 'something else'. He's not been clear what made him pick this one. As Monzo have pointed out, this meant that the payment journey he took and the warning he was given were not linked to making payments of the kind he was making. Monzo have said that the warning they gave is not the reason that they are declining to refund Mr A's losses – which I take to mean that they accept that the warning they gave was not effective. For completeness, I have considered whether I agree. The warning in question said the following:

"Stop, don't pay

It's very likely it is a scam

Remember:

Monzo will never call you without arranging by email or in-app chat first

Other banks will never ask you to move money out of your Monzo account

Check with your bank"

I don't consider this to constitute an effective warning because:

- There does not appear to have been any mention in the warning of the consequences of proceeding with the payment such as saying that the funds might not be recoverable and
- The warning is not specific to the type of scam Mr A fell victim to – he was not contacted by someone pretending to be from Monzo or any other bank asking him to move money; and
- It does not mention any of the hallmarks of the kind of scam Mr A was falling victim to including making payments towards a property, or any similar or related scam and so by extension there was no clear guidance that would have allowed Mr A to protect himself from the type of scam he was falling victim to.

I don't underestimate the challenge Monzo faces in providing warnings strong enough to break the spell in a sophisticated scam such as this. But the difficulty of meeting that challenge does not mean the warnings given by Monzo were sufficient or contained enough clarity to meet the minimum requirements in the CRM code. Overall, I am not satisfied that the warnings met the requisite criteria here. I don't consider the warnings given were effective warnings as defined within the CRM code. It follows that Monzo has not established it can fairly apply the exception to reimbursement relating to Mr A 'ignoring an effective warning'.

Did Mrs A have a reasonable basis for belief?

I have carefully considered Monzo's representations about whether Mr A had a reasonable basis for believing that the transaction was genuine. But I am not persuaded that Mr A 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 A lacked a reasonable basis for belief. I say this because:

- Mr A's cousin found the advert listed on a well-known and reputable website. Further, to add a property to this website the owner/landlord needs to upload evidence they have the right to rent out the property. This includes land registry title documentation, insurance certificate, signed letter from a solicitor from completion or confirming ownership of the property, and a mortgage letter. So, it is reasonable that Mr A and his cousin believed they were dealing with a legitimate landlord, and did not ask to see any documentation proving ownership;
- Monzo have argued that it was unreasonable for Mr A to make a payment of this size without doing any independent checks on the property or landlord – but instead relying on what his cousin had said and done. But I do not believe that it is unusual or unreasonable that when renting a house share, one member of the group will be entrusted to do more of the checks and correspondence. Further, Mr A was not dealing with a stranger here – it was his cousin. So I think it was reasonable for him to trust that his cousin had done sufficient checks;
- The scammers created an official looking tenancy agreement, which would have reassured Mr A that they were dealing with a legitimate landlord. It was styled to look like a genuine rental agreement through the website. There was nothing in it that should have given him cause for concern that he was dealing with someone illegitimate.
- Mr A thought the payment was going to an agent, rather than directly to the 'landlords' and so would have thought it was protected and legitimate.
- Monzo have pointed to guidance on the website that says you should see the property first, and make deposit payments by card payment on their website. But as Mr A didn't see this, and this seems reasonable given that it does not appear on the property page itself but rather on another part of the website. And I do appreciate one should see a property before renting it out, but unfortunately competition for rental properties can be high and so it is not unheard of that people will rent properties without seeing them first.
- Monzo said that Mr A didn't query which agency the agent was from when they contacted him. But Mr A had thought he was speaking with the landlords and they had said the agent would be in touch, so it was not as if the agent got in touch totally out of the blue. So I do not see any reason for him being concerned about the agent, when he thought he was dealing with legitimate landlords.

On balance, I am satisfied that when considering all of the circumstances, Mr A's decision to make the payments was not unreasonable. I believe that Mr A believed he was dealing with a legitimate landlord and he wanted to ensure he secured the accommodation. Mr A was not alive to the possibility he was dealing with a fraudster and this is another reason why I don't think he acted unreasonably by engaging with the fraudster, via his cousin, and making the payment.

With all of the above in mind, in light of all the circumstances here, and in line with the requirements of the CRM Code, I am not satisfied Monzo has been able to establish that when Mr A 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 Bank Ltd should:

- Refund the £3,600 lost as the result of the scam, deducting the £13.35 that was

returned from the receiving bank account; and

- Pay 8% simple interest from the date they declined to refund Mr A 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 A'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 A to accept or reject my decision before 30 November 2022.

Katherine Jones
Ombudsman