

## **The complaint**

Miss S is unhappy because Monzo Bank Ltd (“Monzo”) declined to refund £3,125 which she lost as a result of a scam.

## **What happened**

The details of the complaint are well known to both parties, so I will not go into every detail of what happened here. But in summary, both parties accept that in July 2023, Miss S was tricked into sending funds in the belief she was sending them to purchase a car.

Miss S was looking to buy a car and found a company on a social networking marketplace. She found a car that seemed to meet her requirements, and spoke to the company. They agreed a price, signed a contract, and organised delivery of the car. Miss S sent then £3,125 to cover the price of the car and delivery.

The scam came to light when the car was not delivered, and Miss S could no longer contact the company through either the phone number or email address they had previously communicated through. Miss S raised the matter with Monzo. Monzo investigated Miss S’s complaint and issued its final response in September 2023, not upholding the scam complaint. In summary, they did not accept liability as they did not think Miss S had done enough to check she was dealing with a legitimate company who had the car to sell her. They contacted the receiving account, who confirmed that there were no funds remaining in the receiving account to return to Miss S. Monzo did pay Miss S £50 in recognition of the fact they took longer than they ought to provide her with a response to her complaint.

Unhappy with Monzo’s response, Miss S brought her complaint to our service and one of our investigators looked into what happened. They recommended that the complaint should be upheld, and that Monzo should refund the money that Miss S had lost, along with interest. In summary, our investigator did not consider that Miss S had ignored any genuinely impactful warnings and they thought this was a sophisticated scam and very believable to Miss S, so she had a reasonable basis for believing she was making a payment to buy a genuine car from a legitimate company.

Monzo did not agree with our investigator’s opinion on Miss S’s complaint and asked them to reconsider. They said that the pre-conception of mistrust in the second-hand car market is so widely known it could be regarded as a cliché – so Miss S likely would have known that she should have exercised more caution.

In summary, they said:

- Miss S ought to have done further checks to ensure the car was legitimate:
  - She ought to have viewed the car or found one nearer to her home so that it was within easy travelling distance to arrange a viewing.
  - Miss S ought to have done further checks on the car, such as an HPI check which is standard when buying a secondhand car.
  - The car price was too good to be true. They said that a similar make, model and age of vehicle could have easily achieved a sale price of up to £1,000 (25%) more. The idea that it would be cheaper because it was bought at auction is not in line with secondhand car sales business models as they will wish to maximise

profit regardless of how they bought the car.

- Miss S ought to have done further checks to ensure the company was legitimate:
  - Miss S ought to have done further checks online about the company – this is commonplace when buying any product or service.
  - There was no credible information online which would persuade someone who was taking appropriate precautions to believe that this was a legitimate company.
  - Confirmation of payee, and the fact the payment went to a business account do not mean that funds are going to a legitimate business.
  - There are plenty of well-known and trusted car websites which do operate in this way which Miss S could have bought a car through, which have tens of thousands of positive online independent reviews.
- By using a social media marketplace, Miss S accepted the associated risk which comes with it that there was the potential she would not receive the car.
- The contract Miss S signed was poorly put together and contained errors. Had she read it she ought to have seen some 'red flags'. Excusing a customer for not reading a contract is effectively saying the contract is irrelevant and does not set the right example for customers.

Our investigator considered their response but was not persuaded to change their opinion on the matter. As no agreement could be reached, the case has been passed to me to decide.

### **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.

In deciding what's fair and reasonable in all the circumstances of the 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.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of their customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse them, even though they authorised the payment.

When thinking about what is fair and reasonable in this case, I have considered whether Monzo should reimburse some or all of the money Miss S lost in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Miss S from the possibility of financial harm from fraud.

There is no dispute here that Miss S was tricked into making the payment. But this is not enough, in and of itself, for Miss S to receive a refund of the money under the CRM Code. The Code places a level of care on Miss S too.

#### *The CRM Code*

Monzo isn't a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances, but has agreed to apply its principles. Monzo says exceptions to reimbursement apply in this case. It says that Miss S didn't have a reasonable basis for believing the person she transacted with was legitimate or was providing a legitimate service.

It is for Monzo to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code.

Those exceptions are:

- 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: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

*\*There are further exceptions within the CRM Code, but they do not apply in this case.*

*Did Miss S ignore an effective warning in relation to the payment being made?*

Monzo have not argued that they provided an effective warning, as they did not deem the payment as one that appeared to be a risk of a scam. So, I do not need to consider whether Miss S ignored one in this case.

