

The complaint

Mr C is unhappy that Monzo Bank Ltd (“Monzo”) will not refund the money he lost after paying for an item he did not receive.

What happened

Mr C was looking for a smart watch online when he found the profile of someone selling the watch he wanted on a selling page of a social networking site. The profile Mr C found was a number of years old and appeared to have genuine posts and photographs.

Mr C shared some messages with the seller and they agreed a price of £190. The seller told Mr C that once they had received the payment, they would send the watch.

The seller provided their bank account details and Mr C made the transfer from his Monzo account online.

Once Mr C had made the payment, the communication with the seller stopped and Mr C didn't receive the watch - so he contacted Monzo for help. Mr C explained that he thought he had been the victim of a scam and explained what had happened.

Monzo went on to consider whether it should refund Mr C for his loss. But it turned down his claim for a refund and said he didn't take enough steps to check who he was paying was legitimate. When Mr C complained, Monzo said it had acted in line with its internal procedures and regulatory guidelines.

Mr C brought his complaint to our service as he wasn't happy with the bank's decision.

One of our Investigators looked into the complaint and recommended it be upheld. Monzo is not a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) but it has agreed to adhere to it regardless. This means Monzo has made a commitment to reimburse customers who are victims of authorised push payment scams except in limited circumstances. Our Investigator didn't think any of those circumstances applied here.

The investigator said Monzo had not been able to establish that Mr C did not have a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods and/or that the person he was transacting with was legitimate. In reaching that position, they placed weight on the social media selling platform as a recognised and informal selling site. They pointed out that the profile in question had been established for a number of years and appeared to have genuine posts. They also said the price requested was reasonable for a second-hand smart watch like the one in question. For these reasons, our investigator thought Monzo should have fully reimbursed Mr C's loss.

Monzo disagreed. It said the price of the smart watch was 'too good to be true'. It said it had been able to find the watch for sale for £250 and therefore the cost of the watch should've been of concern to Mr C. It also pointed to some best practice standards set out by the social networking site itself which said users should use Paypal and not electronic transfer when making purchases through the site. Monzo didn't think Mr C had taken heed of this. It also pointed out that profiles on the site were easily faked and shouldn't be relied on as factual – the amount of time the profile had been in place was no way to verify its legitimacy. Finally, it said it had provided a scam warning to Mr C at the time the payment was made and it had also informed him the payee's details did not match the account he was transferring to, yet he had proceeded regardless. Overall, Monzo was of the opinion that Mr C should have done more due diligence before making the payment.

Our Investigator wasn't minded to change their view of the complaint. They acknowledged that the price was lower than the average price found by Monzo but although cheaper, this didn't mean that the price should be considered too good to be true on this occasion, especially as the item would be considered second-hand. She also pointed out that she had found the item for sale at a similar price to the one paid by Mr C. She pointed out that the very nature of the selling site used meant it was geared towards informal private sales and there wasn't a requirement for purchases to be made via PayPal. She also pointed out that Mr C had said he'd previously received messages from Monzo saying the accounts details didn't match when paying friends and family and the payment still reached them. She also highlighted that the warnings Mr C had seen at the time weren't specific to the scam he was falling victim to and for these reasons she didn't think it was unreasonable for Mr C to have moved past the Confirmation of Payee (CoP) and scam warnings.

Monzo did not agree. It maintained the view that Mr C did not have a reasonable basis for belief when making this payment. It thought he had sent the payment to an unknown individual online without a proper basis for trusting them and reiterated the points it had made previously. Monzo maintained that it had no obligation to refund the loss when correctly applying the CRM Code.

As no agreement could be reached, the complaint has been referred to me.

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 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 C 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 C from the possibility of financial harm from fraud.

There's no dispute here that Mr C was tricked into making the payment. He thought he would receive a smart watch in exchange for his money and the seller did not keep to their side of that bargain. But this isn't enough, in and of itself, for Mr C to receive a refund of the money under the CRM Code. The Code also places a level of care on Mr C.

The CRM Code

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 if it believes its customer should not receive a refund of the amount lost. In this case, Monzo has explained its key concern is whether Mr C made the payment without a reasonable basis for believing that the payee was the person he was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom he transacted was legitimate. There are further exceptions within the CRM Code, but they do not apply in this case.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am not persuaded the concerns Monzo has raised about the legitimacy of the transaction Mr C was making are enough to support its position that he failed to meet his requisite level of care under the CRM Code. It follows that I do not think Monzo has been able to establish that it may choose not to reimburse Mr C under the terms of the Code.

Having thought about what both sides have said and provided, I consider Mr C had a reasonable basis for believing the payment he was making was for genuine goods and that the person he was transacting with was legitimate. In reaching that conclusion, I have thought carefully about what it is realistic to have expected Mr C to do when he was looking to spend a total of £190 online.

The screenshots provided show the sellers profile had been established for a number of years. Mr C has told us that there appeared to be a number of genuine posts. The profile appeared to be that of a private individual who posted regularly.

