

The complaint

Miss M complains that Monzo Bank Ltd did not refund a series of payments she lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here.

In summary, Miss M met an individual I'll call X who asked her to invest in his new club. As Miss M had seen his new member's only event space and attended a previous night club of his, she felt he was genuine and invested the following:

- 3/1/22 – £10,000
- 5/1/22 - £2,000
- 5/1/22 - £200

Unfortunately, despite receiving £1,000 from X for a laptop, Miss M did not receive any returns and X made excuses as to why this was. Monzo initially treated this as a civil dispute, so did not agree they needed to refund Miss M.

Our Investigator looked into the complaint and explained from what they had seen, Miss M had been the victim of a scam so the transactions could be considered under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. This is a voluntary code and while Monzo has not officially signed up to it, they have agreed to follow the principles of it. They felt Miss M should receive a partial refund of the first payment of £10,000. This should be reduced by 50% and 8% simple interest should be added from the date the claim was declined to the date of settlement.

Miss M felt she should receive a full refund as other victims of the scam had. Monzo did not agree with the findings and still felt this was a civil dispute and not an authorised push payment (APP) scam. They also said they had provided a warning for the £10,000 payment which they feel was effective.

The complaint was passed to me, and I issued a provisional decision that read as follows:

Can this be treated as a scam?

It isn't in dispute that Miss M authorised the payments that left her account. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an APP scam.

Monzo has agreed to follow the principles of the CRM Code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...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 were legitimate purposes but which were in fact fraudulent.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"This Code does not apply to:

b) private civil disputes, such as 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."

So, I've considered whether or not the transactions Miss M made fall under the scope of an APP scam as set out above. Having done so, I think that they do. I'll explain why in more detail.

Miss M's testimony has been that she met X and invested in his concept of a new club. She had visited a previous club that he had owned and met X in a private member's only space he had created, which is why she was convinced to invest in a future project of his. I have reviewed the statements of the bank account Miss M transferred the funds to. As the third-party statements contain sensitive information, for data protection reasons I am unable to share the details of what I've seen. Having carefully reviewed these, I am satisfied that X had no intention of using Miss M's funds to create and fund a new club. As I think X convinced Miss M to transfer funds for what she thought was a new club, but they were used for another, fraudulent purpose, I think the transactions can be considered under the CRM Code.

APP considerations

Before considering these transactions under the CRM code, I have firstly applied the general APP considerations.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Miss M authorised the payments in question as she believed they were part of a legitimate investment. So, while I recognise that she didn't intend the money to go to scammers, the starting position in law is that Monzo was obliged to follow Miss M's instruction and process the payments. Because of this, she is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Monzo did enough to try to keep Miss M's account safe.

The initial payment to X of £10,000 was of a higher value than most other transactions on her account and in itself is a high value payment. As this was a high-value payment to a new payee, which stood out as unusual when compared to the genuine account activity, I think Monzo should reasonably have carried out further checks on the payment prior to processing it. And I think this should reasonably have included staff intervention so that tailored questions could be asked about the transaction.

I've gone on to consider whether I think intervention would have revealed the scam and reasonably broken the spell that X had over Miss M at that point. I would have expected Monzo to ask what Miss M was investing in and how she came across the opportunity. And I see no reason why she would not be honest in her answers. Miss M met X at the opening of one of his premises, which was a member's only space in a very popular and sought after area. She was able to look him up on Companies House and see he was the director of a number of similar businesses. And he had been a director of a club Miss M herself had previously visited. So, I think she was suitably convinced that X was a genuine individual and that this was therefore a genuine investment opportunity.

With this in mind, I think it is unlikely that intervention by Monzo would reasonably have revealed the scam at that time. Miss M had met X and there was no indication he was not a legitimate business man with an investment opportunity for her. So I don't think the spell would have been broken had Monzo intervened.

Did Monzo meet its obligations under the code?

I've considered whether Monzo met its obligations under the CRM code when it processed the payments in question. Monzo has asked where in the code it says banks have to identify an APP scam risk in a payment journey. SF1(1) of the code says: "Firms should take appropriate action to identify Customers and payment authorisations that run a higher risk of being associated with an APP scam." It goes on to say that where it identifies a scam risk, it should provide an effective warning.

