

The complaint

Mr M complains that Monzo Bank Ltd won't refund him the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, and based on the submissions of both parties, I understand it to be as follows.

Mr M met someone online who encouraged him to invest in cryptocurrency. This individual portrayed himself as an expert in such matters and struck up a relationship with Mr M which meant Mr M trusted him and his advice. But unfortunately this individual was a fraudster.

The fraudster encouraged Mr M to make a number of 'investments' which led to Mr M making payments from the account he held with Monzo, as well as payments from accounts he held with other banking providers. Unknown to Mr M at the time, the payments would ultimately end up in accounts controlled by the fraudsters. This final decision only relates to the payments Mr M made from his Monzo bank account.

In order to invest, Mr M looked for individuals selling cryptocurrency via a legitimate cryptocurrency exchange. Upon finding these sellers, he made payments to them in exchange for cryptocurrency which he received into a cryptocurrency account, before being tricked into sending it on to the fraudsters.

Mr M made the following three payments from his Monzo account, totalling £1,745;

27 November 2020	£955
27 November 2020	£90
4 December 2020	£700

Mr M realised he'd fallen victim to a scam when he was unable to withdraw any funds from his cryptocurrency account. This was because Mr M was told 'the account was locked' and to unlock it he'd need to send across more money, causing him to become suspicious.

Mr M reported the scam to Monzo in early January 2021. Monzo looked into Mr M's complaint and issued its final response on 4 August 2021 not upholding his complaint. Initially Mr M denied making the payments, but once it became clear he had authorised the payments having fallen victim to a scam, Monzo felt Mr M should've taken more care and that it shouldn't bear any responsibility for Mr M's loss.

Unhappy with Monzo's response, Mr M referred his complaint to our service. One of our Investigator's looked into things, but didn't uphold the complaint. In summary our Investigator didn't think that the payments Mr M made were covered by the Lending Standards Board's Contingent Reimbursement Model (the CRM Code).

The CRM Code is a voluntary code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Monzo is not a signatory to the CRM Code, but has agreed to adhere to the provisions of it. But where our Investigator didn't consider the payments were covered by the Code, he said this meant Monzo didn't have to consider reimbursing Mr M under its provisions. Our Investigator went on to think about Monzo's role in protecting customers from financial harm from fraud, but he didn't think the payments Mr M made were remarkable enough to have warranted concern, particularly as there was very little previous account history to compare the payments to.

Mr M didn't agree with the Investigator's view. In summary his representative felt Monzo should've been concerned about the payments, particularly as Mr M was making payments to new payees and within a one-week period.

As agreement couldn't be reached the complaint has now been passed to me for a final decision.

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.

Having done so I've decided not to uphold the complaint for broadly the same reasons as the Investigator.

There's no question that Mr M authorised the payments in dispute here. That means that under the Payment Services Regulations 2017 he's presumed liable for the losses in the first instance.

I agree with the Investigator that the payments Mr M made are not covered by the CRM Code. This is because the CRM Code defines an authorised push payment scam as;

A transfer of funds executed across faster payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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 to be legitimate purposes but which were in fact fraudulent.

Here, Mr M transferred funds to sellers who were advertising the sale of cryptocurrency. Mr M transferred money to those sellers who provided him with what he asked for – in this case cryptocurrency. Essentially Mr M got what he paid for at this point, the scam only occurred when Mr M sent the cryptocurrency on to the fraudsters, from his cryptocurrency account.

But that isn't the end of the story, taking 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, 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years.
- In some circumstances, have taken additional steps or made additional checks before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Given the above, I've thought carefully about the payments Mr M made, and whether Monzo should've been concerned that Mr M might be at risk of financial harm from fraud. Having done so I'm not persuaded the payments he made were remarkable enough for Monzo to have intervened and questioned Mr M as to the purpose of the payments before processing them.

Mr M's representative has said that the fact Mr M paid new payees over the course of a week ought to have prompted Monzo to be concerned and should've 'triggered' an intervention.

Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. There is a delicate balance to be struck. There are many millions of payments made each day and it would not be possible or reasonable to expect a bank to check each one. In this particular case, Mr M's account had only been open for a short period of time, and so Monzo didn't have previous account activity to compare these payments to. It's also the case that, while I don't doubt the payments represented a lot of money to Mr M, they are of values which I don't think would have appeared so suspicious or unusual to Monzo, when compared with other payments that it processes on a daily basis.

So overall I don't consider the payments Mr M made to have been remarkable enough to have warranted Monzo to take action and contact Mr M ahead of processing the payments.

Mr M's representative's added that Monzo would've been aware of cryptocurrency scams at the time Mr M made the payments and had the payments triggered, it could've alerted him to the risks of proceeding with the payments. I've explained why I don't think Monzo ought to have asked questions about the payments before processing them. But it's also relevant that, in this case, Mr M was paying individuals rather than a cryptocurrency exchange – this meant Monzo wouldn't have been aware of any heightened risk of harm from fraud associated with cryptocurrency investment. However, even if the payments had gone directly to a cryptocurrency account, people can and do legitimately invest in cryptocurrency, so it doesn't automatically follow that Monzo ought to have been concerned even if the payments had gone directly to cryptocurrency accounts.

I've thought about whether Monzo could have recovered any of the funds Mr M lost when it was made aware of the scam. But given the funds had been exchanged into cryptocurrency and then been moved onto accounts controlled by the fraudsters, I don't think Monzo would have been able to recover any funds. It follows that I don't think it missed an opportunity to recover the money Mr M sadly lost.

I have a great deal of sympathy with Mr M being the victim of what was clearly a cruel scam that has had a significant impact on him, not just financially but also because the fraudster deceived him and gained his trust. But I don't find that Monzo has acted unfairly in processing the payments Mr M made and in turn I've decided Monzo isn't responsible for reimbursing him.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2023.

Stephen Wise
Ombudsman