

The complaint

Mr E complains that Monzo Bank Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In July 2022, Mr E saw some trainers he was interested in buying advertised on a social media platform. He says he saw the seller had a good number of followers and positive reviews, so contacted them and agreed to buy the trainers. And he then made a payment of £377 from his Monzo account to the bank details the seller had given him, to pay for them.

The seller then told him the payment hadn't been received but that, if he made it again, the first payment would be refunded once the second payment was received. Mr E made a second payment for £377 but the seller again said it hadn't been received and that he'd need to send another payment to pay for the trainers and get the earlier payments refunded. Mr E then made a number of further payments to a number of different bank details the seller gave him, and the seller kept saying they weren't received and more payments were necessary. I've set out the payments Mr E made below:

Date	Details	Amount
25 July 2022	To 1 st bank details	£377
25 July 2022	To 2 nd bank details	£377
25 July 2022	To 3 rd bank details	£377
25 July 2022	To 3 rd bank details	£754
25 July 2022	To 3 rd bank details	£1,508
25 July 2022	To 3 rd bank details	£4,147
26 July 2022	Card payment	£3,500
26 July 2022	Card payment	£3,000
26 July 2022	Card payment	£500

The scam was uncovered when the seller continued asking for larger and larger payments and Mr E realised he had been the victim of a scam. He then reported the payments to Monzo as a scam and asked it to refund the money he had lost.

Monzo investigated but said it felt it had acted in line with its internal procedures and regulatory guidelines. It said it didn't think Mr E had taken enough steps to check who he was paying and what for. So it didn't agree to refund the money he'd lost. Mr E wasn't satisfied with Monzo's response, so referred a complaint to our service.

I sent Mr E and Monzo a provisional decision on 22 February 2024, setting out why I was intending to uphold this complaint in part. An extract from my provisional decision is set out below:

“Are the payments covered by the CRM code?”

I’ve first considered whether the CRM code applies to the payments Mr E made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code and Monzo has said it is committed to applying the principles set out in it. This code sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scams. But it doesn’t apply to card payments.

Here, the final three payments Mr E made on 26 July 2022 were made using his debit card details. And so the way the code is written means I don’t think these payments are covered by the CRM code. I’ve highlighted these payments in bold in the table above.

The rest of the payments Mr E made were faster payments from his Monzo account. And they meet the other requirements needed to be covered by the CRM code. So I think these payments are covered by the code.

The payments covered by the CRM code

The CRM code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mr E fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

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 E have a reasonable basis for belief when making the payments?

Monzo has argued that Mr E should have done more to check who he was paying and what for. And while I appreciate he has been the victim of a cruel scam, I do think there were a number of things about what was happening and what he was being told here which should have caused him significant concern.

The trainers Mr E thought he was buying appear to have been listed for sale at significantly below their market value. This brand and style of trainers appear to usually cost significantly more than twice what Mr E agreed to pay for them. And Mr E doesn’t appear to have been given any explanation for why the trainers were being sold at such a reduced cost. So I think this should have caused Mr E significant concern that what he was being offered was too good to be true.

Mr E was also asked to make the first payment to a personal account, rather than a business account in the name of the company he thought was selling the trainers. And he doesn’t appear to have been given any explanation for who this person was or how they were connected to the sale. So I think this should also have caused him some concern.

The later payments Mr E was asked to make then went to different personal accounts. But he also doesn't appear to have been given any explanation of who these people were, or how making payments to these different accounts would allow the earlier payments to be refunded.

And I think what the seller was telling him about the payments not being received, but not being refunded until further payments were made, should also have caused Mr E concern. I don't think this explanation was particularly plausible and this isn't how I would expect a genuine business to operate. Mr E also appears to have had some concerns himself, as he contacted Monzo after the second payment and asked for a refund, before continuing to make further payments.

So I think Mr E should have had significant concerns about what was happening and what he was being told, and I don't think any of the seemingly genuine information he saw should have been enough to overcome those concerns.

And so I think Monzo has established that Mr E didn't have a reasonable basis for belief when he made any of these payments. So it has established that one of the exceptions to reimbursement under the CRM code applies here, and it does not have to refund Mr E all of the money he lost.

Did Monzo meet its obligations under the CRM code?

Even though I don't think Mr E had a reasonable basis for belief when making the payments, 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 first five payments Mr E made here weren't for particularly large amounts. He'd made payments for similar amounts previously and the payments didn't leave the balance of his account at particularly unusual levels. So I think it's reasonable that Monzo didn't identify a scam risk as a result of these payments.

