

The complaint

Mrs W is unhappy that Monzo Bank Ltd decided not to refund her after she'd been the victim of a scam.

Mrs W is bringing her complaint using a claims management company which I'll refer to as K.

What happened

Mrs W decided to invest in a company I'll refer to as A. A offered a rent-to-rent property investment. Mrs W's funds would be used to refurbish properties and A would find a tenant to rent the property at a higher price. A told consumers they would rent the properties out to council's or housing associations. A claimed to have agreements in place with a well-known charity (I'll refer to as H) and a housing association (I'll refer to as P).

This service is broadly aware of the scam Mrs W fell victim to. She was far from the only person to be drawn into the scam and, sadly, this service has seen numerous complaints from different victims. We know investors were promised monthly returns, based on the length of each contract. Funds would be used for the sourcing and refurbishment of properties. The scheme continued for some time, with some 'investors' actually receiving some money back, as might be expected of a Ponzi or pyramid scheme.

In or around May 2023, H issued a public statement on its website, saying that it had been made aware of several property investment schemes where H had been named as either the guarantor or would be placing tenants into the rented properties. It said H had no involvement with these schemes. Any claims that H was involved were bogus and fraudulent. It specifically mentioned A, where it claimed H as the "tenant" in its contracts, dating as far back as 2019. H reiterated it had not entered into any agreements or had any dealings with A.

K, representing Mrs W, as well as many other consumers, has provided correspondence from the housing association - P. In these emails P said it had never worked with A. Mrs W made 3 payments between March and May 2023, totalling £12,950. Mrs W initially received one monthly return of £725. And in August 2023 consumers were contacted by the director of A, to say the company would be dissolved and no further payments made to customers.

Mrs W raised a scam claim with Monzo. It said it wouldn't be refunding Mrs W but would attempt to recover her funds from the recipient bank. It's not provided an update on this matter since.

Unhappy with that outcome, Mrs W brought her complaint to our service. One of our investigators looked into things. He was satisfied that Mrs W's claim was an Authorised Push Payment scam and therefore covered by the Contingent Reimbursement Model (CRM) code. In summary the key points he set out were:

- A, provided rental agreements with a well-known charity - H. That charity has since released a public statement on its website that it has never had any dealings with A.

- The housing association – P, that A also claimed to be working with, confirmed it also had never had dealings with A.
- Because of the two false representations above, which featured in most consumers contacts with A, he was satisfied that A dishonestly deceived consumers about the purpose of the payments they were making.
- Mrs W's contract included the housing association – P - as the tenant in one of the contracts, which was found to be untrue. He was persuaded that A could not fulfil the contract with Mrs W.

He went on to say that Mrs W should receive full reimbursement under the CRM code as she had a reasonable basis of belief when making the payments. He said:

- A provided professional and convincing sales literature and had a professional website.
- The agent Mrs W spoke to was knowledgeable.
- The company had been registered on Companies House since 2019.
- At the time A claimed to have agreements in place with H and P, which appeared genuine at the time she decided to initially invest.
- The rental contracts A provided appeared genuine and didn't look too good to be true.

He recommended that Monzo reimburse Mrs W in full and pay 8% simple interest from October 2023 (the date from which Monzo ought to have given an outcome under the CRM code) to the date of settlement.

Monzo provided its business file in response to the investigators view. It says it provided a new payee warning as well as its low friction warning and a confirmation of payee was confirmed. It said those warnings were effective under the CRM code. It went on to say Mrs W had no reasonable basis of belief because:

- She didn't carry out any investigation into the investment beyond what she was presented with, and it would have expected her to carry out further checks.
- She found the investment via social media which is not a legitimate investment platform.
- The social media pages have little interaction.
- A doesn't appear to be a legitimate investment company and is not FCA regulated.
- Online reviews are low in numbers and can be manipulated.
- There were online warnings about A in May 2023.
- It later added that the matter is under Police investigation and was therefore not being progressed.

The investigator considered that whilst Mrs W initially found the investment via social media, all the other interaction and documents from A were professional and persuasive.

The "warning" Monzo referred to, was the statement from H, that it had no connection to A, and was issued on or around May 2023. Mrs W had already made two out of the three payments to A by this time. So, she couldn't have discovered it until the last payment at the very earliest, and he didn't think it was unreasonable that she didn't discover this at the time given she was already investing with A.

