

The complaint

Mr S complains that Monzo Bank Ltd won't refund a payment made from his account which he says he didn't make.

What happened

In July 2022, Mr S saw an advert online for a cryptocurrency investment company. He says the advert showed the company was endorsed by a number of high-profile, successful businessmen and so he thought it looked legitimate. He clicked on the link in the advert, was contacted by someone from the company and made an initial investment of \$250 from an account he holds with another bank.

After his initial investment, Mr S says the investment company kept contacting him about how well his investment was performing. They told him that, in order to continue investing in cryptocurrency, he needed to open an account with Monzo – which he did. And after being told he had made a significant profit, Mr S asked to make a withdrawal.

The company agreed to the withdrawal, but said he needed to download software so they could connect to his device and show him how to do it. Mr S says he downloaded the software and had a phone call with the investment company where he thought he was making a withdrawal. But he later found out a payment of £5,000 had been made from another bank he held an account with to his Monzo account, and then out of his Monzo account – which he says he didn't agree to.

After finding out about the payment out of his Monzo account, Mr S realised he had been the victim of a scam and contacted Monzo to ask it to refund the money he had lost.

Monzo investigated but thought Mr S has authorised the payment out of his account, so it didn't agree to refund it. It did offer to pay him £75 as compensation for the poor customer service it provided when dealing with his claim though. But Mr S wasn't satisfied with Monzo's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They agreed with Monzo that Mr S had most likely authorised the payment, but they said Monzo should then have considered whether Mr S had been the victim of a scam. And as they didn't think Monzo had done what it should to detect and prevent scams, it should refund Mr S some of the money he had lost. 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.

Having done so, I think it would be fair for Monzo to refund 33% of the money Mr S lost as a result of the £5,000 payment. I'll explain why below.

Did Mr S authorise the payment?

Generally a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer authorised the payments – for example, by making them themselves or telling someone else they could make them.

Deciding whether a customer has authorised payments is a two-part test. Firstly the payments must be authenticated, and secondly, the customer must have consented to the payments being made. And this doesn't necessarily require proving that the customer made the payments themselves, as it is possible for a customer to consent to someone else making payments on their account.

Monzo has sent us evidence that the payment was made using Mr S's mobile banking details. And Mr S says he thinks he went into his banking app while speaking to the scammers. So I think it's likely the payment was made using Mr S's banking details. This means the payment was correctly authenticated, and so I must also think about whether the evidence suggests it's more likely than not that Mr S consented to the payment.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

Mr S says he downloaded software which allowed the scammers to connect to his device. But, based on what I understand, the software Mr S has mentioned would only allow the scammers to view what was happening on his device. It wouldn't allow them to control his device, and so the scammers wouldn't have been able to make the payment in this way.

Mr S has also said no-one else knows the security details to access his mobile banking, he didn't give his security details to the scammers and he doesn't have them written down anywhere. But, if this is the case, I can't see how anyone else would have been able to make the payment without him knowing. The scammers would have needed to correctly guess his security details in order to make the payment, which I think is unlikely.

Monzo's evidence also shows that, around the time of the payment, there were a number of log-ins to Mr S's mobile banking from an IP address which also was used to log-in both before and after Mr S's contact with the scammers. As this IP address logged in to Mr S's mobile banking both before and after his contact with the scammers, I think it's likely this is his genuine IP address. And so I think this suggests he was accessing his mobile banking around the time of the payment.

I appreciate that Mr S says he thought he was making a withdrawal, rather than making a payment. And I think it's possible the scammers tried to confuse him about how the process worked and what was happening. But, ultimately, based on the evidence I have and in the absence of any other plausible explanation, I think it's likely Mr S was at least aware a payment was being made from his account. And so I think Monzo has acted reasonably in treating the payment as authorised.

Is Monzo required to assess this claim under the CRM code?

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. And as I think Mr S likely authorised the payment here, the starting position is that Monzo therefore wouldn't be expected to refund it.

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.

Monzo has argued that it has to review and assess claims based on the information a customer gives it. And as Mr S said he didn't authorise this payment, rather than that he had been the victim of a scam, it should not have to assess this case under the CRM code. But I don't agree that its responsibilities ended there in these circumstances.

Mr S said in his communication with Monzo that he had been the victim of a scam. He also said he had been trying to withdraw from a fictitious trading account and mentioned a potentially fake investment company supposedly endorsed by a number of high-profile, successful businessmen. So I think Monzo should have recognised that, in addition to not thinking he had agreed to the payment, Mr S was saying he had been the victim of a scam. And so, after establishing that the payment was authorised, it should also have assessed it under the CRM code.

Monzo has also argued that there is an exception for reimbursement under the CRM code where a customer has acted dishonestly or obstructively in a material respect. But, from what I've seen, I don't think Mr S was deliberately dishonest or obstructive here. I think it's likely he was genuinely confused about how the payment was made and honestly didn't think he had authorised it. So I don't think it would be fair for Monzo to rely on this exception or to refuse to assess his claim under the CRM code as a result of it.

