DRN-3571914

The complaint

Mr K is unhappy that Monzo Bank Ltd has declined to refund him after he was the victim of a scam, where he thought he was sending money to HMRC.

What happened

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued my provisional decision on this complaint recommending that Monzo refund Mr K 50% of his losses plus interest. Both parties came back and agreed to those provisional findings, so I see no reason to depart from them. I have included my provisional findings in full below.

My provisional decision

Mr K was called by scammers pretending to be from HMRC saying he owed tax and there would be serious implications if he didn't pay this, including; being taken to court, his bank accounts being frozen and his assets being seized. Mr K said this would have had serious ramifications on his employment as well.

Mr K says the scam was well-timed as he had an approaching deadline to pay tax to HMRC and the scammers gave a realistic amount of tax due. Mr K says the scammers directed him to make payments from a different bank account first, and Mr K says this account was then blocked, so he moved funds into his Monzo account and made payments from there.
Mr K made three payments to the scammers from his Monzo account, using two different payees, as follows

Date	***Time***	***Payee account***	***Amount***	***Total***
09/12/20	*12:39*	*Payee 1*	*£4,900*	
09/12/20	*13:23*	*Payee 2*	*£2,500*	
09/12/20	*13:27*	*Payee 2*	*£2,500*	
				£9,900

Mr K says he realised he had been scammed when he had a conversation with his wife, whilst still on the call with the scammers, and she said to put the phone down.
Mr K contacted Monzo, the same day, to raise the scam and request a refund. In the course of its investigation Monzo asked Mr K what had happened. Mr K, at the time, provided the following information:

- *he was on the phone with the scammers for around 2 hours;*
- *he did not perform a check on the person, and he wasn't able to confirm the telephone number;*
- *the scammers didn't have any personal information about him;*
- *he was due to pay tax and that's what made the scam seem convincing;*
- *he was told the payments hadn't gone through properly which is why some of them were repeated;*
- *he thought there was a restriction on his account which made the scam look genuine; and*
- *he did read the warning Monzo presented in the mobile banking app but believed he was speaking with the genuine HMRC so proceeded with the payments.*

During the course of our investigation of Mr K's complaint, we have asked him similar questions and Mr K has said:

- *the scammers had prior knowledge of him and knew he was a property landlord and said they had been in contact before – he said he had a previous missed voicemail message some weeks earlier which he had ignored;*
- *the caller was knowledgeable about departmental tax recovery processes and gave him the immediate impression they were genuine because of their knowledge of his circumstances and tax bill;*
- *because he was placed in a high stress situation it was difficult to think clearly about whether the caller was genuine; and*
- *the amount of money they were demanding was consistent with his anticipated tax bill.*

The money that funded the payments from Mr K's Monzo account came from his various savings accounts that he held with a different bank. In total, Mr K paid £15,800 to the scammers as part of this scam across his accounts. Mr K has been refunded £5,900 plus interest of £108.62 and compensation of £50 by his other bank which covers his total losses from that bank.

Monzo considered the circumstances of the scam that Mr K fell victim to and although it is not signed up the Contingent Reimbursement Model (CRM) Code, it says it considered everything with the Code in mind and it was working within the spirit of the Code. Monzo's records show that for the each of the payments Mr K received a warning that the account name couldn't be checked. Its records then show he shown a series of warnings.