Whilst there was a Police investigation, he was satisfied there was enough persuasive evidence that this was a scam and therefore there was no need to await the outcome of that investigation.

He asked Monzo to explain why it didn't think there was sufficient evidence that meant it was appropriate to await the outcome of the Police investigation. It said it wouldn't be able to provide further comment until the Police investigation was complete.

As the complaint couldn't be resolved it has been passed to me.

I have been in touch with Monzo to provide some wider context about what we've seen in handling a number of complaints involving A. And to say that I provisionally agreed with the findings made by the investigator that this was a scam.

Monzo replied to say although it agreed this was likely a scam, it wouldn't be progressing the complaint until the Police investigation had concluded.

Monzo also set out several expectations around consumers' due diligence and the checks it considered appropriate, before consumers decided to invest with A. Which included:

- Checking the FCA register, whether or not A were required to be regulated.
- Consumers obtaining evidence from A as to why it would hand over a share of the profit.
- The contracts were not legitimate and fraught with legal issues and involved tenants' rights. And it would have been reasonable to have someone capable (most likely a solicitor) look over them to ensure their validity and enforceability.
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I responded to say as Monzo agreed it was a scam there was no need to delay the outcome of this complaint.

R3(1)(C) of the CRM code says if a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm's decision, the Firm may wait for the outcome of the investigation before making a decision.

However, there is no need to delay a decision if all parties agree this is a scam. Monzo hasn't provided an explanation why awaiting the police investigation would reasonably inform an outcome under the CRM code. A Police investigation and decision to charge will be based on a criminal burden of proof. That may well take many months or years to decide or may not happen at all. In this case I'm deciding if Monzo, under the voluntary CRM code, is liable to refund the consumer where it's more likely than not, that the consumer was the victim of an APP scam. I appreciate a Police investigation may reveal more detail but as it's not in question that this was a scam, then that isn't necessary in this particular instance.

I also considered the points raised by Monzo in terms of whether Mrs W had a reasonable basis of belief when deciding to invest and they didn't change my view. There wasn't anything concerning about A in the public domain, at the time Mrs W (and many other consumers invested with A), or anything that would, or ought to have put consumers on alert, that this was a scam, or red flags that this might not be a genuine investment. I'd also considered the specifics of Mrs W's actions in light of her personal circumstances and knowledge, and I wouldn't have expected Mrs W to take the steps set out by Monzo. Overall, I was satisfied that in the circumstances Mrs W had a reasonable basis of belief when deciding to invest with A.

Overall, I was satisfied that Monzo ought to refund Mrs W in full under the CRM code and pay interest from the date it ought to have responded to her claim under the code - which was 15 days after she raised the scam claim.

As Monzo didn't agree I'm setting out my findings in full, in a formal 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've come to the same conclusions as the investigator and those set out in my informal provisional decision to Monzo. I'll set out my findings in full below.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards, codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Monzo is not a signatory of the Lending Standard Board's Contingent Reimbursement Model Code (the LSB's CRM Code). But it has adhered to agree to its principles. The CRM Code requires firms to reimburse victims of APP Scams in all but a limited set of circumstances. The investigator set out his explanation for making the finding this was an APP scam (and therefore a claim caught by the CRM code) but for clarity I'll repeat the salient points here.

- I've seen no evidence that A could have fulfilled the contracts it entered into with consumers. It did not have the agreements in place with the parties it claimed - either H or P. And in Mrs W's case, her contract included P as one of the parties.
- The contracts and agreements A provided to consumers were therefore fictitious as they contained the details of parties who had not contracted with them.
- I've also explained I have seen other supporting evidence that A was not operating in line with the purpose that was agreed with its customers.
- There's no evidence that Mrs W's funds were used for the intended purpose that both she and A had agreed they would be used for.

I've asked Monzo if it has any evidence that A was operating legitimately, and it hasn't provided any. And it agrees this was most likely a scam in any event.

As I'm satisfied this is an APP scam and caught by the CRM code, I've gone on to apply the provisions of the code below.

As I've mentioned, Monzo has agreed to adhere to the CRM code which requires firms to reimburse consumers who have been the victims of APP scams, in all but a limited number of circumstances and it is for Monzo to establish that a customer failed to meet one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that*:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made payments without having 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.
 - o and/or the person or business with whom they transacted was legitimate

*Further exceptions outlined in the CRM Code do not apply to this case.

