

The complaint

Miss F is unhappy that Monzo Bank Ltd (Monzo) won't reimburse the money she lost to an investment scam.

What happened

The investigator's letters of 15 November 2023 and 26 March 2024 outlined the background to this complaint. But briefly Miss F fell victim to an investment scam with an organisation I will refer to as K. Between 23 September 2021 and 25 September 2021, Miss F transferred three payments totalling £21,000 directly to K.

Monzo initially felt this was a civil dispute, but it also said even if it was a scam, it didn't think Miss F had done sufficient checks to verify the investment before proceeding with the payments. It also felt it provided her with an effective warning.

Monzo credited her account with £40 in March 2023 as it recognised the case took longer than expected to investigate the matter.

Our investigator upheld the complaint. She concluded this was a scam rather than a failed investment. She felt the complaint should be upheld in full under the Contingent Reimbursement Model (CRM) Code. This was on the basis that she didn't think Monzo's warning was effective as defined under the CRM Code and she also felt Miss F had a reasonable basis for believing this was a genuine investment.

The investigator also recommended Monzo increase the compensation from £40 to £200 (so an additional £160) for the delays it had caused.

Monzo didn't agree. It said its warning was effective and it felt there was a lack of evidence that K was legitimate. It felt Miss F should have undertaken further due diligence.

As the case could not be resolved informally, it's been passed to me for a 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 agree with the investigator broadly for the same reasons.

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

Where the evidence is incomplete or missing, I am required to make my findings based on a balance of probabilities – in other words what I consider is more likely (than not) given the information available to me.

I am extremely sorry to hear about the situation Miss F is now in, following the failure of K, and the impact it has had on her. She has sustained a significant financial loss, through no fault of her own. However, I do not have the power to consider the actions of K. The complaint I am limited to deciding is the one Miss F brings against her bank, Monzo. That means I must focus on whether I consider Monzo was at fault in any way - and if so, what difference I think that fault likely made.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the 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 the customer even though they authorised the payment.

Was K a scam or genuine investment?

Monzo originally said this was a failed investment rather than a scam. However, it hasn't disputed the investigator's conclusions that this was a scam. But for completeness I agree it was a scam – broadly for the same reasons the investigator outlined.

This is relevant because the Code doesn't cover

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 it wouldn't cover a genuine investment that has subsequently failed.

An APP scam is where:

The customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

Miss F believed the purpose of her payments was providing an investment to K that would be passed on to other small to medium sized businesses in the UK property finance industry. This was by way of short-term bridging loans to companies involved in property development. Miss F understood she would receive regular returns and profit by the end of the investment term. I've considered whether there is convincing evidence to demonstrate that the true purpose of the investment scheme was significantly different to this, and so whether this was a scam or genuine investment.

The Insolvency Service has said it hasn't found any evidence of bridging loans being provided by K - which was exactly what K told investors it would be doing. It also had concerns over the trading of K and said it was acting as a Ponzi scheme. It hasn't found any evidence that K conducted any investments.

The Insolvency Service and the insolvency practitioner involved in the liquidation process, have both confirmed the directors of K continue to fail to co-operate with the Insolvency Service's investigation into the company. The directors have also failed to attend court for a private examination. They have said this is frustrating the liquidation process.

Other concerns are that Miss F says the website closed and K then became uncontactable - which is unusual with a genuine organisation. According to Companies House, K's principal activities are listed as 'buying and selling of own real estate and other-letting and operating of own or leased real estate', which is different to how it purported to be using investors' money.

Overall, there is a lack of any evidence that K was operating as a genuine and legitimate company. Most consumers invested a large amount of money and received very small monthly returns for a short period before this stopped – typical of how a Ponzi scheme operates.

And ultimately, I've not been provided with any evidence to show that the business was operating in line with the way it described to, and agreed with, its investors prior to their investment. So based on the evidence I have, I am satisfied this was a scam.

Reimbursement under the CRM Code

Monzo isn't a signatory to the Contingent Reimbursement Model (CRM) Code – but it has committed to applying the principles of it when handling consumers' claims. Under the CRM Code the starting principle is that a firm should reimburse a customer who is the victim of an APP scam, like Miss F. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the CRM Code outlines those exceptions.

One such circumstance might be when a customer has ignored an effective warning.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having 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.

The CRM Code also outlines the standards a firm is expected to meet. And it says that when assessing whether the firm has met those standards, consideration must be given to whether compliance with those standards would have had a material effect on preventing the APP scam that took place.

I am also mindful that when Miss F made these payments, Monzo should fairly and reasonably also 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). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before it processed a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Did Monzo meet its obligations under the CRM Code and did Miss F ignore an effective warning?

When a firm identifies an APP scam risk in relation to a payment, the CRM Code says firms should provide an effective warning. The CRM Code sets out the minimum criteria that a warning must meet to be an 'effective warning'. I appreciate that, in providing Miss F with the 'high friction warning', Monzo took steps to provide her with an effective scam warning during these payment journeys. However, despite this, I'm not persuaded the warning met the minimum requirements of an effective warning under the CRM Code.