The first said:

> ***Are you currently on a phone call?***
> *We think this payment is suspicious*
> *Don't make this payment if someone has called you to move money from your account unexpectedly, it's likely to be a scam*

Monzo's record show Mr K clicked the following option

> *"yes, I'm on a phone call"*

Monzo has shown that following the above, Mr K would have been presented with options for who he thought he was paying, and he selected HMRC as the payee. Monzo's records show he then received the following warning

> ***Remember:***
> *X HMRC won't ever pressure you to pay over the phone*
> *XFraudsters can 'spoof' or fake HMRC's number to make it look legitimate*
>
> ***Call HMRC's official number***
> *Call HMRC directly on 0300 200 3300 to see if the request was genuine*

Monzo originally said after the above warning Mr K was also presented with a pop up which said

> ***Are you sure?***
> *Once you make a payment, its almost impossible for us to get the money back*

Later Monzo said instead of the above message Mr K should have been presented with the following message:

> *You are paying £x to a risky payee*

You may not be able to get your money back if this does turn out to be a scam

When asked about the warnings Mr K said there was a tick-box warning, which looked generic and asked him to check the payment being made. But he didn't recall anything specific about HMRC. And he says the pop-up starting with "are you sure?" wasn't presented to him. He says this was introduced later by Monzo and he doesn't recall seeing that when he made the scam payments.

Monzo's records show that Mr K spent less than a minute on the screen the HRMC warning was displayed on, each time it was presented to him, and before he clicked through to continue with the payment.

When alerted to the scam Monzo contacted the recipient banks the same day at 17:36pm, 17:38pm and the second bank the next day, at 09:30am. But no funds remained in any of the accounts.

Monzo didn't uphold Mr K's complaint it said it had correctly followed its internal procedures and met its regulatory requirements. But to acknowledge the distressing situation it offered to send flowers to Mr K.

Unhappy with the response from Monzo Mr K brought his complaint to our service. One of our investigators looked into things and upheld the complaint. In summary she didn't think Mr K had ignored and effective warning.

At the time of writing her initial view, Monzo hadn't provided the HMRC warning it says Mr K would have seen. So the investigator concluded that Monzo couldn't evidence that it provided an effective warning in line with the CRM Code.

Later Monzo was able to provide evidence that Mr K selected and was presented with the HMRC warning, but couldn't evidence that either the "are you sure" or "you are paying a risky payee" pop-up warnings were displayed to Mr K. And because of this she wasn't satisfied that Monzo had been able to provide effective warnings – as it is required to under the CRM code.

She also went on to say she didn't think Monzo had established that Mr K didn't have a reasonable basis for believing he was speaking with HMRC and the payments he was making were legitimate. She said:

- *The scammer knew Mr K's personal details, that he was a landlord, and seemed knowledgeable about tax recovery processes.*
- *The tax that he was told he owed was consistent with his anticipated tax bill and linked to his landlord status.*
- *He was told he had been blacklisted due to non-payment and faced legal action which could affect his employment status. This was particularly relevant because of his line of work. So, the explanation and threat from the scammers seemed plausible.*
- *Mr K was also threatened and told to act quickly to avoid further consequences.*

The investigator also went on to consider the nature of the payments and whether Monzo ought to have intervened if it was clear Mr K was at risk of financial harm. She felt that the combined total of payments Mr K made, ought to have concerned Monzo, so much so that it ought to have stepped in when Mr K attempted the second payment – and if it had Monzo would have prevented the scam.

Overall, she recommended that Monzo fully reimburse Mr K and pay 8% interest from the date it rejected the first payment under the CRM code. And the same interest rate from the date the other two payments were made.

Monzo disagreed, it said it had provided effective warnings in line with the CRM Code. But the investigator was still not persuaded that Mr K was presented with either warning asking "are you sure?" and the warning that followed, or the additional message that said "you are *paying a risky payee".*

Monzo responded to say too much focus had been placed on what the customer might have seen and the outcome should be based on the facts and codes and not what was deemed an appropriate warning. And it didn't matter that the customer might not have seen something in addition to the HMRC warnings provided. It believes it provided a warning to help prevent the payment from being made. It believes the HMRC warning itself meets the requirements of the code. Monzo asked for the complaint to be passed to an ombudsman.

