DRN-3568510

The complaint

Mrs F complains Monzo Bank Ltd won't reimburse her in full for money she lost when falling victim to a bank impersonation scam.

What happened

In March 2021, Mrs F received texts purportedly from another bank she is a customer of, which I'll call "B", to ask if she had made a payment of £253.99. When she replied 'N' she was told she'd be contacted. It transpires this text and the following calls were actually from scammers pretending to be B's fraud department.

Mrs F says the callers knew her bank details, personal information and had seen fraudulent activity including payments to Deliveroo and Mercedes. She says they explained her two current accounts with B had been compromised and they would need to set up two new accounts for her. It isn't entirely clear how the scammers had access to Mrs F's accounts with B. But she reports she was told fraudsters had taken out overdrafts – totalling £2,000 - on her accounts and everything needed to be transferred to Monzo to prevent loss. Mrs F agreed to the transfer into her Monzo account.

She says she was then notified two new accounts had been set up with B and account details were provided for her to move her money back to it. When she attempted it initially, she received a message that the payee – her – didn't match the account destination. So she was given another name to use, and was told it was the name of a branch manager for B. She then received a further warning, in which Mrs F confirmed she was transferring money to a 'safe account'. Mrs F not only sent back the £2,000, she also sent an additional £2,958 that had been held in her Monzo account – this was done in two payments. It isn't entirely clear why this was done but it appears Mrs F was told the fraudsters had access to her Monzo account also. During this time, Mrs F says she searched the number she was called from and realised it was a scam.

Mrs F reported the matter to Monzo. It refunded £2,958 that she had lost from her Monzo account. But it refused to reimburse the £2,000 as it said that had been unauthorised lending and so should be the responsibility of B. Not happy with that, Mrs F asked us to look into her complaint. Our investigator upheld the complaint. She said that, under the Lending Standards Board's Contingent Reimbursement Model (CRM), Monzo should reimburse customers who are victims of authorised push payment scams except in limited circumstances; and she didn't think those circumstances applied here. (Although not a signatory of the CRM, Monzo has agreed to adhere to it). The investigator upheld the complaint as:

- She wasn't persuaded Monzo had provided an effective warning when the payments were requested.
- She was satisfied Mrs F had a reasonable basis for belief that her account with B was compromised and that she needed to take action.
- As Mrs F had selected 'safe account' it ought to have known she was risk of losing money and paused the payment to ask further questions.

Monzo asked for the matter to be referred to an ombudsman. In summary, it says:

- It doesn't believe it should be reimbursing the £2,000 that was unauthorised lending from B. It believes B should be responsible for reimbursing this.
- It provided an extract from some guidance where it suggests the loan provider will be liable for making good an unauthorised loan and so it doesn't believe it is responsible for this.

On 24 May 2022, I issued my provisional decision explaining why I wasn't going to ask Monzo to pay any more compensation than it already has. Monzo has confirmed it agrees with the outcome reached. We haven't heard from Mrs F, despite following the matter up and providing extra time for a response. It is now appropriate to move the complaint to this final stage and in doing so, I have assumed Mrs F has nothing further to add.

As neither party has provided any further submissions for me to consider, I see no reason to alter my provisional findings. I therefore make them final below.

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 broad terms, the starting position is that a payment service provider is expected to process payments that its customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs), which apply to this complaint, and account terms and conditions. But where a customer made a payment as a result of the actions of a scammer, it may sometimes be fair and reasonable for a payment service provider to reimburse its customer, even though the payment was authorised.

In considering this, I have taken account of whether Monzo ought to have reimbursed Mrs F under the provisions of the CRM code, and whether it ought to have done more to protect her from potential financial harm from fraud. The Code also places a level of care on Mrs F, and so I have considered whether she met this.

The CRM Code

The CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this, in all but limited circumstances. 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 other exceptions which aren't applicable here. So I need to consider whether any exceptions apply to Mrs F's case.

Was there an effective warning?

The CRM Code sets out that an effective warning should enable a customer to understand what actions they need to take to address risk and the consequences of not doing so. As a minimum the CRM Code sets out that an effect warning should be understandable, clear, impactful, timely and specific.

Monzo has provided a copy of the warning that was provided to Mrs F. Initially the customer is asked what the payment is for – amongst a number of options is 'Transfer to a 'safe account''. Once that option is selected the customer is taken to an additional screen which has a warning triangle, and underneath says:

Stop, don't pay
It's very likely this is a scam

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

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

I have considered the warning carefully. And although I accept this is written in clear language and is provided at a timely place within the payment journey, I'm not persuaded its impactful or specific. Although it tells the customer not to pay, it doesn't set out the consequences of proceeding; Monzo has said in its submissions that the warning clearly states that it is almost impossible to reclaim money, but this doesn't feature in the warning information it says Mrs F saw. And although it says other bank's will never ask you to move money out of Monzo, there is nothing about scammers pretending to be banks within the warning.

