

The complaint

Mr R is a sole trader, trading as F. He complains that Monzo Bank Ltd did not reimburse the money he transferred to a fraudster.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them all here. But briefly, both parties accept that in January 2023, Mr R met with an individual (alongside another public figure) who he believed was interested in placing a large order through the business Mr R runs as a sole trader. Mr R and the individual agreed a sale and the individual made a payment of £9,240.27 through an e-commerce platform Mr R used. After making the payment, the individual said he had changed his mind and wanted a refund. Mr R attempted to maintain the sale by offering a discount of £1,500 in cash, which the individual accepted at the time.

However, a few days later the individual maintained that he wanted a refund which Mr R agreed to. The individual said he didn't want the refund being sent to his credit card as he was having account issues, so requested that, rather than be refunded through the e-commerce platform, Mr R send his refund to a different individual's account. Mr R has acknowledged this seemed odd, so asked the buyer to provide identification first. The buyer provided Mr R with a copy of a driving licence confirming his name and address, which matched the details provided for the e-commerce order. On this basis, Mr R made the refund as requested. Mr R deducted the £1,500 cash payment as well as fees from his refund and sent £6,960 to the account details requested.

A few weeks later Mr R received a chargeback request through his e-commerce platform, stating the payment taken was fraudulent. Mr R attempted to speak with the individual he'd had contact with, but was unable to reach him. He also contacted the public figure who had attended the meeting who explained the name Mr R had been given for the buyer was false. At this point Mr R realised he'd been the victim of a scam and contacted Monzo to make a claim.

Monzo investigated Mr R's fraud claim and considered its obligations to provide Mr R with a refund. Monzo has agreed to act in the spirit of the Lending Standards Board Contingent Reimbursement Model (CRM) Code, although it isn't a signatory of it. The CRM Code requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. Monzo says one or more of those exceptions applies in this case.

Monzo has said Mr R didn't have a reasonable basis for believing the payee was the person Mr R was expecting to pay, or that the person he was transacting with was legitimate. Monzo considers Mr R ought to have done more checks to make sure the person he was making the payment to was genuine. However Monzo did acknowledge that there were delays in providing a final response to Mr R, and customer service issues, so awarded £50 in compensation to Mr R.

It also attempted to recover Mr R's money, but unfortunately no funds remained in the beneficiary account.

Mr R feels he should be refunded and so has referred his complaint to us. An investigator looked into the complaint and thought it ought to be upheld, with Monzo providing a full

refund and a further £100 compensation. Monzo agreed to the additional compensation, but not to refunding Mr R the scam payment. As Monzo disagreed with the investigator's view, the complaint has 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 am satisfied that:

- Under the terms of the CRM Code, Monzo should have refunded the money Mr R lost. I am not persuaded any of the permitted exceptions to reimbursement apply in the circumstances of this case.
- Monzo should in any event have intervened when Mr R attempted to make this payment, as it was unusual and out of character for Mr R's account use and if it had done so, I am satisfied the fraud would have come to light and the loss prevented.
- In the circumstances Monzo should fairly and reasonably refund the money Mr R lost.
- The money was taken from Mr R's business current account. It is not clear how Mr R would have used his money differently if Monzo had refunded him when it should have done, so Monzo should also pay interest on the money it should have refunded at 8% simple per year from the date Mr R made the fraudulent payment to the date of refund.

I have carefully considered Monzo's representations about whether Mr R had a reasonable basis for believing the transaction to be genuine. But they do not persuade me to reach a different view. I'm satisfied that Monzo has not shown that Mr R lacked a reasonable basis for belief when making the payment because:

- Monzo has stated that Mr R has placed himself at risk by not following the correct refund procedure of the e-commerce platform the order was made through, and that a request for refund by other means ought to have been a red flag for Mr R. While, in hindsight, a refund through the payment channel would've avoided this scam, I don't agree that a failure to do so equates to unreasonable actions. Mr R had met the fraudster in person and had seen (falsified) identification that matched the individual he believed he was selling to. The fraudster was also in the company of a known public figure (and successful businessman) which further supported Mr R's impression that the fraudster was also genuinely interested in conducting a business deal. I think it's also worth bearing in mind that this wasn't a straightforward scam where a victim is tricked into sending someone money in return for something – in Mr R's mind he had already received payment from the fraudster and was merely returning it. I think it's fair to say, in this scenario, individuals are less alive to the possibility that they may be at risk of being scammed.
- I appreciate that Mr R 'refunded' another individual's account, whose name was unrelated to the sale, but I think, for similar reasons as listed above, this wouldn't have seemed as suspicious to Mr R. I can see why, as Mr R had met with the fraudster, received payment from him and seen identification that matched to this payee, he would be more open to returning a payment in the way requested by a customer, even if this was outside of usual processes.
- Metro has argued that simply seeing an individual's identification, even if it is genuine, doesn't mean they aren't a criminal and that other due diligence checks

should still be carried out. While I accept this is true, I think it's fair to say that by providing identification that appears to provide details such as a home address, most individuals *would* consider this provision reassuring that the person they're transacting with has genuine intentions - as it suggests the individual is allowing themselves to be more easily traceable should any problems arise.

- Mr R has been unable to provide evidence of the conversation between himself and the fraudster, stating that the conversations were on his old phone and records have therefore been lost since changing phones. Monzo has questioned whether the reason provided by Mr R is plausible and provided evidence that Mr R has had the same phone since December 2022 – a month before the scam occurred. Mr R has confirmed he purchased a new phone at this time, but has stated he continued also using his old phone for several weeks – accounting for the loss of messages. Having considered Mr R's evidence as a whole, I've found it to be credible and consistent – I therefore consider the reasons he's given for the lack of available messages to be plausible, particularly in the absence of a contravening set of circumstances from the receiving account holder.

Overall, for the reasons set out above, I think Mr R had a reasonable basis for believing the payment he made was genuine and so I'm not persuaded that this exception to reimbursement applies.

It's not entirely clear from Monzo's representations whether it also considers it provided Mr R with an effective warning when making the payment, as a further reason to not reimburse Mr R. However, for completeness, I've reviewed the warning it provided and don't consider it to be specific enough to the scam Mr R fell victim to, to be considered 'effective' under the CRM Code.

Should Monzo have fairly and reasonably made further enquiries before it processed Mr R's payments?

In reaching my decision that Monzo should have made further enquiries before processing Mr R's payment, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Monzo's December 2022 business account terms and conditions gave it rights (but not obligations) to:

- Block payments if it suspects criminal activity on a customer's account. It explains if it blocks a payment it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post).

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected criminal activity
- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, whilst the current account terms did not oblige Monzo to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And, whilst Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case for the reasons I have explained, I am satisfied it should have intervened. And if it had, with appropriate questioning, it could have uncovered that Mr R was at risk of financial harm and avoided the scam from happening.

Distress and inconvenience

Finally, I've considered the additional £100 compensation awarded by our investigator, on top of the £50 already offered by Monzo. Based on the failings in Monzo's customer service during the claims process, I agree this award is a reasonable reflection of the additional frustration caused to Mr R.

My final decision

For the reasons I've explained, my final decision is that I uphold F's complaint against Monzo Bank Ltd. I require Monzo Bank Limited to:

- Refund F the £6,960 it lost to the scam;
- Pay 8% simple interest, from the date of Mr R made the payment to the date of settlement;
- Pay an additional £100 compensation to F.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 21 February 2024.

Kirsty Upton
Ombudsman