

## **The complaint**

Company M complains that Monzo Bank Ltd didn't do enough to prevent them losing out financially as a result of an authorised push payment ('APP') fraud.

## **What happened**

The background to the complaint is well known to both parties and so I won't repeat it at length here.

Briefly, as I understand it, in August 2020 M received an email from a known supplier about an outstanding invoice. There was some discrepancy in the amount and so M called the supplier to confirm the correct amount. After this call M received the invoice through an email for the correct amount, which was £11,246.40.

Two hours later M received another email purportedly from their supplier stating that due to 'an overdue loan payment' the supplier wasn't able to accept the payment into their usual bank account. The email asked M whether they could pay to an altogether different bank account. The account was with Monzo and the email said that this account was the bank account of the supplier's bookkeeper.

M went ahead and made the payment as advised. Unfortunately, the latest email was from a fraudster who had intercepted the exchanges between M and the genuine supplier. The fraud came to light few weeks later when the genuine supplier contacted M for the payment. M immediately contacted their bank who in turn contacted Monzo but no funds remained in the account.

M said that Monzo didn't help prevent their loss and that the bank allowed a fraudster to open an account in the first place. Monzo responded to say that it had opened the account correctly and followed its procedures and regulatory guidelines.

One of our investigators considered the complaint and said that it should be upheld. They said, in summary:

- The Contingent Reimbursement Model code (the CRM code) didn't apply in this case as M isn't a micro-enterprise.
- They haven't seen anything suspicious at the time of account opening to have alerted Monzo to the fact that the account would later be used for fraudulent purposes.
- However, the activities on the recipient's account following the receipt of the funds from M were unusual compared to the previous activities on the account. The bank had an opportunity to look at what was going on when the third payment out of the account was attempted. Had it looked at the ongoing activities at the time more closely, there were adequate reasons for it to be suspicious and that would have led to the fraud coming to light. As such the bank missed an opportunity here to prevent further losses to M.

Therefore, it is fair that it reimburses M for those losses.

- That said, there was some contributory negligence on part of M. The fraudster's email came within the same chain with the genuine supplier and as such M had no idea that it was corresponding with a fraudster. However, M had spoken to the actual supplier over phone just two hours prior to the intercepted email and there was no mention of any issue with their bank account by the supplier. Nor was this mentioned when the supplier sent the revised invoice to M following the call. So, when another email came soon after, citing difficulties in accepting the money into their account due to 'overdue loan payment' that ought to have raised questions. In addition, the email asked that the payment is made to the personal account of the bookkeeper which too was highly unusual. In these circumstances it would have been reasonable for M to have contacted the supplier verbally on a trusted source to verify the request and payment details. And if this had happened, the scam could have been discovered earlier. Therefore, it is fair that they take some responsibility for the loss.
- Taking all the above into account, a fair resolution to the complaint would be that Monzo reimburses £4,425.21 (this being 50% of the funds that would have remained had Monzo intervened at the third outgoing payment), together with interest on that amount.

The investigator later amended their opinion to say that in this instance no interest need be paid because M has not yet paid the supplier – though they say that they have very recently started a payment plan with the supplier.

M agreed with investigator's opinion. Monzo did not. In summary, it said:

- Though the investigator has said that the complaint isn't covered under the CRM code, they seem to have applied the provisions of the code here to arrive at their conclusions.
- There is no precedent to suggest that a beneficiary bank should be liable for a payment except the CRM code.
- Due consideration should be given to any failure on part of M and their bank to prevent the loss.

The bank reiterated that its systems acted as expected and there wasn't anything flagged on its systems for it to intervene. It said that the fact that its customer made a higher than usual payment doesn't automatically mean that it ought to have been flagged.

