

The complaint

Ms B is unhappy that Monzo Bank Ltd won't refund the money she lost after she 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 I understand it to be as follows.

Ms B was looking to have some dental work carried out. She contacted a dental surgery, that I'll refer to as 'D', who had been recommended to her by a friend, and agreed a price for some treatment. On 17 February 2023, Ms B made a payment, for £1,519.05, to D and arranged an appointment. But the appointment kept being cancelled and Ms B has since learnt that D has gone out of business and the actual dentist had been struck off.

Ms B raised the matter with Monzo, as she believed she'd been scammed by D. It looked into Ms B's complaint, but didn't think it should be upheld. In summary it didn't think it was liable as it considered the matter to be a 'civil' claim. It did however say that it had taken too much time to reach an outcome and so gave Ms B £50 as a gesture of goodwill, in recognition of the poor service it had provided.

Unhappy with Monzo's response, Ms B brought her complaint to this service. One of our Investigator's looked into it and it was their view that Ms B had been the victim of a fraud and that Monzo should refund her in line with the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM code/the code). Monzo has committed to follow the CRM code, despite not being a signatory of it. The code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

Monzo didn't agree with our Investigator's view.

As agreement couldn't be reached the complaint has been passed to me for a 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 to uphold it. I'll explain why.

It is not in dispute that Ms B authorised the payment to the company. So she is presumed liable for it under the Payment Services Regulations 2017 (PSRs). However, as mentioned above, Monzo has committed to follow the CRM Code. This code sets out a basis on which it should retrospectively reimburse its customer if they fall victim to an APP scam.

It only applies to APP scams which it defines in the following terms:

“... a transfer of funds executed across Faster Payments, CHAPS or internal book transfer, authorised by the Customer in accordance with regulation 67 of the PSRs where The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.”

The code specifically excludes what it refers to as “private civil disputes” from its application. As an example of such a scenario, it says;

‘...where a Customer has paid a legitimate supplier for goods, services, or digital content, but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.’

It’s quite clear that it doesn’t protect customers in circumstances where they haven’t fallen victim to a scam. To find that Ms B’s losses fall within the ambit of the code, I need to be persuaded that it’s more likely than not that she was a victim of fraud. This isn’t a straightforward question to address. I need to be persuaded that the dentist she hired had a settled intention to scam her. I cannot know what was in the mind of the dentist at the time.

As a result, I must infer what his intentions were based on what the available evidence tells me. Having thought about this carefully there are a number of factors which persuade me that it’s more likely than not that D had no intention to complete the work they took payment for and on balance, I’m satisfied that the evidence supports the conclusion that this was a scam, rather than a civil dispute.

In the circumstances of this case, I note that information from the Insolvency Service says the following in respect of D;

‘The Court stated in its judgment that the company was conducting illegal dentist service’

And

‘The Insolvency Service found evidence to suggest that clients were paying for procedures in advance of appointments, appointments were cancelled at short notice with various reasons given, and customers found it difficult to contact the company to rebook or request refunds. Trustpilot informed the investigators that they removed a number of fake reviews found to be posted about “[D]”.

Monzo argue that the information on the insolvency notice is from 30 March 2023, but Ms B made her payment on 17 February 2023, prior to when the company was officially liquidated. It also argues that the dentist hadn’t been suspended at the time the payment was made.

However, I’m not persuaded by Monzo’s arguments. The General Dentist Council’s records indicate that the dentist’s suspension dates back to a number of years before 2023. As well as this, I don’t think there is any substance in Monzo’s argument around Ms B’s payment being made before D was *officially* liquidated. I think it’s reasonable to say, indeed it is almost indisputable, that the wrongdoing by D, that the court has referred to, would bound to have *actually* taken place before the company was liquidated.

I consider it reasonable to rely on the evidence or findings from this government agency. And I’m persuaded that overall the weight of evidence points to D setting out with the intent to defraud Ms B.

Overall, for the reasons explained I’m persuaded that what has happened here is more akin to a scam, not a civil dispute. So the CRM code applies – meaning the starting position is that Monzo should refund Ms B. There are some exceptions under the code, where a firm

may not be expected to fully reimburse a customer who hasn't met the standards expected of them. But Monzo hasn't argued that any such exceptions apply here. But in the interest of completeness, I'm satisfied it wouldn't be fair to apply an exception relating to the actions Ms B took. I don't think Ms B would have had reasons to doubt the legitimacy of D at the time she engaged with them. It didn't become apparent that the work wouldn't be completed until later on. Nor can I see that Ms B was shown an effective warning by Monzo, when making these payments, which ought to have alerted her that this was a scam.

Putting things right

In all the circumstances, for the reasons given above, Monzo Bank Ltd should now;

- Refund Ms B the money she lost as the result of the scam, being £1,519.05.
- Pay 8% interest on this amount, from the date Monzo first declined Ms B's claim, until the date of settlement.

My final decision

My final decision is that I uphold this complaint against Monzo Bank Ltd

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 8 March 2024.

Stephen Wise
Ombudsman