

The complaint

Miss W is unhappy because Monzo Bank Ltd ('Monzo') declined to refund £348.17 which she lost as the result of a third-party scam.

What happened

I issued a provisional decision in November 2022 to explain why I thought Miss W's complaint should not be upheld. And I said I'd consider anything else that either party wanted to give me prior to reaching a final decision in this case. This is an extract from my provisional decision:

"The details of the complaint are well known to both parties, so I won't go into every detail of what happened here. But in summary, both parties accept that in October 2021, Miss W fell victim to a scam when she was selling a sofa on a free classified adverts website.

Miss W decided to sell two sofas, so she listed them on the website. The scammer got in touch pretending to be a potential buyer. They said they would like to buy the sofas and agreed on a price of £350. The scammer asked Miss W if she had used the website's 'door-to-door' courier service before, which Miss W said she hadn't. The scammer sent her a screen shot that had information about the purported service that included the branding of the website, as well as the branding from a courier service which Miss W recognised as genuine.

Miss W was advised that the courier company would need to verify her account by checking that she had sufficient funds to cover the purchase price to protect against seller fraud. She was told this was necessary to ensure the 'buyer' was protected against fraud through the buyer protection scheme. The scammer sent Miss W a link to a website where she filled out the requested details which included her card number, the amount of the payment the 'buyer' was making to her, and the security number on her card. Miss W received a confirmation request from her Monzo application. Miss W said she assumed this was just part of the process, so she completed the process. Just under £350 was then debited from Miss W's account and sent to an international account. Miss W then realised she had fallen victim to a scam and contacted Monzo.

Monzo looked into what had happened and declined to refund Miss W. They said she hadn't taken reasonable steps to protect her account. Miss W said that the scammer had sounded genuine. She thought the screen shot looked authentic, and so she said she thought she had a reasonably held belief that she had been using a legitimate service.

Miss W then complained to our service. Our investigator looked into what had happened and recommended that Miss W's complaint be upheld. He said that he didn't think the payments were properly authorised by Miss W, so asked that Monzo refund the loss.

Monzo didn't agree. They said that Miss W had authorised the payment, albeit as the result of a scam, and so they declined to refund the loss. They said she had completed the form and process for the transaction, and so she had authorised it in line with the relevant regulations and the terms and conditions of her account. As no agreement could be reached,

the case has been passed to me to decide.

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.

Having done so, I am minded to reach a different outcome from our investigator. I'll explain why.

Generally, Monzo can hold Miss W liable for disputed transactions if the evidence suggests that it is more likely than not that she authorised these payments or gave someone else consent to make them on her behalf. I am satisfied from Monzo's technical evidence that the payments were properly authenticated – in this case this was done by entering the correct card details, including the expiry date and CVV on an online form. But the regulations relevant to this case say that is not, on its own, enough to enable Monzo to hold Miss W liable. So I need to consider whether the evidence suggests that it is more likely than not that Miss W consented to these transactions being made. Having done so, I think on balance it is most likely that she did – albeit as the result of a scam. I will explain why.

The relevant regulations to this point are the Payment Service Regulations 2017, which say that consent to a payment transaction must be given in the form, and in accordance with the procedure, agreed between the payer and the payment service provider. The concept of giving consent is a formal one – if the consumer uses the agreed form and procedure for making payment orders then they have given consent to the execution of the payment transaction. This is an objective test and does not depend on the consumer, Miss W, being fully aware of the details of the payment at the time they completed the procedure for giving consent. Consent in this context is not the same as 'informed consent' – the validity of the consent to a payment transaction does not depend on the payment transaction being fully explained to them. The fact a payment takes place as part of a scam does not usually make the payment unauthorised.

The circumstances of this case are not common – I accept that Miss W did not realise when she authenticated the payment by entering her card details into the website, that she was or might be making a payment. It is clear from her testimony and the circumstances surrounding this complaint, that she thought that she was doing something to safely receive payment for goods she was selling. And so, the purpose of her entering the details onto the website being not to send a payment, but to receive one, has required careful consideration. I do think that regardless of what was understood, she did complete the agreed form and process on the website the scammer directed her to. She does not dispute being the one who entered the details required to make the payment. In addition to this, Monzo have provided the journey she would have taken on their mobile application to confirm and authorise the payment, and I think this evidence strengthens Monzo's argument. The steps she went through on the application were clearly stated to be about authorising a payment – not receiving one. Whilst Miss W did not read them, it is enough in accordance with the relevant regulations that she completed the relevant form and process to authorise the payments. As outlined above, it is not material whether she understood exactly what she was doing – and so I am minded to say in my final decision that this is enough to consider these payments were authorised by Miss W, and as such that it was fair and reasonable for Monzo to decline to refund them.

I've also considered whether there is any other reason that the money lost to the scammer should be refunded to Miss W – and I do not think there is. The loss is not covered by the Lending Standards Board's Contingent Reimbursement Model (the CRM code). This is because the lost funds were sent abroad, and the CRM code does not cover international

payments. So I do not think Monzo are bound to refund her under the code which they have agreed to adhere to the principles of.

I also do not think there was anything so unusual or out of character about this payment that it ought to have meant that Monzo were on notice that Miss W was at risk of fraud or financial harm. And so I do not think it would have been reasonable for them to have done more to intervene when she was making the payment, or to have prevented her from making it altogether.

So, based on everything I have seen so far, I am unlikely to be asking Monzo to refund Miss W's losses in my final decision.

My provisional decision

My provisional decision, based on the available evidence at this time, is that I do not intend to uphold this 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.

Monzo accepted my provisional decision and did not have any further points to add. Miss W expressed dissatisfaction with my provisional decision. In summary, she said:

- She took issue with the expiry date and CVC being used as evidence of authentication, because the form she filled in had nothing to do with Monzo. She thought it was to check she was not a scammer.
- She did not agree that she could consent to a transaction that she did not intend to make.
- She had not seen the evidence of the process she would have followed when making the payment. She just swiped on her mobile as she thought it was the money coming into her account. She truly believed she would receive a credit.
- It seemed unfair that the CRM did not apply as she was not aware she was making an international payment – she did not know it was a payment at all. So she feels that it is prejudiced against her.
- She did not act with gross negligence or ignore safety advice, she simply did not believe she was authorising a payment.
- That I as the ombudsman had agreed with her position previously and so she does not understand why this has changed.

I have thought carefully about what Miss W has said, and it has not changed my view of what happened here. I appreciate that this will disappoint Miss W, so I will deal with each point in turn.

As I outlined in my provisional decision, authentication is the act of entering her card details onto the form – whether she knew what she was doing or not. It does not have to be entered into some kind of Monzo related form for authentication to be valid here – it would be the same if her card was tapped on a contactless payment machine, or her genuine chip was read and PIN entered in a chip and pin machine.

I do appreciate that she did not know she was making a payment – but I don't think this is the same as not being able to know a payment was taking place. The payment journey with Monzo clearly said that she was making a payment – and it cannot be the fault of Monzo that she did not read this.

I appreciate her comments about the CRM code not applying being unfair – but the decision not to apply it to international payments was not mine or Monzo's, and applies to all customers so is not something I can amend in her case.

I appreciate it must be frustrating because I initially indicated that I was thinking about upholding her complaint – but I invited further evidence to be submitted by either party to this dispute. And having reviewed Monzo's evidence I discovered that Miss W could have known she was making a payment, and carried out the agreed form and procedure to authorise the transaction. As I said in my provisional decision, this is enough to say she is liable for these transactions.

My final decision

For the reasons outlined above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 27 April 2023.

Katherine Jones
Ombudsman