

The complaint

Mr H complains Monzo Bank Ltd (Monzo) won't refund the money he lost when he fell victim to a scam.

What happened

In 2022, Mr H saw a social media advert for an investment opportunity, which appeared to be endorsed by a well-known public figure. He contacted the company, "P", and ultimately decided to invest with them. Unfortunately, they were operating a scam.

Mr H initially made payments to the scam from his existing bank account – and also received a credit of around £400 as a return. When the bank blocked a scam payment, P directed him to set up an account with Monzo. Mr H used this account to transfer the following payments to a recipient he understood would move the funds to his trading account with P:

Date	Amount
11/10/2022	£4,000
20/10/2022	£1,837
20/10/2022	£2,474.80
28/10/2022	£4,562
07/11/2022	£4,562
09/11/2022	£2,720
Total	£20,155.80

In mid-December 2022, Mr H reported to Monzo that he had made the payments due to a scam. Monzo told him it would look into whether it was liable, and also directed him to report the matter to Action Fraud. Mr H remained in contact with the scammers during this period, and further payments were sent to the scam from another account in late December 2022. When Monzo didn't agree to refund Mr H, he complained (via a professional representative).

Monzo paid £15 compensation for service issues but otherwise maintained its position. It said it had considered whether he was due a refund under the terms of the Lending Standards Board's Contingent Reimbursement Model code (the CRM code). This voluntary code requires signatory firms to reimburse customers who have been the victims of authorised push payment (APP) scams in all but a limited number of circumstances.

Monzo isn't a signatory of the CRM Code but has explained it is committed to applying the principles set out in it. However, it said Mr H wasn't due a refund as it had provided him with relevant warnings when he made the payments – and Mr H hadn't done enough to verify the investment.

Unhappy with this response, Mr H referred the matter to our service. He said he was vulnerable and Monzo should have done more to protect him. Our investigator didn't uphold the complaint. They didn't think Mr H had a reasonable basis for believing the investment at the time of the payments from his Monzo account.

They didn't think Monzo had effectively warned Mr H about the scam – but weren't persuaded that would have stopped him from proceeding. They noted his contact with the scammers showed he had variously been warned about the scam by his bank as well as by family. In those circumstances, they didn't consider it fair to direct Monzo to refund him.

Mr H appealed the investigator's outcome so the case was passed to me. His representative said even if he didn't have a reasonable basis of belief, Monzo should still refund him 50% of his loss under the CRM code due to failing to give an effective warning.

I contacted Mr H's representative to explain, in addition to what our investigator had addressed, I wasn't persuaded he met the terms for a refund due to vulnerability under the CRM code. In reply, it then raised that it thought Mr H *did* have a reasonable basis for belief. It also said the intervention by Mr H's bank hadn't been sufficient so shouldn't be considered. And if Monzo had intervened proportionately, it would have uncovered the scam.

I then issued my provisional decision in July 2024 to address these arguments. I explained why I wasn't persuaded Mr H had a reasonable basis for belief. I also addressed why I thought the bank intervention was a relevant consideration – and why, overall, I didn't think proportionate intervention by Monzo would have prevented Mr H's losses. I explained I was therefore minded not to uphold the complaint.

I asked both parties to provide any further comments or evidence they wanted me to consider when making my final decision. Monzo didn't reply by the deadline I gave. Mr H's representative replied to confirm he doesn't agree with my decision – but they had nothing further to add.

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 have decided not to uphold it. As I haven't received anything new to consider following my provisional decision, my reasoning remains the same. I have explained how I came to this outcome below.

In line with the relevant regulations – the Payment Services Regulations 2017 – banks are expected to execute authorised payment instructions without undue delay. The starting position is that Mr H is liable for payments he authorises, even if he was tricked about their purpose etc.

However, when payments are made as the result of an APP scam (as it is agreed was the case here), there are some circumstances under which a bank might be expected to hold liability for the fraudulent loss incurred. Such as when a payment meets the conditions of the CRM code and no exceptions apply which mean the bank wouldn't be expected to refund the consumer.

