

## **The complaint**

Mr A and Ms M are unhappy that Monzo Bank Ltd won't reimburse them money they lost from what they believe to be fraud.

As Mr A is the principal complainant here, for ease I'll refer to them throughout the decision.

## **What happened**

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr A was looking to have works completed on his garden and employed the services of a contractor. Once the works had been agreed, the contractor instructed Mr A to make a deposit payment to his account of £1,600. Mr A made this payment on 20 April 2022 from his Monzo account.

Following payment, Mr A struggled to get the contractor to commit to a date to complete the works, and communications from them became scarce. As a result, Mr A decided that he no longer wanted the contractor to carry out the works and requested a refund of the deposit paid.

The contractor sent Mr A several excuses as to why this couldn't be done and continued to communicate infrequently. Mr A was also made aware of other customers of the contractor being dealt with in a similar manner. This led to Mr A believing he'd been the victim of fraud, and so he reported the transaction to Monzo.

Monzo considered Mr A's claim, but it decided not to reimburse him. Mr A complained to Monzo, and it concluded that the claim had been handled correctly. It added that it wouldn't be able to treat the transaction as fraud and thought Mr A ought to have done more to ensure what he was paying for was legitimate.

Mr A remained unhappy with Monzo's response, so he came to our service for an independent review. An Investigator considered only the evidence Mr A had provided our service—as Monzo failed to respond to our requests for information—and concluded that Monzo weren't liable for reimbursing him. In summary, they concluded that, on balance, Mr A likely hadn't fallen victim to a fraud, but instead had a private civil dispute with the contractor. As this was the case, Monzo had no liability to reimburse his loss.

Mr A disagreed. He pointed out that the contractor had claimed to have purchased materials with the deposit paid yet had never delivered them, despite numerous requests. Mr A felt that this supported his assertion that the contractor had never used the deposit for the purpose it was paid and had no intention of carrying out the work.

As Mr A disagreed with the Investigator's assessment, 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.

In deciding what's fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It is not in dispute here that Mr A authorised the transaction in dispute. The starting position in law is that banks, such as Monzo, are required to process payments in line with its customer's instruction. So, where payments are authorised, the customer is deemed liable for the payment in the first instance.

However, taking into account regulatory expectations and requirements, and what I consider to have been good industry practice at the time, Monzo should fairly and reasonably have been on the lookout for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

Monzo has also agreed to abide by the principles of the Contingent Reimbursement Model (CRM Code). The starting position within the Code is that firms, such as Monzo, must reimburse a loss where a customer has fallen victim to an authorised push payment (APP) fraud unless certain exceptions apply.

All of the above considerations would only apply where it's more likely than not that the customer has fallen victim to fraud. They don't, however, apply where there is a private civil dispute between the customer and person to whom they've paid. The CRM Code goes further in setting out that it does not apply to:

*“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, before I can assess whether Mr A is entitled to reimbursement under any of the above considerations, I must first decide whether this is likely a civil dispute between both parties or a fraud.

In order for me to be satisfied Mr A has been the victim of fraud, I'd need to see persuasive evidence that the contractor set out, from the point at which they'd requested payment, to deceive him and not provide the services paid for. I can't know for sure what the intentions of the contractor were at the time, but I've used the information provided by Mr A and the contractor's bank account provider to draw conclusions on what I believe to be more likely in the circumstances.

Having considered the evidence collated, I haven't seen persuasive evidence that the contractor did likely set out with the intention to defraud Mr A. I've reached this conclusion for the following reasons:

- It was Mr A who decided to terminate the contractual agreement reached with contractor at the point of payment.
- While this was due to the contractor not commencing the works on the date they'd agreed to, the contractor did attempt to rectify this by offering a new start date. By this time, Mr A had decided he no longer wished to employ their services.
- Communication from the contractor was clearly poor, but this didn't necessarily mean they didn't intend to carry out the work.

- The contract clearly set out that the deposit of £1,600 paid was non-refundable.
- Information received from the contractor's account provider suggests they were legitimately running a business from their account. While I can't disclose specific information on the account, a review of it shows that it was being used to carry out the services it advertised. Transactions on the account support the purchase of materials and the payment of wages.

Mr A has argued that several factors appear to suggest that the contractor was acting dishonestly. Some of those being:

- The contractor claimed to have already purchased materials, yet wouldn't provide those materials, or receipts for them.
- They were aware of other parties that had experienced the same treatment by the contractor, supporting the fact they were acting dishonestly.
- Trading Standards has confirmed that Mr A has been defrauded following a report to it.

I understand Mr A's strength of feeling here, and why he may think this supports his assertion that he's been defrauded. But I don't find this goes far enough.

While I can't be certain the contractor purchased materials for his specific project, the deposit was non-refundable. I therefore don't find that failure to deliver, or provide proof of purchase for those materials, suggests the contractor set out to defraud.

I am also only able to comment to the circumstances of Mr A's specific complaint. While there may be other reports and reviews Mr A can provide of the contractor breaching their contractual agreement with other parties, again, this doesn't persuade me that the contractor was operating illegitimately. I find it more likely that the contractor was taking on too much work, was disorganised and wasn't acting diligently or professionally. So, disputes will naturally arise from such unprofessional conduct. Information from the contractor's account provider, and the messages provided by Mr A between him and the contractor, supports my conclusions that this is the more likely scenario.

While Mr A may have reported his experience to Trading Standards, I've seen no evidence to suggest any criminal charges have been brought against the contractor. So this doesn't go far enough in proving the contractor set out with the intent to defraud. Nor does it suggest they were operating an illegitimate business.

I realise Mr A will be disappointed by my assessment and findings, but I am persuaded from the evidence provided that this is more likely than not a private civil dispute, as there is no persuasive evidence to suggest the contractor set out with the intention to defraud or was running an illegitimate business.

And so it follows that I don't find it fair or reasonable to expect Monzo to reimburse Mr A his loss, as these types of disputes are specifically excluded from any reimbursement under the CRM Code.

### **My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Ms M to accept or reject my decision before 12 July 2024.

Stephen Westlake  
**Ombudsman**