During the course of my investigation of the complaint we have asked Mr K to provide some additional information and answer some additional questions. In summary Mr K has provided the following:

- *Statements from his other bank accounts to evidence the payments to the scammers and the transfers to his Monzo account.*
- *Tax calculations for 2019/20 and 2020/21. The tax return for 2019/20 shows he made an overpayment on tax for £120.80.*
- *He said an accountant submitted his tax returns for the year 2019/20 and it was the first year he submitted a tax return with an accountant.*
- *When asked why he told Monzo that the scammers didn't have any personal information about him, but when he contacted us, he said they did - he said he wasn't thinking straight when he first contacted Monzo and he had a strong sense the scammers knew his personal details. He said they knew he was a landlord and they had called him previously leaving a voicemail, which he had ignored.*
- *He couldn't remember exactly what the scammers had said but there was reference to a house he owned with the correct county named.*
- *He went on to say the next tax bill due was approximately £3,000 and the amount the scammers asked for, including fines, sounded consistent with this.*
- *When we asked about making payments to different accounts, he said he was told a payment could be made to the court to stop the hearing that was due that day. And when he was given account details, he didn't questions these as he was in panic mode to set up the payments as soon as possible.*
- *He also said he was told there was a problem paying money to the first account and the money hadn't gone through so the scammers provided different account details for further payments to be made. At the same time payments from his other bank account had been blocked.*
- *He said he could see from his bank account that payments had debited his account and he explained this to the scammers but they kept saying they hadn't been received so the court case would still go ahead. He said he was convinced that the caller was genuine so when they said the payments hadn't been received he believed them. He says he was also told any overpayments (if that turned out to be the case) would be refunded so that's why he continued make payments and why the second account details were provided by the scammers.*
- *And he said he had to lie to his other bank to get the blocks on his account removed as well.*

In the course of my investigations I have also asked for information from Mr K's other bank. This included:

- *its final response;*
- *fraud notes; and*
- *all call recordings where Mr K called up to unblock his account and then called to report the scam.*

These show that the successful payments to the scammers debited Mr K's Monzo account first, before the successful payments are made from his other bank account. And it appears as though the calls with his other bank to remove the blocks from those payments are made after the Monzo payments. The calls appear to be at 13.45 and 14.30.

Below I've summarised the call where Mr K's other bank block one of the payments and he *called up to unblock it and explain what the payment was for.*

- *When asked what the payment was for, Mr K said he was making a payment to a personal account relating to an investment. He says he'd set up investment accounts and had made a mistake by trying to do it all in one payment but he was trying to leverage those investments and the accounts were relatively new.*
- *The bank representative explained that as there are so many scams, they'd need to check he wasn't being scammed. The rep asked if anyone had called him and asked him to move money, as fraudsters pretend to be from the bank and say you need to move money to a safe account. Mr K says no, he'd found an investment opportunity which was novel and was trying to move money. He said he was trying to branch out into something a little bit more high risk and talks about having other basic investments which can be seen from his account.*
- *The bank rep says if someone calls pretending to be BT, Microsoft your broadband provider or amazon prime, just hang up.*

What I've provisionally 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 doing so I've come to a different outcome to the investigator. I'll explain why.

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.

When thinking about what is fair and reasonable in this case, I've considered whether Monzo should have reimbursed Mr K 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 K from the possibility of financial harm from fraud.

And I've gone on to consider the wider landscape of authorised push payment scams. As Mr K made the payments himself and under the Payment Services Regulations 2017, and the terms and conditions of the account, Mr K is presumed liable for the loss in the first instance.

But I've also taken into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time.
As such I think Monzo should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

So in addition to the CRM code I've gone on to think about whether Monzo ought fairly and reasonably to have done more here; whether it ought to have suspected the payments may have been at risk or not.

THE CRM CODE

There's no dispute here that Mr K was tricked into making the payment. He thought he owed tax and there would be serious consequences if he didn't pay this. But this isn't enough, in and of itself, for Mr K to receive a refund of the money under the CRM Code. The Code places a level of care on Mr K too.