Did Monzo meet the standards expected of a firm under the CRM Code?

The CRM code says that, where a firm identifies APP scam risks, it should provide "Effective Warnings" to their customers. It sets out 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.

I'm satisfied given the value of the second and third payments that Monzo ought to have identified that Mrs W could be at risk of an APP scam and provided effective warnings in line with the firm's standards under the CRM code.

Monzo presented a new payee warning which is not specific to any particular type of scam. It then presented a low friction warning – which I haven't seen was based on asking Mrs W any questions at the time she made the payment or understanding the purpose of the payment. The low friction warning is aimed at safe account type scams and doesn't mention anything that would be specific to the type of payments Mrs W was making here.

Overall, I'm satisfied that Monzo ought to have provided effective warnings which it didn't. And so Monzo has failed to meet the firms' standards under the CRM code.

Did Mrs W have a reasonable basis of belief when making the payments?

I've also thought about the steps Mrs W took to reassure herself about the legitimacy of the contact she'd received from A and whether it was reasonable for her to proceed with the payments. And I'm persuaded she did. I'll explain why.

- Whilst Mrs W initially found the investment opportunity on a social media platform, she then went on to have, what she describes as professional and detailed conversations with representatives of A.
- A had a basic, but professional looking website, which I've had limited access to, given that it's no longer accessible.
- A had an entry on Companies House showing incorporation from 2019, with two sets of micro-company accounts submitted at the time Mrs W invested.
- Mrs W also says she saw reviews on a trusted website, which at the time, showed all positive reviews – albeit they were limited in number.
- At the time Mrs W entered into the contracts with A, there wasn't anything in the public domain that would have put Mrs W on notice that this wasn't a legitimate investment.
- The returns promised didn't seem too good to be true. Mrs W's contract contained a property that could be found on the land registry, the monthly rental payment seemed reasonable, given the property was being refurbished and used as home of multiple occupancy.
- Mrs W's contract included a genuine housing association – P, incorporated since 2012. And Mrs W had no way of knowing P's involvement was a lie.

Monzo has also set out what it thinks Mrs W ought reasonably to have done, before deciding to invest.

- *Checking the FCA register, whether or not A were required to be regulated.* However, I'm satisfied this wouldn't have had any material impact. A did not claim to be FCA regulated and there wouldn't have been any entry for A, even if Mrs W had searched its website. Without a prompt to do so, I wouldn't have expected Mrs W to carry out an FCA check and given there wouldn't have been any information about A I'm

satisfied this makes no difference to Mrs W's reasonable basis of belief here.

- *Consumers obtaining evidence from A as to why it would hand over a share of the profit.* I'm not persuaded Mrs W needed to know or understand how A was operating, earning a profit or the details of its business model. The contracts contain a provision for A to take a commission so Mrs W could see it wasn't offering its services for free, which would have been suspicious. Beyond this I wouldn't have expected Mrs W to reasonably have carried out further investigation into A's profit share of the scheme.
- *The contracts were not legitimate and fraught with legal issues and involved tenants' rights. And it would have been reasonable to have someone capable (most likely a solicitor) look over these contracts and ensure they're valid, enforceable, and what they purport to be.* – I'm not satisfied Mrs W would have reason to believe the contracts were not legitimate. A had carefully arranged for all parties, expected to be present in such an arrangement to appear on the various contracts Mrs W received. Whilst there are some tenants' rights these are terms P has contracted to adhere to. As P was a professional and genuine housing association, I wouldn't have expected Mrs W to consider those terms further. I think it's reasonable for her to have relied on P – as a party to the contract, to have understood the impact on any tenants' rights. And she didn't know and couldn't have reasonably known that A had lied about P entering into this (and other) contract(s).

On this basis, I'm satisfied, that in these circumstances, Monzo has not established that an exception to full reimbursement should be applied. Therefore, Monzo needs to refund Mrs W for her losses.

Putting things right

- I direct Monzo to pay Mrs W £12,225. This calculation is based on payments lost to the scam investment of £12,950, minus a return of £725.
- Monzo needs to pay 8% simple interest from the date it declined Mrs W's claim (which was 04 September 2023), to the date of settlement.

My final decision

I uphold Mrs W's complaint against Monzo Bank Ltd and direct it settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 September 2024.

Sophia Smith
Ombudsman