And while Mr E did contact Monzo after the second payment to ask for a refund, I don't think he gave Monzo enough information about what had happened for it to have identified a scam risk at this point. Mr E messaged Monzo via its in-app chat and said he needed a refund for the first two payments that had been made at that point. Monzo then responded asking for more details, but Mr E didn't give it much more information – just repeating that he needed a refund and saying he was being refused one. And after Monzo then said it would send his case to be investigated, Mr E made further payments less than ten minutes later. And he didn't wait to hear from Monzo about its investigation or give it any more information about the payments. So, based on the information it had at this point, I don't think it was unreasonable that Monzo didn't identify a scam risk here.

But the sixth payment Mr E made for £4,147 was for a significantly larger amount and was significantly larger than the payments usually made from the account. So I think Monzo should have identified a scam risk as a result of this payment, and shown Mr E an effective warning before allowing it to go through.

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.

Mr E wasn't shown a warning when making this sixth payment. But Monzo has sent us a copy of the warning Mr E was shown when making the third payment, which 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*

You may lose money if this is a scam.

If you're at all unsure, stop and get advice."

While the warning does mention offers that are too good to be true and double-checking who you are paying, the rest of the things mentioned in it aren't really relevant to Mr E's circumstances. The warning doesn't give much detail about what this kind of fake purchase scam could look or feel like. And I don't think it does enough to highlight the seriousness of the risks or what steps someone could take to try to avoid falling victim to a scam.

So I don't think this warning was specific or impactful enough to be effective in Mr E's circumstances. And, even if it had been shown to him before he made the sixth payment here, I don't think it would have been enough to say Monzo had met its obligations under the CRM code.

I therefore don't think Monzo met its obligations under the CRM code in relation to this sixth payment, and I think Mr E is entitled to a refund of 50% of it under the CRM code.

The payments not covered by the CRM code

As I explained above, the last three card payments Mr E made aren't covered by the CRM code. And the evidence I've seen from Monzo suggests Mr E either made or consented to these payments himself. So while I recognise that he didn't intend for the money to go to scammers, he did authorise these payments. And so the starting position is that he is liable for them and Monzo doesn't have to refund them.

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I think Monzo should also fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*

- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

So I've also considered whether Monzo should have identified that Mr E was potentially at risk of fraud as a result of these payments, or otherwise done more to protect him.

Did Monzo do enough to protect Mr E?

At the point Mr E was making the first of these card payments, he had made a number of payments the previous day to bank details he hadn't sent money to before – and those payments had been increasing in size significantly each time. He'd also then messaged Monzo via its in-app chat again, saying that he'd been scammed while trying to buy trainers. And the first card payment was for a significant amount of money and larger than most of the payments made out of Mr E's account in the previous months. So I think Monzo should have identified that Mr E was potentially at risk of fraud as a result of this payment, and carried out additional checks before allowing it to go through.

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then follow-up questions about the refunds Mr E thought he should be getting.

I've not seen anything to suggest Mr E would have lied or tried to mislead Monzo if he was asked about the payment. So I think it's likely he would have told Monzo the payment was for trainers he was buying and that he was having to make a number of payments in order to receive refunds he was due. And as this isn't how I would expect a genuine business to operate, I think Monzo should then have warned him that he was likely the victim of a scam

If Monzo had warned Mr E that he was likely the victim of a scam and that no genuine business would require further payments to be made before a refund would be issued, I think he would have realised this was likely a scam and wouldn't have made any further payments.

So if Monzo had done more to protect Mr E, as I think it should have, I don't think he would have made this card payment or any of the later payments. And so I think Monzo should therefore bear some responsibility for the money he lost as a result of this scam, from this first card payment onwards.

Should Mr E bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr E to bear some responsibility for the loss he suffered. And, for similar reasons to why I don't think he had a reasonable basis for belief when making the payments, I think it would be fair for him to do so. I think there were a number of things about what was happening and what he was being told that should have caused Mr E significant concern – including the price of the trainers, how he was asked to pay and that he was told he had to pay more to receive refunds.

So I think it would be fair for Mr E and Monzo to share responsibility for the card payments, and so for Monzo to refund 50% of these payments.

Summary

Overall then, I think Monzo should refund 50% of the sixth payment Mr E made that is covered by the CRM code, as I don't think he had a reasonable basis for belief when making the payments but Monzo also failed to meet its requirements under the code for this payment.

And I think Monzo should refund 50% of the card payments Mr E made which aren't covered by the CRM code, as I think it should have done more to protect him but that it would be fair for him to bear some responsibility for his loss too.

Recovery

We expect businesses to take reasonable steps to help customers recover any money they have lost as a result of a scam. So I've also considered whether Monzo did enough to try to recover the money Mr E lost – including making use of any available chargeback scheme.