Monzo has agreed to adhere to the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of 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 further exceptions within the CRM Code, but they do not apply in this case.

Did Mr K ignore and effective warning?

I've started by considering that the CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. The code also says that the assessment of whether a firm has met this standard or not should include consideration of whether compliance with that standard would have had a material effect on preventing the scam. The CRM code sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. As a minimum, the CRM code sets out that an effective warning should be understandable, clear, impactful, timely and specific.

Due to the size of the first payment, I think Monzo should have identified the risk of a scam and so should have provided an effective warning to Mr K.

I've seen the HMRC warning that Mr K was presented with and it does go some way to provide steps for Mr K to verify who he was speaking to and I think if Mr K had followed the steps set out in the warning – to call HMRC on its genuine number – the scam would have been prevented. But it doesn't explain what the consequences would be if he carried on making the payments.

Monzo has provided evidence which persuades me that Mr K would have seen the HMRC specific warning. But it hasn't provided any substantive evidence to show that either of the following messages were presented to Mr K.

> ***Are you sure?***
>
> *Once you make a payment, its almost impossible for us to get the money Back*
>
> Or

You are paying £x to a risky payee
You may not be able to get your money back if this does turn out to be a Scam

The evidence from Monzo doesn't show that these messages were presented, and so the warning doesn't provide the consequences of going ahead and making the payment. Therefore, under the code the warning doesn't meet all the standards for firms. But I have also gone on to consider whether any additional element of the warning would have made a material difference in these particular circumstances.

I say this because Mr K made payments from another bank account as part of this scam and when making those payments his bank blocked one or some of those payments for a fraud security check and spoke to Mr K. I've listened to those calls as part of my investigation into this complaint to help me determine if a better warning from Monzo would have made a difference in these particular circumstances. I've set out a summary of the call - where Mr K spoke to the bank about the block on his account – in the background of this complaint.

To clarify it's not my role, when dealing with this complaint, to comment on the quality of the questioning by the other bank. Or make a finding if that was sufficient or not. But I do think the calls helps to contextualise what might have happened if Mr K had been given the additional elements of the warning by Monzo.

Mr K made the payments from his Monzo account first and would have received the HMRC specific warning. Then he went on to make further payments from his other bank account where the bank spoke to him and also provided some warnings about scams (although not specific to HMRC). Given all of this I'm not persuaded the additional warning messages from Monzo here would have made a difference to Mr K's decision making in the moment. Although the other bank also doesn't provide any warning about the consequences of making the payment, it does give Mr K the opportunity to talk about the payments and reasons for making them and advises him about impersonation scams in general and what to do in those situations. And, Mr K having seen both the HMRC warnings from Monzo and heard this advice from his other bank, continues to make payments to the scammers. So on this basis I think Monzo is entitled on the rely on the exemption not to refund Mr K under the CRM code – I think if Mr K had taken the appropriate action in response to the Monzo warning – by calling HMRC on the correct number this would have prevented the scam. And I don't think the requirement that the warning included the consequences of making the payments would have made a material difference here in the particular circumstances of this complaint.

Was an effective warning enough in the circumstances of this complaint?

The requirement to provide an effective warning is the minimum expectation of firms where a scam risk has been identified. As I set out in the background to this complaint, Monzo should have had systems in place to identify when customers might be at risk of harm and in certain circumstances have taken additional steps to protect customers by intervening and making additional checks before processing payments.