I've firstly considered if Monzo should have identified that the payments in question ran a higher risk of being associated with an APP scam and for the reasons outlined above, I think they should have done for the initial payment of £10,000. So, I think Monzo should reasonably have provided an effective warning for this payment. However, for the last two payments, I don't think they were so unusual to have warranted an effective warning in the circumstances. They were not of a high value, and I don't think they appeared sufficiently unusual in the circumstances.

Monzo has said that they did provide a warning when Miss M made the payment, and they feel this was effective. This mentioned that a legitimate investment would never guarantee a profit, which they feel was specific to this scam. I accept that a feature of this scam was that Miss M was expecting payment five weeks after the initial investment was made, but I don't think this alone means the warning was effective for this payment. On balance, I don't think the warning was detailed enough or brought to life what an investment scam might look or feel like. So, I don't agree that in this case, Monzo provided an effective warning and therefore met its obligations under the CRM Code. So, I agree there should be a reimbursement of the initial £10,000 payment.

Did Miss M meet her obligations under the code?

The CRM Code requires a firm to reimburse victims of authorised push payment scams that fall under its provisions, unless a firm can demonstrate that one of the exceptions to reimbursement apply. In this case, Monzo says that Miss M lacked a reasonable basis for believing that she was making a legitimate investment or that the person she was paying

was legitimate. Having carefully considered this, I think that Miss M did have a reasonable basis to believe the investment was genuine. I'll explain why in more detail.

As explained earlier, Miss M met X at the launch of what appeared to be a successful members-only space in a desirable location. This later had issues but at the time that Miss M met X, there did not appear to be any problems. In addition, Miss M had visited a previous successful business that X had been a director of, which she was able to verify on Companies House. So, I think it was reasonable that Miss M believed that X was legitimate as an individual. And I think this is therefore a strong basis for Miss M to believe that the investment itself was also legitimate. And I think any other reasonable individual would have thought the same.

I do acknowledge that the details of the investment, including the contract that Miss M signed, promised significant returns and that in some circumstances this can be an indication that something is not right. Overall, the agreement is poorly worded and it wasn't clear how Miss M's funds would be invested. Miss M has said she took the contract to a lawyer who confirmed it was poorly worded but has not provided any evidence to substantiate this, so I haven't place much weight on this.

However, I don't agree that the poorly worded contract is enough for me to think that Miss M did not have a reasonable basis to believe the investment was genuine. And I still think that the fact she met X at the launch of his seemingly successful business provided a very strong basis of belief that she was dealing with a legitimate individual who had a promising investment opportunity. I also think that the fact she had met X and believed him to be genuine reinforced the promise of significant returns, as she had visited two seemingly successful businesses of his. So, I don't currently think that the exception to reimbursement under the code can be applied to the £10,000.

I note that Monzo has also offered £150 compensation for the incorrect information being included in the final response letter. I agree that this is fair in the circumstances, and this should be included in the redress if it has not been paid already.

Could Monzo have done more to recover the funds?

Monzo initially explained that the payments had been made by debit card, but they were not eligible for a chargeback claim. So, they did not attempt to recover the funds on Miss M's behalf. However, after reviewing the statements, I can see these were faster payments and not debit card payments.

I've reviewed the beneficiary bank account statements and having done so, I can see that Miss M's funds were no longer remaining by the time she made Monzo aware of the scam. So even if Monzo had acted within a reasonable timeframe to try and recover them, they would not have been successful. So I don't think Miss M has lost out as a result of this error.

Miss M responded and accepted my provisional findings.

Monzo did not respond with any additional comments or evidence for me to consider.

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.

As neither party has provided any additional comments or evidence for me to consider, I see no reason to deviate from the findings set out in my provisional decision. So, for the reasons

set out above, I uphold this complaint in part and recommend a full refund of the initial £10,000 payment, as well as 8% simple interest from the date of the declined claim to the date of settlement.

If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss M how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint in part and recommend Monzo Bank Ltd pay Miss M the redress as set out above.

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

Rebecca Norris
Ombudsman