Overall, I'm not minded to find the warning was effective. I do, however, think it relevant to take into account when deciding if Mrs F had a reasonable basis for belief, which I come on to below.

Should Monzo have intervened?

I have taken account of section SF1(5) of the CRM which says:

> *Where a Firm has sufficient concern that a payment may be an APP scam, it should take appropriate action to delay the payment while it investigates.*
>
> *Where Firms have concerns, Firms should intervene on a risk-based approach to delay execution of the payment authorisation to the extent possible within the limits of the law and regulation, taking reasonable steps to communicate with the originating customer.*

I think it fair to say, at the point Mrs F selected 'transfer to a 'safe account'' when indicating the purpose of the transfers, Monzo was on notice that she was more likely than not falling victim to a scam; I'm not aware of any legitimate scenario involving a safe account. It therefore should have had sufficient concern that she was at risk of financial harm such that it ought to have delayed the payments and spoke to Mrs F before allowing them. I'm satisfied an intervention of the type set out in the CRM would have been sufficient to stop Mrs F in her tracks and so Monzo could have prevented her loss.

Should Monzo be liable for the £2,000 transferred from B?

The scammers had access to Mrs F's accounts with B. And as part of the scam was able to effect two overdrafts, one on each of the accounts held with B. Mrs F says she was told the fraudsters who had access to her accounts had taken out the overdrafts and she needed to move the funds in order stop the fraudsters having access to them. As a result she authorised the moving of the funds from B to Monzo in order to protect them.

I do take Monzo's point that the lending here was unauthorised; Mrs F hadn't taken out the overdrafts nor agreed to them being taken out. But the transfer from B to Monzo was in fact authorised – she agreed for the transfer to take place to protect the funds. I'm satisfied that once the funds were within Mrs F's account with Monzo, they became its responsibility to safeguard from the risk of fraud and scams, in line with its duties and obligations.

I have considered the information provided by Monzo, which appears to be a form of guidance in relation to reimbursement of funds if unauthorised lending has occurred. It goes on further to say any unauthorised lending should be referred back to the lender. However, this doesn't appear to be part of the official CRM nor its accompanying practitioners guide. I have therefore placed little weight on this in reaching my conclusion in the paragraph above.

Did Mrs F have a reasonable basis for belief?

Under the CRM Code Monzo can choose not to reimburse Mrs F if it doesn't believe she took the requisite level of care to ensure she had a reasonable basis for belief that the person/business she was paying was legitimate and for genuine goods or services. It isn't enough for Mrs F to believe that she was paying a legitimate business for genuine goods or services, she had to have a reasonable basis for belief. And it's here that I disagree with some of the investigator's findings.

I accept that Mrs F was under the impression that her accounts with B had been compromised. I also accept the scammers were very convincing – they knew personal details about her and seemingly wanted to help her keep her money safe. However, it isn't clear why Mrs F accepted the texts that started the scam process as legitimate. They weren't sent from a number spoofed to look like B's, nor did it enter into any previous chat or text line that Mrs F had had with B previously. Rather the text came from a mobile number which isn't how a bank would usually contact its customer.

Further, it's unclear why, having been told two new accounts had been opened with B that Mrs F sent not only the £2,000 back, but also the money she had held in her Monzo account. There is some indication in Monzo's file that she was told the scammers were in contact with Monzo as well, but it's unclear why Mrs F believed B would have had access to Monzo's systems in order to know that.

But more important, is that Mrs F was told by Monzo not to pay, and that she was likely falling victim to a scam. Further, the warning also said that other banks would never ask her to move money out of her account. Whilst I didn't find the warning effective, once Mrs F saw this, I'm satisfied she no longer had a reasonable basis for belief that the payment was for genuine goods or services, or that the person or business with whom she was transacting was legitimate.

Under the CRM Code where a business has failed to provide an effective warning, but the customer hasn't met the requisite level of care, each party will accept equal responsibility. In these situations the CRM Code requires the payment service provider/bank to reimburse 50% of the losses. Although I have found Monzo could have done more, I find that a fair way to resolve this complaint – as I have found Monzo didn't provide an effective warning, but that Mrs F hadn't met the requisite level of care to ensure she was paying a legitimate person or business or for genuine goods or services.

Monzo has already reimbursed Mrs F £2,958 which is over 50% of the total losses Mrs F incurred. I'm therefore don't require it to reimburse anything more.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 27 July 2022.

Claire Hopkins
Ombudsman