I'm satisfied that the payments made from Mr K's account required those additional steps and measures to be taken by Monzo. In particular I'm satisfied the first payment he made ought to have concerned Monzo that he was potentially at risk of financial harm. I say this because:

- *Mr K rarely used the account and when he did it was for low value payments, in the six months prior to the scam payments Mr K's highest value transaction was £200.*
- *The first payment was for £4,900 which is high value and out of character for Mr K and it was to a new payee.*
- *The first payment went to a pre-paid card account provider which presents a higher fraud risk than a normal bank account – something I'd expect Monzo to be have been aware of.*
- *Mr K also selected he was on a phone call at the time of making the payment and Monzo identified this as a risk - as part of its warnings systems*

- *Mr K then selected he was paying HMRC which again Monzo identified as being risky as it provided a warning.*
- *Whilst confirmation of payee may or may not have been available for this particular transaction, I think Monzo ought to have reasonably been aware that the destination account wasn't likely to have belonged to then genuine HMRC.*

So I think there was enough going on here that Monzo ought to have done more - than the minimum requirement to provide a warning - and ought to have intervened with the payment.

Would intervention have made a difference?

I've then thought about whether this would have made a difference, bearing in mind what I know about the conversation Mr K had with his other bank account when he made further payments as part of this scam. And I think it would have.

Whilst Mr K told his other bank he was making payments for an investment Monzo had the context of Mr K selecting that he was paying HMRC. So I think either Mr K would have explained why he thought he was paying HMRC, and if Monzo had acted as it ought to have done, it would have asked questions about this and why this didn't seem likely in the context of the pressured call and the payments he was being asked to make and therefore exposed the scam. Or Mr K would have likely said that he was moving money for investment purposes (as he told his other bank when they asked about the transactions). Which firstly Monzo would need to question why this differed from the reason he'd selected when making the payment (paying HMRC) and then I would have expected it to ask questions about the investment and potentially ask for supporting documentation, given the value and destination of the payment. And I don't think Mr K would have been able to provide sufficient detail that would've persuaded Monzo that he wasn't at risk of financial harm. Further probing beyond this point and a lack of detail or supporting documentation from Mr K I think in all likelihood would have exposed the scam and the payments wouldn't have been made.

Should Mr K share responsibility for his losses?

Under the CRM code I would need to go on to consider whether Mr K had a reasonable basis for believing he was paying the genuine HMRC. And outside of the code, when thinking about Monzo's need to intervene, I would also balance that against Mr K's actions and whether he should fairly and reasonably share responsibility for his losses. Under either set of considerations I think Mr K should share the responsibility for his losses and I'll explain why.

I appreciate we have asked for detail about the events sometime after they occurred and this hasn't been easy for Mr K to fully recall. The detail will of course, have faded over time, so I've balanced what Mr K initially told Monzo, and his other bank, immediately after the scam – which is likely to be the most contemporaneous evidence, with the information he has provided us during the course of our investigation into his complaint. I've used all of this to weigh up what I think most likely happened to base my findings on.

I appreciate that in the moment these scams are designed to apply pressure and use scare tactics to get their victims to act quickly. And that Mr K very much felt this pressure and overall the scam has had an impact on him. But I still need to consider if Mr K acted with a reasonable basis for belief when he made those payments thinking they were to pay tax he owed to HMRC. And whether its fair for him to share responsibility for the loss he suffered. I have no doubt that Mr K believed he was doing the right thing at the time and didn't realise he was being scammed. But I'm persuaded there was enough going that he ought to have questioned what he was doing and carried out some checks to make sure everything was genuine. And I'm satisfied further checks would have revealed the scam and prevented Mr K's loss. I understand Mr K was very scared of the consequences that were being described to him. But, from what he has said, it seems he didn't actually do anything to verify the caller(s) and who they said they were. Mr K didn't know or check the number he was being contacted on and didn't check to make sure it was HMRC or a phone number linked to it. He's also said different things about how he was contacted by the scammers. To Monzo *he said he had a missed voicemail a few weeks earlier which he didn't respond to and to his other bank he said he said he responded to the voicemail he received and the number he was provided from this voicemail – when contacting HMRC. Again I appreciate memories can fade over time and this detail isn't overly important here. But I have gone on to consider that:*