### **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.

Having done so, I agree with the conclusions reached by the investigator essentially for the same reasons.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Monzo also has an ongoing obligation to be alert to various risks in relation to accounts with it. Specifically, I'm mindful that it:

- must conduct their “*business with due skill, care and diligence*” (FCA Principle for Businesses 2);
- must fairly and reasonably been monitoring accounts and any payments made or received to counter various risks including anti-money laundering and preventing fraud and scams. These requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage risk, e.g. through customer due-diligence measures and the ongoing monitoring of the business relationship including through the scrutiny of transactions undertaken throughout the course of the relationship;
- must have systems in place to look out for unusual transactions or other signs that might indicate risk of fraud. This is particularly so given the increase in sophisticated fraud and scams in recent years.

Ultimately, it is a matter for the bank as to how it chooses to configure its fraud detection systems and strike a balance between allowing its customers to transact business and questioning transactions to confirm they are legitimate.

However where it is alleged that it didn't do enough to prevent a loss which resulted from an APP fraud, I will look into the circumstances of the case and decide, based on what I have seen, whether in that case Monzo could have fairly and reasonably done more.

The bank has provided relevant information to our service to allow us to investigate this. I am limited as to how much information I can share because it relates to a third-party account. But I'd like to assure that I've carefully reviewed everything before reaching my decision.

Having reviewed the submissions, I agree with the investigator that Monzo could have done more here. I note Monzo's submission that a higher than usual payment may not automatically be a trigger. However, I see that several large payments (compared to the previous transactions) went out of the account, in quick succession. And that was on the back of an unusually large payment coming in. Further, Monzo had an opportunity to look more closely at what was going on when their customer attempted the third payment as that was specifically brought to its attention, as explained by the investigator. Had it done so, it would have noticed the unusually large incoming payment which wasn't compatible with what their customer said at the time of the opening of the account. This would have prompted further investigation and the fraud would have come to light. As such the bank missed an opportunity here to prevent further losses to M. Therefore, it is fair that it reimburses M for those losses.

Monzo says that due consideration should be given for any failure on part of M and their bank to prevent the loss to M. I see that the investigator has already explained that they had reviewed the complaint about M's bank and had concluded that it hadn't done anything wrong in this instance and that was accepted by M.

As regards M, I agree that there was some contributory negligence on their part for the reasons explained by the investigator and so it is fair that they share some of the losses. But I must reiterate here that it is still the case that Monzo too failed to prevent the loss to M, as explained above. So, I consider it fair that both parties share the liability equally in this case.

Monzo says that the investigator has confirmed that the complaint isn't covered under the CRM code but yet they have applied the provisions of the code here to arrive at their conclusions. It also says that there is no precedent to suggest that a beneficiary bank should be liable for a payment except the CRM code.

It is correct that M isn't eligible to be covered under the CRM code as they are not a micro-enterprise. However, M is a '*small business*' for the purposes of our dispute resolution rules and have the necessary relationship under DISP 2.7.6(2B)(R) to complain to us about

Monzo. That is because they transferred funds as a result of an alleged authorised push payment fraud and Monzo was involved in the transfer of funds as the receiving bank.

And where we consider a complaint, we will determine it by reference to what is in our opinion, fair and reasonable in all the circumstances of the case. In doing so, it may be that in this instance we arrived at a conclusion that is similar to an outcome under the CRM code but that is not to say that we applied the CRM code.

Further, as previously noted, even though the CRM code didn't apply here, this doesn't remove Monzo's responsibility to identify and respond to signs of possible fraud. I'm satisfied that there should have been an intervention here for the reasons explained and, if there had been, the fraud would likely have been uncovered, preventing M's losses.

M told us that it hasn't yet paid the supplier and has only recently started a payment plan with them. Thus, though M has lost its funds, from what I can see, they haven't yet suffered any additional loss on being deprived of those funds. So, I agree that it wouldn't be fair to award interest in this instance.

### **My final decision**

I uphold this complaint. In full and final settlement of it, Monzo Bank Ltd should pay £4,425.21 (less any money already returned).

If this sum isn't paid to M within one month of Monzo Bank Ltd getting notification from us of M's acceptance of this decision, then Monzo should also pay M simple interest on any outstanding sum at the rate of 8% per year from the date of my decision until the date Monzo pays M the relevant amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 9 December 2022.

Raj Varadarajan  
**Ombudsman**