Monzo's electronic warning at the time of Miss F's payments advised her to check the company was legitimate - with a link to what I believe would have taken her to Companies House. But K was registered on Companies House so appeared legitimate. Although, in its submissions, Monzo refers to its warning having a link to the FCA website. So Monzo should clarify the link address in response to this provisional decision.

The warning did say "*don't pay unless they are registered with the FCA and you're certain you can trust them*". But K's literature confirmed this wasn't a regulated investment. Whilst there may be risks to the investment and unregulated investments are not afforded the same protections as regulated investments – this isn't necessarily indicative of a scam. And by this point Miss F had successfully invested with K with returns received - so there wasn't any reason for her to question its legitimacy or for her not to trust K. In its submission Monzo refers to high risk investments but taking a risk with your money is not the same as losing it all to a scam.

The warning also said:

Legitimate investments will never guarantee profit
Legitimate investments aren't arranged over social media or things like WhatsApp

But of course, the literature made it clear that capital was at risk and the investment had been arranged over email and the telephone.

Monzo has also said Miss F spent a long time looking at the warning she was presented with. The suggestion here from Monzo is that the warning must have resonated with her to a degree. But the time spent by Miss F viewing the warnings doesn't make up for the failures to provide an effective warning. And given the things it focuses on; I think Miss F might reasonably have concluded (after 16 minutes of checking things out further) that the warning simply wasn't relevant to her. She did say in her initial response to Monzo that she saw the warning and checked the payment and the account details were correct.

Overall, I don't think the warning was sufficiently impactful or specific as required by the CRM Code. It also didn't explain the consequences of proceeding with the payment so wasn't impactful. So, I don't think Monzo can fairly rely in this exception to reimbursement.

Providing an effective warning in some circumstances is only one of the standards a firm must adhere to under the CRM Code. Under SF1(5) in some circumstances a firm is required to go further and, where it has concerns about a payment, it should intervene and take 'reasonable steps to communicate with the originating customer'. I also consider it to be a matter of good practice for a firm like Monzo to be on the lookout for out of character and unusual transactions to, among other things, try and prevent customers suffering financial harm from fraud.

I think there were reasons for Monzo to be concerned here. The first transaction was for £9,000 as was the second transaction – made a day later. These amounts were significant and unusual based on the account history – so I would have expected Monzo to take reasonable steps to communicate with Miss F – for example through its online chat.

That said, it is difficult to see how any further intervention would have had a material effect on preventing the scam given the level of sophistication involved here. This finding is significant in terms of the redress and when interest is payable from.

This case hinges on whether Miss F had a reasonable basis for belief.

Did Miss F have a reasonable basis for belief?

The investigator outlined the reasons why she felt Miss F had a reasonable basis for belief and I agree - broadly for the same reasons.

I have considered not just whether Miss F believed she was sending money for an investment, but whether it was reasonable for her to do so.

Miss F told us she had been contacted by K some time prior to 2021. This was after she'd left her details on a genuine investment broker website when she was actively looking to invest her money. She'd previously invested with K and the evidence suggests she had transferred that original investment into this new bond. Miss F says she saw website articles quoting K – adding to an overall sense of legitimacy.

I don't think the indicative rates of return suggested that the investment was too good to be true. And, in line with a genuine investment opportunity, the company's literature stated that 'capital is at risk'. K issued Miss F with a substantial amount of material including a brochure terms and conditions, invoice and bond certificates. The material I've reviewed appears professional.

Monzo says there is a lack of evidence that K was legitimate – but it is only now with a significant amount of investigation that the events surrounding K have come to light. There was nothing in the public domain at the time about K that Miss F could've reasonably inferred from that a scam was taking place.

This means Monzo should fully reimburse Miss F for all three transactions.

Recovery of funds

In light of my conclusions above, it is not necessary in this case to consider whether the bank also exercised enough care and urgency in trying to recover the stolen funds from the payee bank before they were irretrievably removed by the scammers. But for completeness, even if there was a delay, I don't think it likely would have made a difference here.

The three scam payments were made in September 2021 and the scam was reported in December 2022 – over a year later. I understand that Miss F didn't know she was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful.

Distress and inconvenience

Monzo offered Miss F £40 for delays in its complaint handling and responses within its in-app chat. Our investigator felt a sum of £200 was more appropriate. I have reviewed the chat messages and agree there were some delays and an overall lack of explanation and communication around expected timescales. I appreciate this was an unusual scam scenario – but in thinking about the impact of Monzo's actions (rather than the crime itself) and the impact this had on Miss F - not least because she has been facing the very real possibility that she would not get her money back - I think the sum £200 fairly reflects the impact of Monzo's failings in this particular case.

Putting things right

In order to put things right for Miss F, Monzo Bank Ltd should:

Refund Miss F in full (so £21,000) less any returns she received. As I understand it, she received one of £179.28

Because Miss F has been deprived of this money, I consider it fair that Monzo Bank Ltd add 8% simple interest to the above from the it declined Miss F's claim to the date of settlement.

Pay £200 compensation.

If Monzo Bank Ltd is legally required to deduct tax from the interest it should send Miss F a tax deduction certificate so she can claim it back from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint and Monzo Bank Ltd should put things right for Miss F as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 16 October 2024.

Kathryn Milne
Ombudsman