But I've seen evidence that most of the payments Mr E made were withdrawn from the accounts they were sent to almost immediately – as is often the case with scams. So I don't think it's likely that anything we would reasonably have expected Monzo to have done to try to recover the money he lost would have been successful.

And Mr E has said the card payments he made were to cryptocurrency exchanges and to purchase cryptocurrency. And I haven't seen anything to suggest these cryptocurrency exchanges did anything wrong or did anything other than just process the cryptocurrency transactions as they were instructed to. So I don't think any chargeback attempt against the cryptocurrency exchanges for the card payments would be successful either."

I said I'd consider anything further Mr E and Monzo sent in following the provisional decision, provided it was received by the deadline given.

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.

Both Mr E and Monzo responded to the provisional decision with a number of points, which I will address below. And I want to assure both Mr E and Monzo that I have read and considered everything they sent us. So while I may not comment on every point they made, as I have focused my findings on the issues I think are most relevant to the outcome of this complaint, I have considered everything they sent and told us in coming to this decision.

Mr E responded to the provisional decision saying he had no idea he was being scammed, was not in a good place at the time and got himself into a state where he continued to pursue the money from the scammers. And I appreciate this was a difficult time for him and my intention isn't to diminish or underestimate the impact this had on him. But, from what I've seen, I don't think his circumstances were such that he was unable to protect himself from this scam.

And while I also appreciate that he has lost a significant amount of money as a result of this scam, as I explained in my provisional decision, I think there were a number of things about what was happening and what he was being told that should have caused him significant concern. And so I still don't think he had a reasonable basis for belief when making the payments covered by the CRM code, and I think it would be fair for him to bear some responsibility for the loss he suffered.

Monzo responded to the provisional decision disagreeing with the outcome as it didn't agree the payments Mr E made were unusual or required intervention. And I said in the provisional decision that I thought the first five payments Mr E made as a result of this scam weren't unusual or out of character when compared with the previous spending on his account. But the sixth payment he made, for £4,147 on 25 July 2022, was for what I consider to be a significant amount, and was for a significantly larger amount than any other payment made out of his account in the months before the scam. It also used up a significant proportion of the available funds in his account. And so I still think Monzo was required to provide an effective warning before allowing this payment to go through.

And at the point Mr E was making the first of the card payments, he had made a number of payments the previous day to bank details he hadn't sent money to before – and those payments had been increasing in size significantly each time. He'd also messaged Monzo via its in-app chat again, saying that he'd been scammed while trying to buy trainers. And the first card payment was for a significant amount of money and larger than most of the payments made out of Mr E's account in the previous months. So I still think Monzo should have identified that Mr E was potentially at risk of fraud as a result of this payment, and carried out additional checks before allowing it to go through.

Monzo also argued that the payments Mr E made were all authorised, and so for it to interrupt the payment journey would have been inappropriate and would contradict the Supreme Court ruling in the case of *Philipp v Barclays Bank UK PLC* and one of the overarching provisions of the CRM code.

But the other overarching provisions listed in the CRM code are to reduce the occurrence of APP scams and to increase the proportion of customers protected from the impact of APP scams. And, as I explained above, I think Monzo should have identified a scam risk before allowing the sixth payment here to go through and so I think the CRM code requires it to have provided an effective warning. And so I don't think the overarching provision it has highlighted means it is no longer under this obligation.

And for the payments not covered by the CRM code, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC*. 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 2021 terms and conditions gave it rights (but not obligations) to:

- Block payments if it suspects criminal activity on the customer's account.

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 refuse 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.

As I explained in my provisional decision, I think the circumstances here were such that Monzo should have made additional checks before processing the first card payment. And that, if Monzo had done these additional checks as I think it should have, I don't think Mr E would have made this card payment or any of the later payments. And so I think Monzo should therefore bear some responsibility for the money Mr E lost as a result of this scam, from this first card payment onwards.

So, for the reasons set out above, I still think the conclusions I reached in my provisional decision were correct. I still think Monzo should refund 50% of the sixth payment Mr E made that is covered by the CRM code, as I don't think he had a reasonable basis for belief when making the payments but Monzo also failed to meet its requirements under the code for this payment. And I still think Monzo should refund 50% of the card payments Mr E made which aren't covered by the CRM code, as I think it should have done more to protect him but that it would be fair for him to bear some responsibility for his loss too.

My final decision

I uphold this complaint in part and require Monzo Bank Ltd to:

- Refund Mr E 50% of the sixth payment he made – totalling £2,073.50
- Pay 8% simple interest on this first refund, from the date it initially responded to Mr E's claim, until the date of settlement

- Refund Mr E 50% of the card payments he made – totalling £3,500
- Pay 8% simple interest on this second refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 April 2024.

Alan Millward
Ombudsman