

The complaint

Ms H complains that Monzo Bank Ltd won't refund the money she lost to an investment scam. Miss H is represented by a third party in bringing this complaint.

But for ease of reading, I'll refer to any submission and comments it has made as being made by Ms H herself.

What happened

I issued a provisional decision on this case on 26 October 2022. I've copied the content of that document below:

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that in August 2020, Ms H began communicating with an individual claiming to be an investment broker, after being recommended the firm by her father. Unfortunately, unbeknown to Ms H at the time, the individual was in fact a fraudster.

Ms H was initially investing with money her father had deposited into the account previously, but as the account appeared to be profiting, the fraudster suggested Ms H invest more to increase these profits. On this basis Ms H set up a cryptocurrency account and transferred £5,200 in from her Monzo account to convert to Bitcoin. She then transferred the funds on to what she believed was the broker's platform, the fraudster guiding her on the process using remote access to her computer.

When the fraudster asked Ms H to deposit a further £17,000, she became suspicious and asked to make an account withdrawal. However, after failing to receive her funds, Ms H realised she'd been the victim of a scam and contacted Monzo to raise a claim.

Monzo declined Ms H's claim to reimburse the payment she'd made. It said the payment fell outside of the scope of the Contingent Reimbursement Model Code (the CRM Code), as the funds went to another of her own accounts.

Unhappy with Monzo's response, Ms H brought the complaint to our service. Our investigator considered the complaint but didn't uphold it. She didn't think the faster payment Ms H made was so unusual for her account that Monzo ought to have intervened before allowing it to be processed. Ms H disagreed. In summary, she said:

- She was not in control of the account she transferred funds to as she was being manipulated and the account activity was being controlled remotely.*
- Monzo ought to have taken more action to protect her from the scam.*

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.

When considering what is fair and reasonable in this case, I've thought about the Lending Standards Board's voluntary Contingent Reimbursement Model, which Monzo hasn't signed up to, but has agreed to act in the spirit of. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam. I've thought about if the CRM code applies in the circumstances for the payment Ms H made and, in particular, whether Monzo ought to reimburse her under the provisions of the Code.

But the Code is quite explicit that it doesn't apply to all push payments. The CRM Code only covers APP scam payments when the funds are being transferred to another person and not to a consumer's own account. In this case, Ms H sent the money to a cryptocurrency wallet in her own name, that she had set up. While it seems the fraudster also had some control over, or access to this wallet, Ms H has confirmed she could also access this account – so I don't think Monzo is responsible for reimbursing Ms H because of any obligation under the CRM Code. I've therefore considered whether Monzo should reimburse Ms H under any of its other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that its customer authorises it to make. Ms H accepts she willingly made the faster payment herself. This means that at the time she sent the money, she authorised the payment and wanted it to be made. Although she did not intend for the money to go to a fraudster, under the Payment Services Regulations 2017 which apply to the payment she made, and the general terms and conditions of bank accounts, Ms H is presumed liable for the loss in the first instance.

But, taking into account the law, regulators rules and guidance, any relevant codes of practice and what I consider to have been good industry practice at the time, I consider 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 (amongst 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.*

I've therefore looked at what I think is the heart of the matter here, being; should Monzo have recognised Ms H's payment as being suspicious and intervened to try and mitigate the risk of her falling victim to financial harm from fraud.

Having considered this fraudulent payment against Ms H's usual account activity, I think the payment was unusual enough that Monzo ought to have intervened before processing it. I say that because from reviewing her statements for the year prior to the scam, I can see there were around seven transfers out of Ms H's account that were higher than £1,000 in value (only one of these being higher than the fraudulent payment). However, five of these transfers moved funds to another 'pot' Ms H held with Monzo. Only two of the payments were where funds actually left Ms H's Monzo account and these were both for £1,200 or

under. Therefore I think an external transfer of £5,200 to a new payee was out of character for Ms H.

I appreciate the transfer was being made to an account in Ms H's own name, but as Confirmation of Payee wasn't in use by the beneficiary bank, this wouldn't have been confirmed by Monzo when the payment was made. In any event, it's now widely known by banks that fraudsters will arrange for payments to be sent to new accounts set up in customer's names, before directing the money on - so I don't think this alone was sufficient for Monzo to not have intervened on this payment.

Had Monzo contacted Ms H prior to releasing the payment, I think there were sufficient red flags in what Ms H would've told them for it to have had concerns – for example, the request to set up a new account which the fraudster also had remote access to, the initial small investment to build trust followed by a significant increase and an inability for Ms H to personally withdraw perceived profits on her account. Here, Ms H was investing funds she had been saving for a house purchase and it was her first time investing. Had Monzo shared these further scam hallmarks with her, I think it's more likely than not she wouldn't have proceeded to make the payment.