- *Mr K originally said the caller didn't know any personal information about him but has later said they knew he was a landlord and the county in which that property was held. He's also said that the caller's knowledge of the tax processes was also convincing. I find it unusual that Mr K said the scammers had no knowledge of him at the time Monzo asked but has later added this detail. I also appreciate Mr K says at the time of contacting Monzo he was thinking straight – and this was the same day, shortly after the scam had occurred. But having listened to his call with his other bank. Mr K confirmed he didn't question if the caller had any knowledge of his employment status or related questions as he was convinced he was talking to HMRC. Weighing up what Mr K told both Monzo and his other bank at the time of reporting the scam and then has later told us, I'm not persuaded that the scammers had any meaningful knowledge about him to say it was reasonable for him to believe he was being called from HMRC.*
- *Mr K has said he received a similar voicemail a few weeks earlier which he had ignored. Which also led him to believe the scam at the time was genuine and that the scammers had information about him. Mr K hasn't described what was said in the voicemail or why he ignored it, so I haven't been able to conclude what impact this had on his thinking at the time of the scam call. All I would say is that this detail by itself doesn't persuade me that Mr K ought reasonably believed he was speaking with the genuine HMRC. And this is a different version of events to the one he gave his other bank where he said he received a voicemail and returned that call thinking he was speaking to HMRC at the time and then went on to make the payments. In either event I don't find this persuasive reasoning for thinking the call with HMRC was genuine.*
- *Mr K has provided evidence of his tax return for 2019/20 and explained he used an accountant for the first time to submit that return on his behalf. Having seen this tax return I can see it was calculated in the month following the scam. In the tax year 2019/20 Mr K had actually overpaid £120. And he completed his tax calculations a few days after the scam. In the tax year 2020/21 Mr K was due to pay approximately £2,500. Bearing in mind the tax calculations (only a few days after the scam) it's not clear why Mr K thought it was reasonable to go on to pay over £15,000 to HMRC - which is considerably more than he ought to have expected to pay in tax. My understanding is that Mr K may have initially been told by the scammers that his tax liability was £4,900. And although I appreciate, he wouldn't have known his exact tax liability at the time he was scammed, I think this figure ought to have seemed alarming, potentially suspicious and something he ought to have checked.*
- *Mr K also says this was first year he had used an accountant so its not clear why he didn't contact his accountant at the time to query the amount he was being asked to pay.*
- *Mr K then goes on to make subsequent payments as he was told they hadn't gone through and needed to be repeated but he could see from his accounts that payments had been successful and had debited his account. So, it's not clear why he thought what he was being told about this was persuasive and why he continued to make additional payments.*

Overall, I think Mr K ought to have recognised the risk that this wasn't a genuine contact from HMRC. I'm not satisfied that Mr K either had a reasonable basis for belief that he was dealing with HMRC or that he shouldn't bear some responsibility for his losses with Monzo. I think it would be fair and reasonable in the circumstances to split that liability 50/50.

Summary

I'm satisfied that the payments Mr K made were unusual and suspicious enough that Monzo ought to have identified he was at risk of financial harm. Monzo provided a good warning and I'm also persuaded a better one wouldn't have made difference. But I think the set of circumstances here and the specific knowledge Monzo had when Mr K made the payments means that a warning here wasn't sufficient and it needed to do more. If it had, I think it *would have exposed the scam and prevented the payments. But I also think that Mr K's actions mean that he should fairly and reasonable share the responsibility of those losses. So I'm currently minded to award a 50% refund of Mr K's losses here.*

My provisional decision

For the reasons I've given above, I'm minded to partially uphold this complaint and direct Monzo Bank Ltd to:

- *Pay Mr K 50% of his losses.*
- *Add interest to the above amount, at the account rate, from the date it declined his claim to the date of settlement.*

Putting things right

I now direct Monzo Bank Ltd to make the settlement payment as directed.

My final decision

I partially uphold Mr K's complaint against Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 July 2022.

Sophia Smith
Ombudsman