

## **The complaint**

Miss S complains that Monzo Bank Ltd won't refund the money she lost when she was the victim of what she feels was a scam.

## **What happened**

Miss S works in the fashion industry and, in March 2021, she was approached by a designer she had met a few times through work with an opportunity to invest in his business. The designer told Miss S he had agreed a contract to provide clothes to a well-known retailer but needed some money to complete the order. He said he would pay her back double what she lent him, within two weeks. So Miss S made a number of payments to the designer, including one payment of £1,500 from her Monzo account.

Miss S didn't receive her money back from the designer by the agreed deadline, so she started chasing him for updates. And while he did initially respond, the emails Miss M sent him then started being returned undelivered, his phone number stopped working, his website was taken down and he blocked her on social media. Miss S also visited the designer's office, which was permanently closed. Miss S was then contacted by someone else who had given money to the designer and spoke to Police who were investigating him. And so she then contacted Monzo to report the payment she made as fraud and ask it to refund the money she had lost.

Monzo investigated but said it felt the situation was a civil matter between Miss S and the designer, so it didn't agree to refund the money she had lost. Miss S wasn't satisfied with Monzo's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They felt the designer set out with the intention to defraud Miss S, and so this case should be treated as a scam rather than a civil dispute. They also didn't think Monzo had established that Miss S had ignored an effective warning when making the payment or didn't have a reasonable basis for believing the designer was legitimate. So they thought Monzo should refund the money Miss S had lost in full. Monzo disagreed with our investigator, so the complaint has been passed 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 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 in 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 customer 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 customer even though they authorised the payment.

Monzo isn't a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code) but has said it is committed to applying the principles set out in it. This code requires firms to reimburse customers who have been the victim of authorised push payment scams in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam.

*Does the CRM code apply to the payment Miss S made?*

The CRM code says it applies to payments made as a result of an APP scam, which it defines as where:

*“(i) The customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”*

And it says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way or the customer is otherwise dissatisfied with the supplier. So in order to decide whether Monzo should refund the money Miss S lost under the CRM code, I first need to consider whether she has been the victim of a scam – or, in other words, whether the designer set out from the beginning with the intent to defraud her.

Monzo has said the designer had a showroom and employees, showed Miss S convincing looking paperwork, and that Miss S had met them in person several times. So it appeared that this was a genuine business opportunity that just went wrong.

But the information I've seen suggests there were a significant number of other people who lent money to the designer for similar reasons to Miss S and didn't get their money back. It appears the paperwork Miss S was shown by the designer was faked, and the designer showed similar fake paperwork from different well-known retailers to the other people as well. The orders the designer told Miss S and the other people he needed to complete don't appear to have ever existed. And the designer has been arrested in connection with these agreements. So I think it's likely the designer set out from the beginning with the intent to defraud Miss S.

Monzo has also argued that Miss S's agreement with the designer was just for a loan, and the paperwork she and the designer signed for that loan doesn't mention any business opportunity or investment. And so the business opportunity or investment is not relevant to whether it should have to refund the money Miss S lost. But I disagree. As I explained above, the CRM code defines a scam as where a customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent. So I think the purpose of the payment and what the customer believed they were doing or getting in return is relevant.

Miss S thought she was lending the designer money so he could complete an order with a retailer. And that the designer would pay her back, plus some profit, once the order was complete. But the order didn't really exist. So I think the purpose she transferred the funds for was fraudulent, and this situation does fall under the definition of a scam from the CRM code.

So I think Miss S has been the victim of a scam, and the CRM code does apply to the payment she made as a result of it.

*Is Miss S entitled to a refund under the CRM code?*

As I explained above, the CRM code requires firms to reimburse customers who have been the victim of authorised push payment scams in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- 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:
  - o the payee was the person the customer was expecting to pay;
  - o the payment was for genuine goods or services; and/or
  - o the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

The CRM code says 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. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Monzo has sent us a copy of the warning it says Miss S would have seen before she made the payment. And the warning says:

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

*Remember:*

- *Legitimate investments will never guarantee a profit*
- *Legitimate investments aren't arranged over social media or things like WhatsApp*

*Check out the company*

*See if they're a legitimate company here. Don't pay unless they're registered with the FCA and you're certain you can trust them."*

While the warning does mention that this could be a scam, the specific examples it gives about guaranteed profit or being arranged over social media aren't really relevant to Miss S's circumstances. They are more focused on traditional types of investment that receive ongoing returns, whereas Miss S was just going to receive a lump sum once the order was complete. And Miss S had met the designer in person and the agreement was originally discussed over the phone. I also don't think the warning goes into enough detail about what the scam could look or feel like. So I don't think this warning was specific enough to be effective in Miss S's circumstances.

I also don't think Monzo has established that Miss S made the payment without a reasonable basis for belief that it was genuine. She had met the designer in person and been to his showroom, which will have made him seem legitimate. She was also shown a genuine-looking letter between the designer and the retailer, showing the order he had supposedly agreed with them. The designer then sent her a relatively professional-looking loan agreement to sign. And he sent her a copy of his passport and gave her a plausible

explanation for why he needed the money from her, rather than getting a loan from a high-street bank. So I think Miss S did have a reasonable basis for believing the payment she was making was genuine.

And so I don't think Monzo has established that any of the exceptions to reimbursement under the CRM code apply. So it should refund the £1,500 payment Miss S made, in full.

### **My final decision**

For the reasons set out above, I uphold this complaint and require Monzo Bank Ltd to:

- Refund Miss S the £1,500 payment she lost as a result of this scam
- Pay 8% simple interest on this refund, from the date it initially rejected her claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 April 2023.

Alan Millward

**Ombudsman**