I've also considered whether Ms H should take some liability for her losses, but having considered the particular circumstances of the scam I don't think she should. Ms H was initially advised about this firm by her father, who had seemingly been using the firm successfully for a few weeks by the point she became involved. Ms H has explained she checked the FCA register and found no warnings about this firm, had found the 'broker's' professional network page online, that the company she was liaising with had a website and was calling her most days to 'trade'. Ms H thought she could see her money being invested and her profits accumulating so I can understand why, without any advice on how investment scams can appear, this appeared very genuine to her.

Overall, in the particular circumstances of this complaint, I don't think Ms H acted negligently when making the payment towards the scam and so shouldn't be held liable for any losses.

My provisional decision

My provisional decision is to uphold this complaint and for Monzo Bank Ltd to:

- *Refund the £5,200 Ms H lost to the scam*
- *Apply 8% simple interest per year, from the date Ms H made the payment transfer until the date of settlement.*

Both parties have now had the chance to respond to the provisional decision. Ms H accepted the decision. Monzo raised some further points for consideration. To summarise, these were:

- A line has to be drawn between blocking payments in preventing scams and blocking genuine payments which disrupts its customers access to funds. Monzo considers as it's more familiar with forms of scams, it's in the best position to determine which payments should be considered unusual. Monzo also said it's easier to identify a payment as unusual in hindsight. There was also a two-hour gap between Ms H transferring funds from her savings account and then on to the fraudster, rather than rapid movements that would appear more suspicious and in line with fraud.
- While 'Confirmation of Payee' was not in place for this payment, the payee was still listed in Ms H's name, which is enough for Monzo to consider the payment was being made to her own account. In any event, the payment *did* go to Ms H's own account initially, so this point is irrelevant when considering whether Monzo ought to have stopped the payment.
- Ms H saw a tailored warning relating to investment scams and was on this page for 11 minutes before continuing.

My findings

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

Having done so my overall findings on the case haven't changed and I'm upholding Ms H's complaint on the same grounds. I have thought about what Monzo has said since the provisional decision, but it doesn't persuade me to reach a different outcome.

- I agree Monzo has to strike a fine balance between allowing its customers to access their money with as little disruption as possible, while also protecting them from financial harm from fraud. While I don't doubt Monzo has systems in place that aim to protect its customers, my finding is that in this case, there were clear enough indicators that Ms H may have been at risk of financial harm for it to intervene. As I explained in my decision, I reviewed Ms H's statements for the year prior to the scam, and the highest external transfer I can see other than this scam payment was for £1,200. A £5,200 payment (also to a new payee) is therefore a significant increase in usual spending behaviour and something I therefore think ought to have been flagged as unusual and out of character by Monzo for additional questioning. I don't think the time lapse between funds being moved in from Ms H's savings pot and transferred on again negates from the significance of this payment's value in comparison to her usual spending.
- In relation to Confirmation of Payee, the point I intended to make in my provisional decision was that this information couldn't be confirmed by Monzo when Ms H made the payment to the fraudster, to satisfy itself that the payment was not being maliciously diverted, as is often the case in some types of scam. However, as mentioned, even in cases where Confirmation of Payee does confirm the name matches, it's still a common theme in certain scams, particularly investment scams as seen here, for fraudsters to arrange payments to be made to other accounts before moving funds on – so this alone shouldn't result in a payment not flagging as suspicious, particularly when it's a new payee like in this case.
- I appreciate Monzo provided Ms H with a warning relevant to investment scams and that she reviewed this warning for a significant time period. The warning advised that:
 - Legitimate investments will never guarantee profits
 - Legitimate investments aren't arranged over social media or WhatsApp
 - To check the company is FCA registered

Monzo has acknowledged in its own investigations that Ms H did these checks and so may not have been alarmed by this warning. Ms H hasn't stated that she was guaranteed any profit, she was introduced to the firm by her father who believes he first saw it advertised in a newspaper, and while the firm wasn't on the FCA register, Ms H had noted that it also wasn't on its list of 'problematic traders' which reassured her. Overall, in the context of how this scam was presented to Ms H and the addition of her father having already fallen victim to the scam and providing assurances, I don't think the actions Ms H took in light of this warning were unreasonable.

For these reasons I remain of the view that Monzo should be held liable for Ms H's losses, as set out in my provisional decision.

My final decision

My final decision is that I uphold Ms H's complaint against Monzo Bank Ltd. I require Monzo Bank Ltd to:

- Refund the £5,200 Ms H lost to the scam
- Apply 8% simple interest per year, from the date Ms H made the payment transfer until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 7 December 2022.

Kirsty Upton
Ombudsman