*Did Miss S have a reasonable basis for belief?*

I have carefully considered Monzo's representations about whether Miss S had a reasonable basis for believing that the transaction was genuine. But I am not persuaded that Miss S failed to take the requisite level of care required for Monzo to choose not to reimburse her under the terms of the CRM Code and I do not consider that Miss S lacked a reasonable basis for belief. I say this because:

- Monzo have argued that Miss S ought to have gone to see the car prior to sending any money. This certainly would have been advisable previously, and in many cases still is. However, as Monzo acknowledge, there are many legitimate companies whose business model involves paying for a car which is then delivered and can be returned if any issues arise. Miss S believed that this was the case here – the communications she had with the 'seller' and the contract she signed led her to believe that the car would be delivered and that should there be any problems, she could return the car for a full refund. So given this, and the fact the car was said to be a long distance away from where Miss S lived, I do not think she acted unreasonably in not seeing the car in person prior to sending the funds.
- Miss S further believed that her funds were protected as they went into an agent's account who was contractually bound not to use the funds until they were passed on to the seller. She was told that there was an insurance which would cover any losses due to fraud or errors. This would have provided a level of assurance that her funds were safe and would be returned if any problems presented with the car.
- Given all of this, I think Miss S' level of due diligence on checking the car itself were proportionate in the circumstances. She checked that the tax and MOT information were correct, but did not do the HPI check which Monzo say is standard to do whenever someone is buying a second hand car. I do not think this is something that everyone does or knows to do – and I do not think it would have helped Miss S uncover the scam here. She believed she was dealing with a legitimate company, and that she would have the chance to ensure everything was right with the car upon arrival.
- Monzo said that the price of the car was too good to be true, but I disagree. Whilst in percentage terms up to 25% more *could* have been achieved for such a sale, there is often a variety of prices listed for secondhand cars online and a difference of up to a £1,000 would not be hugely unusual. There are many factors impacting the price of a car including mileage, location, some dealers accepting offers below the asking price whilst others do not, and other factors. I can also only assume that others had a

smaller price differential. So, I am not persuaded that the price was too good to be true such that this ought to have provided Miss S with cause for concern.

- So, I conclude that in terms of the car itself – Miss S did enough to have a reasonable basis for belief that the car was legitimate. So I must now consider whether Miss S had a reasonable basis for believing that she was dealing with a legitimate company who were going to provide her with the car after she paid for it.
- Miss S was provided with a contract which she says she asked some people she knew to look over for her. It contained official sounding language including things like guarantees and insurance as I have mentioned. I do appreciate Monzo's point that there are issues and errors within this contract, but I still think overall it would have appeared plausible to most people reviewing it. I do not think any errors were such that Miss S ought to have recognized that she may be falling victim to a scam. This contract provided the appearance that Miss S was making an agreement with a company who had security and dispute resolution processes.
- Monzo said that we should not excuse customers not reading contracts, but I do not think this is something Miss S or our Service has ever said. In her evidence to us, she asked some other people to look over it for her to make sure it all sounded normal – particularly as this was the first time she had tried to buy a car. She said that the friends she asked to check it over said it all sounded fine. I don't think she overlooked anything in the contract document that was such a clear red flag that I can conclude that she did not read it.
- Miss S said she looked up the company online and found a website which had led her to believe the company was real. She spoke to the company via email and phone – and asked questions which received clear answers. Whilst there is now an online warning for the phone number, there was not one at the time. She found the name of the person who she was meant to be talking to on a well-known professional networking site. The company organized a delivery date with her and went through what happened on delivery. Whilst none of this would have been conclusive in and of itself, it would all appear to be normal ways of doing business and would have added to the sense that she was dealing with a legitimate company.
- Miss S sent the account to an account with a name that plausibly was a business name. Confirmation of payee was positive – which means the account name she entered matched the account name she was sending the money to. She was asked to put the reason for the payment as business. Again, whilst none of this was conclusive, this would have all lined up with what the 'company' had told her and would have not provided any cause for concern.
- I do agree that Miss S could have done further research on the company involved, but it is not clear that this would have prevented the scam. She could have used a company with a large online presence including lots of independent reviews – but not every small, newer company is a scam. It is easy to say with the benefit of hindsight that she should not have trusted this company with its meagre online presence, but I do not think she acted unreasonably at the time she made the payment.
- Finally, Monzo have asserted that the social media marketplace is not a trustworthy place to make purchases – so Miss S must have accepted that she was at risk of not receiving the car. I do not think this is the case here. As an inexperienced car buyer, she looked to people around her who had bought cars and they told her they had done this successfully through this marketplace. She went on to do what she thought were the appropriate level of checks anyway – so she does not appear to have been simply trusting that everything on the marketplace was legitimate.

So, having considered everything I think that Miss S did act with the due caution here – and so Monzo are not entitled to apply the exception to refund that she sent the funds without a reasonable basis for belief.

### **Putting things right**

Monzo must refund Miss S:

- £3,125 (minus anything already refunded from this amount);
- 8% simple interest from the date the case was declined under the CRM code, until the date of the payment.

### **My final decision**

I uphold this complaint and ask Monzo Bank Ltd to refund Miss S in line with my findings above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 28 October 2024.

Katherine Jones  
**Ombudsman**