Having considered this, I don't think there was anything obviously untoward about the seller. And I don't agree with Monzo that the amount of time the profile was in place should not have been a factor in Mr C's decision-making process. There is an assumption that scam profiles will be reported and taken down relatively soon after they have been set-up once their victims become aware of the scam. And so I can understand why a profile having been available for many years would have lulled Mr C into a false sense of security at the time he made the payment. And I'm not satisfied that Monzo has placed enough weight on the fact that this appeared to be a private sale between two individuals and so it is difficult to see what more Mr C could've done to establish that the seller was who they said they were. I don't think it was unreasonable for Mr C to have believed the seller was who they said they were and from what Mr C recalls that he saw, he had no reason to think the seller would not keep to their side of the bargain on this occasion. He had used the selling site many times prior to this and had conducted many successful purchases.

I've thought about the price Mr C paid thinking he was getting a second-hand smart watch. Monzo feels that the price offered by the seller at the time the smart watch was purchased was not feasible and it has pointed to sales showing a higher purchase cost. It says Mr C should have reflected on whether this was too good to be true – a warning had popped up during the payment process to tell him to do just that. But I don't think the price the seller gave was so low that it meant Mr C ought to have questioned it more in his own mind especially when viewed in the context of the overall situation Mr C found himself in. People can and do find good deals online. The watch was second-hand, and this was a private sale between two private individuals. The seller may have had reasons for selling the watch that meant they were happy to take a slightly lower price. And so, whilst I accept that the cost of the item was slightly lower than expected, I'm not persuaded that it was so low that it should've caused Mr C concern.

Even though Monzo has said it believes there was more Mr C could have done to assure himself that he could trust the seller, I am not persuaded Mr C needed to make such extensive enquiries in the particular circumstances of this case. I've thought carefully about the price of the item Mr C wanted to buy and the fact that this was a private sale. Whilst the situation is finely balanced, I think Mr C's actions and assessment of the situation was appropriate and proportionate to a relatively unremarkable payment of £190.

I also agree with our investigator that it wasn't unreasonable for Mr C to have moved past the Confirmation of Payee ("CoP") warning that he would have seen at the time. Monzo has said this would've informed Mr C that the details of the person he was sending to did not match those of the account he was intending to pay. But Mr C had seen the CoP message before when he'd paid relatives and friends and they'd still received the payments. And so I'm not persuaded that Mr C would've thought this an indicator of a potential scam and so I don't think it was unreasonable for him to have moved past it.

I've also looked at the warnings that Monzo said were provided to Mr C during the payment process itself and I don't think it was unreasonable for Mr C to not realise they might be applicable to him at the time.

The warning starts off by saying '*You were told your account is at risk, to make an unexpected payment, or to take out a loan*', and later mentions '*You were told to ignore warnings like this*' but these points aren't relevant to the scam Mr C was unknowingly falling victim to - he wasn't falling victim to a safe account scam, and he wasn't being coached by the scammer on what to do during the payment process. So, I don't think it's unreasonable he moved past this warning considering it wasn't relevant to him.

I acknowledge that the warning goes on to say to not continue with the payment if '*the offer sounds too good to be true & You haven't double checked who you're paying*'. But as I've said above, I don't think the price was too good to be true. And Mr C had thought the longevity of the profile was indicative that this person was genuine. I don't agree with Monzo that a relatively small amount of 'friends' indicated that it wasn't. And so I don't think any of these prompts would've given Mr C pause for thought either.

The site in question is a well-established site used primarily for the purpose of private second-hand sales between private individuals – such as the one Mr C entered into. Whilst I acknowledge that the best practice guidance on the site itself directs potential buyers to purchase via Paypal, it does not preclude the sale of items via bank transfer which is often used as a payment method in private sales such as the one now in question here.

Weighing everything up, I don't think it would have been evident to Mr C that there was a considerable degree of risk associated with this purchase. The seller appeared to have a long established profile and the price wasn't so low that it should've appeared unrealistic. I am not persuaded it did occur to him that there was a possibility he wouldn't receive the item or that it might not be genuine. Fraudsters are masterful at building trust and confidence and it is not realistic to expect Mr C to have the same awareness of what scams like this can look and feel like as the bank does. As I've said above, Mr C had successfully bought items from sellers on this site before. I think Mr C took enough care with a relatively modest purchase of £190 to say that he had a reasonable basis for believing he was buying genuine goods from a legitimate seller. I don't believe he took a calculated chance by going ahead with the purchase in the circumstances he did.

Overall, I don't think Mr C's actions fell below the level of care expected of him in this situation. I think Monzo ought to have fully refunded Mr C at the time he reported the loss and so it should fairly and reasonably compensate Mr C by refunding that loss now.

Putting things right

The Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost.

So I think it's fair that Monzo refunds the £190 Mr C lost, along with 8% simple interest from the date Monzo declined his claim until the date the funds are returned.

My final decision

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to pay the settlement as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 August 2022.

Emly Hanley
Ombudsman