A bank cannot rely on an exception if the consumer is deemed vulnerable as defined by the code. That would apply when: *"it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered."*

Mr H's representative has highlighted the difficult circumstances Mr H was in at the time of the scam. I've carefully considered these, and I do appreciate the role they played in what happened. But I'm not persuaded they amount to vulnerability under the code. That's because, from looking at Mr H's contact records with the scammer, it doesn't appear to me he was unable to protect himself. It appears he was aware of and considered some of the risk factors, despite ultimately being persuaded to proceed.

I've therefore gone on to consider whether it is fair for Monzo to rely on any exceptions under the code. As Monzo has argued an exception applies on the grounds it doesn't think Mr H had a reasonable basis for believing he was transacting with a legitimate company for legitimate purposes.

Overall, I think the exception has been applied fairly. I'm not persuaded Mr H's belief the investment was legitimate was founded on a reasonable basis for belief at the time of these payments. This is because:

- In early September 2022, Mr H's bank flagged payments he was sending to the scam (via a different recipient). Mr H disclosed he was investing in cryptocurrency (as he understood he was). His bank had concerns, so asked him to attend branch.
- Following their warnings, Mr H agreed to do more checks into the company he was investing with – and ultimately decided to proceed. He also told the scammers at the time that his bank account had been suspended and his bank had convinced him the transaction was a scam. He later told them the bank had undermined his confidence.
- Then in late September 2022, an attempted payment was again flagged by Mr H's bank. It again asked him to attend branch due to its concerns. Mr H called to say he didn't want to proceed and didn't want to answer their questions. He told the scammers the bank wasn't allowing him to make the transactions.
- In late September 2022, Mr H also messaged the scammer to say his wife was unhappy as she was convinced the investment was a scam, so he wanted to cash out.
- In early October 2022, Mr H questioned the scammer over when they would be getting FCA approval. He mentioned he had been watching a television show that had given him concern "about loans being taken out for clients" (there is mention earlier in the chat that the alleged investment company had granted Mr H a loan).

Despite the warnings from his bank and family, and the concerns he had expressed based on the reporting he had seen, Mr H went on to set up a Monzo account and made further scam payments. Given those circumstances, I think Mr H had several reasons to doubt the legitimacy of the investment.

Mr H's representative argues he did have a reasonable basis for belief. They say the scammers were able to quell the concerns Mr H had, and they suggest the bank's intervention wasn't sufficient. I shared details of this intervention with them separately to consider alongside my provisional decision.

It does strike me as surprising that Mr H's representative only raised concerns about the bank's intervention at that stage. This is something the investigator relied on when giving their outcome, yet they raised no qualms at that time. Furthermore, while the representative said they wanted more context about this – Mr H was present for this intervention. So I can't see why they couldn't have got that context from him, or why they wouldn't have raised this earlier as an issue.

Regardless of whether the bank's intervention was sufficient, I don't agree with the representative's assertion that, if it fell short of a proportionate intervention, it shouldn't be considered at all as a factor in this case. All the circumstances must be considered, as intervention falling short of the expected level of intervention (by a third party) could still have raised points relevant to Mr H's basis for believing the investment was legitimate.

I think the key point here is that, as is demonstrated by the messages with the scammer, the bank had clearly told Mr H they believed the investment was a scam. I think that level of warning ought to have given him pause to question the legitimacy of the investment – and what the company in question was telling him.

I understand the representative's point that these factors individually may not be enough to undermine Mr H's reasonable basis for belief. But taking them altogether, in the wider context of the scam, I do think there was enough going on that Mr H's willingness to make the payments from Monzo was not founded on a reasonable basis for belief. He had been warned by multiple sources that the investment appeared to be a scam.

I've looked at what the scammer said to Mr H in response to him mentioning those warnings and expressing concerns. I'm not persuaded it was reasonable to rely on their responses as a basis for believing they were legitimate. I can't see the scammers raised much by way of compelling argument to dispel the concerns/warnings. And I also think Mr H had reason to treat their responses with a degree of scepticism; a scammer was unlikely to admit what they were doing.

