

## **The complaint**

Mr F complains that Monzo Bank Ltd has declined to refund the losses he suffered when he attempted to rent a property in 2022.

## **What happened**

Mr F holds an account with Monzo. In 2022, Mr F's previous tenancy was ending, and he was looking to rent a new property.

He agreed to rent with a former work colleague, someone who'd been a close friend of Mr F's for nine years. The friend found a suitable looking property through a letting agent and Mr F went and viewed it in person. Mr F says he'd also checked out the letting agency, which had a website and appeared legitimate.

The agent said he could pay the deposit and advance rent at the letting agency's office. But Mr F said he couldn't make the times the agent said the office was open, due to his work commitments.

Mr F didn't trust sending this payment to the agent's bank account directly – that being a new payee. Instead, he sent it from his Monzo account to his friend, whose account he'd previously made payments to without issue. His friend told Mr F they'd transfer it on to the agent. Mr F sent his friend three separate payments totalling £775.

The agent emailed both Mr F and his friend confirming receipt of the payments. But the agent then said that if they wanted to move in immediately, they'd need to pay for a gas engineer to carry out some work and provide a gas certificate. Mr F then sent three payments directly to the agent for a total of £441.66. He believed this amount would later be refunded by the landlord of the property.

But Mr F wasn't able to move into the property and he says he was then unable to make further contact with the agent or his friend. He now thinks they may have been working together to steal his money.

Mr F reported what had happened to Monzo and asked it to recover his money. However, the funds were no longer in the receiving accounts by the time Mr F reported it to Monzo.

A voluntary code exists to provide additional protection to scam victims in many circumstances - the Lending Standards Board Contingent Reimbursement Model CRM Code (the CRM Code). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Monzo isn't a signatory of the CRM Code but has explained it is committed to applying the principles set out in it.

However, civil disputes aren't within the scope of the CRM Code. Monzo said that Mr F had a civil dispute about the payments he'd sent to his friend and didn't treat this as being an APP scam. Monzo said it wasn't responsible for refunding Mr F.

Mr F didn't accept this – he'd not been able to get the money back and thought Monzo

should be held responsible for paying him what he'd lost.

Our Investigator reviewed Mr F's complaint. The Investigator obtained further information about the accounts that had received the payments Mr F made, to establish if this had been a scam or if this would be a civil matter between Mr F, his friend, and the agent. But the Investigator couldn't find enough evidence to show this was a criminal attempt to defraud Mr F rather than being a civil dispute. In particular, the Investigator didn't think there was enough evidence to show there had been intent to defraud Mr F from the outset – that being needed to show there had been an APP scam. So Monzo didn't need to refund the money Mr F lost.

Mr F didn't agree and so I have been asked to make a final decision on his complaint.

### **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.

I'm sorry to hear about what happened to Mr F. He has lost a significant sum and his friend doesn't seem to have treated him fairly. I can understand why Mr F feels so strongly that his losses should be refunded to him. But that doesn't mean that Monzo is responsible for the money Mr F lost or that it now needs to refund him.

A bank has a primary obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (excepted in limited circumstances). But the CRM Code is quite explicit that it doesn't apply to all payments. It says it does not apply to private civil disputes, including payments made to legitimate suppliers where the goods or services weren't received.

So, the CRM Code isn't a general protection for consumers against non-receipt of services – such as the rental of a flat or gas certificate as happened here.

Instead, the CRM Code only applies in very specific circumstances – where the customer has been the victim of an APP scam, in other words a criminal fraud. In particular, the CRM Code doesn't apply unless it can reasonably be established that there was the intent to defraud the customer from the outset. Further, it would need to be established that this would most likely meet the high bar required for criminal fraud.

Here there doesn't appear to be any doubt that Mr F didn't receive what he paid for. However, with the above in mind, in order to be satisfied that Mr F has been the victim of an APP scam covered by the CRM Code, I'd have to be satisfied that the evidence is enough for me to be sure the lettings agency and Mr F's close friend were both intent on defrauding him from the outset. While I'm sorry to disappoint Mr F, I'm not persuaded I can say that is most likely what happened here and will explain why.

The payments here were made both to Mr F's friend and to a letting agent. Mr F suspects the two were acting in collusion to defraud him. I cannot know for sure what happened, or whether Mr F is right in these concerns. I do not have the power to compel those he accuses to testify to their versions of events, nor can I instruct a Police investigation into the matter. Instead, I'm restricted to considering what I think is more likely than not (and not just as likely) based on the evidence available to me.

Mr F explains this was a friend he'd known for many years. He describes him as a close friend. It is of course possible that this friend suddenly decided to criminally defraud Mr F and had never had any intent of forwarding on the money Mr F sent.

But I can't exclude the possibility that Mr F's friend had genuinely intended to rent a property with him. The evidence I've seen doesn't make me think it is more likely that the friend intended to defraud him from the very start than, for instance, that he withheld the money for other reasons or later decided not to pay Mr F back.

This matters because, to establish that the payments Mr F made to his friend were an APP scam, I'd need to think it most likely that this was always the friend's (criminal) intent, and not something that the friend decided to do later for whatever reason. I can't safely conclude that was the case with the evidence before me, I simply don't find this more likely than the alternatives.

I've also looked at the information I've been able to find about the payments Mr F made to the letting agent. Mr F explains he made these payments in the belief it was to pay for a gas engineer. Mr F now suspects the payments weren't used to pay for the service he expected. But that in itself isn't enough to show that what happened was an APP scam.

Mr F says he visited the rental property to view it with the agent. He says the agent had an office and a website, and that his checks had shown it was legitimate. I haven't been able to review the website, but I appreciate from what Mr F now says, that all appeared genuine at the time. All of these points were consistent with this having been a genuine lettings agent.

In reaching this decision, I've seen confidential information (that I cannot share in any way) relating to the recipient bank accounts. Had the agent been operating fraudulently, it might have been expected there had been reports of other victims. But this didn't appear to be the case. And nothing else I have seen leads me to believe that, at the time Mr F made payments, the agent's account was being operated fraudulently.

Again, while it is possible that the agent deliberately set out to defraud Mr F (and even perhaps did so in collaboration with Mr F's friend), I can't exclude the possibility that Mr F made the payment to a genuine property agent. As I've noted, it seems he didn't get what he paid for, but that isn't enough for the CRM Code to apply to these payments – it doesn't make it an APP scam.

So I don't find I can safely establish that these payments were made because of an APP scam. I can't require Monzo to apply the CRM Code in those circumstances.

Mr F queries why Monzo couldn't chargeback these payments. However, the chargeback process is something that can only apply to card payments, operating under the relevant card scheme rules. It can't be used when money has been sent by bank transfer - as happened here. So Monzo could not have attempted a chargeback.

I also don't think the payments Mr F made were sufficiently out of character or unusual that Monzo ought to have had concerns when Mr F submitted the payment instructions. The payments were all relatively low in value and were unremarkable when compared to the normal usage of Mr F's account. So, I don't consider Monzo needed to intervene before processing them.

I realise that my decision will be disappointing for Mr F but overall, for the reasons I've explained, I can't fairly or reasonably ask Monzo to refund the money he lost.

**My final decision**

For the reasons given above I do not uphold Mr F's complaint about Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 July 2023.

Stephen Dickie  
**Ombudsman**