And so, once it had established that Mr S did authorise this payment, I think Monzo should have assessed his claim under the CRM code.

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.

Did Mr S have a reasonable basis for belief when making the payment?

While I appreciate this was a sophisticated scam where Mr S was given access to a trading platform which appeared to show the profits he was making, I also think there were a number of things about what was happening that should have caused him significant concern.

After seeing the advert online, Mr S doesn't appear to have done significant other checks into who the investment company was. And given the amount of money he ultimately tried to invest, I think it is reasonable to expect him to have done more checks than he did.

Mr S doesn't appear to have been sent any documents or paperwork relating to the investments he was making. But given he thought he was investing through a professional

company, and the amount of money he was investing, I think it would be reasonable to expect at least some documents confirming it. And so I think this lack of documents should have caused Mr S some concern.

Mr S also appears to have been told he had made very significant returns on the money he had invested. From what he's told us, he was told his initial investment had generated returns of more than 1,000% in a relatively short period of time – which I don't think is plausible for any investment. So I think these very high returns should have caused him significant concern that what he was being told was too good to be true.

And Mr S doesn't appear to have made any withdrawals from the trading platform, or been able to access any of the money he was told he had made, without the help of the investment company. And I think this lack of access to his own investment should also have caused Mr S significant concern.

I sympathise with the position Mr S has found himself in. He has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused him significant concern. And I don't think he did enough, or that the seemingly genuine information he was given should have been enough, to satisfy those concerns. So I think he made the payment without a reasonable basis for belief that it was genuine.

One of the exceptions to reimbursement under the CRM code therefore applies here, and Monzo does not have to refund Mr S all the money he lost.

Did Monzo meet its obligations under the CRM code?

Even though I don't think Mr S had a reasonable basis for belief when making the payment, he may still be entitled to a refund of some of the money he lost if Monzo didn't meet its obligations under the CRM code – one of which is to provide effective warnings when it identifies a scam risk.

The payment Mr S made from his Monzo account was for what I consider to be a significant amount. The account had only been opened a few days before so there wasn't much previous activity for Monzo to compare the payment to, but it was still significantly larger than the other payments made out of the account in the previous days. And the payment used up almost the full available balance in the account, and used the full amount transferred into the account shortly beforehand. So I think Monzo should have identified a scam risk here and shown Mr S an effective warning.

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 said it didn't show Mr S any warnings when this payment of £5,000 was made, but did show a warning when he made a payment a few days earlier.

This earlier warning said:

"Could someone be trying to scam you?"

Stop if:

- *You were told your account is at risk, to make an unexpected payment, or to take out a loan*

- *The offer sounds too good to be true*
- *You haven't double-checked who you're paying*
- *You were told to ignore warnings like this"*

But while this warning does mention offers that are too good to be true, the rest of the things mentioned in it aren't really relevant to Mr S's circumstances. The warning doesn't give much detail about what a scam could look or feel like. And I don't think it does enough to highlight the seriousness of the possible consequences of sending money to a scammer, or what steps someone could take to try to avoid falling victim to a scam.

So, even if this warning had been shown when Mr S made the payment of £5,000, I don't think it was specific or impactful enough to be effective in his circumstances. And so I don't think Monzo showed Mr S an effective warning or met its obligations under the CRM code in relation to this payment.

Summary

Overall then, I think Monzo has established that Mr S made the payment without a reasonable basis for belief that it was genuine. But I also think Monzo failed to meet its obligations under the CRM code.

In another complaint linked to this one, one of our investigators said that the other bank the £5,000 payments was originally made from into Mr S's Monzo account could also have done more to protect Mr S. And this other bank has now agreed to refund 33% of the payment – or £1,667.

Where multiple banks, and the consumer themselves, all failed to meet their obligations or could have done more, I think it would be fair for them all to bear some responsibility for the loss. And so, in this case, I think it would be fair for Monzo to also refund 33% of the payment Mr S made.

Recovery

We expect banks to take reasonable steps to try to recover the money their customers have lost, once they are made aware of a scam.

But the payment here was sent to a cryptocurrency exchange, from where it was likely used to buy cryptocurrency. And, due to the amount of time between the payment being made and when Monzo should have recognised that Mr S had been the victim of a scam, I think it's unlikely that anything we would reasonably have expected Monzo to do could have recovered the money.

Customer Service

Monzo has offered to pay Mr S £75 as compensation for the delays and poor communication he received when raising his initial claim. And, from the evidence I've seen, I think this offer is fair and reasonable compensation for the distress and inconvenience this poor customer service caused to Mr S.

My final decision

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

- Refund Mr S 33% of the money he lost as a result of this scam – totalling £1,667
- Pay 8% simple interest on this refund, from the date it initially responded to his claim until the date of settlement
- Pay Mr S £75 compensation, if it has not already done so

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 May 2024.

Alan Millward
Ombudsman