Overall, I don't think Mr H had a reasonable basis for believing the investment was legitimate at the time of these payments. I therefore think Monzo has applied this exception fairly.

Where we find a customer hasn't met their obligations under the code, we would go on to consider if the bank met their obligations. However, on a fair and reasonable basis, I must also consider whether any failings had a material impact on Mr H's losses.

Here, given the payment size and account history, I would have considered it sufficient for Monzo to display a tailored written warning effectively covering the risks of the payment being a scam. However, in order to be in a position to give an effective warning, Mr H would have needed to answer questions about the payment reason honestly. It wasn't otherwise obvious the payments were linked to cryptocurrency.

The contact records I've seen suggest Mr H was open to the scammer's influence and coaching on what to say/do when making the payments. This is also something his representative have told – as they say the scammers frequently called Mr H to guide him through how to make the payments and set up accounts.

I therefore think it's unclear whether Monzo would have known enough about what he was doing to issue a tailored warning. In those circumstances, he wouldn't be due a refund under the code – as Monzo can't be held in breach of its duty for not issuing an effective warning if it's not been given a fair opportunity to do so.

I'm also not persuaded an effective warning about (cryptocurrency) investment scams would have deterred Mr H. That is because his bank had already told him they thought this was a scam - yet he opted to continue. Similarly, his family warned him this was a scam. I'm not sure what else Monzo's warning ought to have included that would have dissuaded him, given he wasn't deterred by these prior warnings.

I'm also conscious that, as shown by the contact records with the scammer, Mr H was aware the investment wasn't (yet) regulated. So even if this had been raised as a potential warning sign/indicator of a scam, I'm not persuaded this would have dissuaded Mr H from proceeding. It appears to me this is something he was aware of, and/or would have gone back to the scammer directly about – and would likely have been persuaded to continue. Particularly as the investment was (allegedly) related to cryptocurrency, the fact the company wasn't regulated made it less obvious it was a scam; this wasn't a requirement for all cryptocurrency merchants.

Furthermore, Mr H told the scammer he was convinced they had scammed him in early December 2022 – and had concerns enough to also report this to Monzo. Yet he continued engaging with them, and appears to have made further payments from another account to the scam. While those payments were reported as unauthorised, the ombudsman who looked into the case against that account provider concluded they were authorised. The contact records also show Mr H was still speaking to the scammers about moving funds to this account, and paying further fees, at that time.

It therefore appears Mr H was persistent about paying. Towards the end, he appears to have thought (or at least had very strong suspicions) this was a scam, but continued paying. If he thought this was a scam, but calculated that it was worth the risk of continuing to pay, in the hope it might allow him to recover funds, that would likely meet the bar for gross negligence – which would be another reason under the code why M

I therefore don't think it would be fair and reasonable to direct Monzo to (partially) refund Mr H due to a failure to meet its requirements under the code, or as part of our wider expectations for how banks should monitor for, and respond to, indicators of a scam risk.

It appears Monzo tried to recall the payments from the beneficiary bank once the scam was reported, but was told no funds were available for return. Given the time that had passed since the payments, I don't consider that surprising. Unfortunately, in scams like this, funds are generally moved on quickly to avoid the chances of them being recovered. I therefore don't think Monzo missed an opportunity to successfully recover the funds.

Looking more widely at the events of the scam, I can see Mr H found the process of reporting the scam, and submitting the supporting evidence Monzo asked for, difficult. While I can see how this process was frustrating for him, I also understand why Monzo considered it important to seek this information to help consider its liability. Overall, bearing in mind Monzo has already paid Mr H £15 compensation, I'm not minded to award anything further for avoidable distress and inconvenience. Ultimately, I think the stress of the situation is attributable to the cruel actions of the scammers.

I appreciate this will be disappointing for Mr H. But overall, having carefully considered the circumstances of this complaint, I'm not persuaded it would be fair to direct Monzo to do anything further.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 6 September 2024.

Rachel Loughlin
Ombudsman