

The complaint

Mr O complains that Monzo Bank Ltd (Monzo) won't refund the money he lost to a scam.

Mr O has used a professional representative to bring this complaint to our service and they have made submissions on his behalf. For consistency, I'll refer to Mr O throughout.

What happened

I issued my provisional decision on this complaint on 29 November 2024. I wanted to give both sides a chance to provide any further evidence and arguments before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

What happened

Mr O was looking for a new job as a result of some ongoing health conditions. As Mr O was employed through a skilled worker visa, he needed to find a new job which also offered visa sponsorship.

Mr O says he was having no luck applying for new roles, and his application for a new visa was rejected several times by the Government. He shared his troubles with his colleague, who recommended the service of an individual who was employed by a company providing sponsorship jobs. On 9 August 2023, Mr O made contact with the individual through a well-known messenger service. Mr O understood he'd be granted a visa quickly and accepted into a sponsorship job in around a week's time. All Mr O needed to do was pay a deposit of £5,000 and then a final balance of £2,000 upon receipt of his certificate of sponsorship. Unbeknown to Mr O, he was speaking to a fraudster.

On 12 August 2023, Mr O made two payments totalling £5,000 to an account controlled by the fraudster, from his Monzo account. After almost two weeks, he still hadn't received the certificate of sponsorship. So he reported the scam to Monzo on 21 August 2023.

Monzo assessed Mr O's claim under the Contingent Reimbursement Model (CRM) Code, which it has agreed to abide by the principles of. The CRM Code sets out that Monzo should refund victims of authorised push payment (APP) scams (like Mr O), in all but a limited number of circumstances. Monzo said as Mr O didn't take enough steps to check who he was paying or what for, that he lacked a reasonable basis for belief. And it was unable to recover any funds from the bank that Mr O sent his money to.

Our Investigator looked into Mr O's complaint, and they recommended that Monzo ought to refund 50% of his outstanding loss, together with 8% simple interest from the date it declined his claim, until the date of the settlement. They too agreed Mr O didn't have a reasonable basis for belief under the CRM Code. But they said Monzo ought to have provided him with an effective warning, so the liability should be shared equally between both parties. They also noted as Mr O had borrowed some funds from his brother, interest may not be payable on the full refund.

Mr O accepted this outcome, but Monzo did not. It said Mr O didn't have a reasonable basis for belief, and the payments were not unusual for his account, so it had no reason to intervene. It also made reference to a recent Supreme Court ruling in Philipp v Barclays Bank UK PLC. It said banks are expected to carry out authorised payment instructions promptly, and it does not need to concern itself with the wisdom of those instructions.

In response, our Investigator said that there was nothing within the judgement that said firms couldn't make fraud-related enquiries with customers or provide warnings. And they said Monzo ought to have contacted Mr O directly when he made the first payment of £4,000, and had it done so, the scam would have been prevented.

As no agreement could be reached, this case was passed to me to be decided.

What I've provisionally 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.

It's not in dispute that Mr O made the payments to the fraudster himself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) he is presumed liable for the loss in the first instance. However, as I've already set out, Monzo has agreed to abide by the principles of the CRM Code.

The starting position under the CRM Code is that Monzo ought to refund Mr O, unless it can establish an exception to reimbursement applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that Mr O;

- 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*

In this case, I think that Monzo has fairly established that the above exception applies, and largely for the same reasons as our Investigator.

Mr O has not disputed the Investigator's outcome on this point, so I won't go into great detail on why I think this is the case. But overall, I find that Mr O ought to have done more to verify that the person he was dealing with was actually able to offer him a legitimate certificate of sponsorship. He received no paperwork, he didn't know the name of the employer, and he was arranging this all through an informal messenger service. Given Mr O had been recently declined multiple times in his own applications for a visa and given his previous experience of applying for such visas, I think he ought to have questioned why, at such a hefty fee, this individual who he knew so little about, could provide what he so longed for. Whilst I accept a recommendation from his colleague might have been persuasive, as his colleague had not used the services of this individual themselves, and given the red flags mentioned, I still find that Mr O ought to have had significant concerns about the transactions he was making. So under the CRM Code, Monzo can fairly hold him at least partially liable.

Standards for firms

The CRM Code requires a firm to provide an effective warning where it identifies an APP scam risk in a payment journey. I'm persuaded there was enough going on for Monzo to have identified a scam risk when Mr O made the first payment of £4,000 given its value and the impact this had on Mr O's account balance. Monzo confirmed it didn't give any warning.

However, the Code also says that the assessment of whether a firm has met the standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam that took place. That is to say, had it provided an effective warning to Mr O, would that have prevented the scam?

As the fraud and scams landscape is ever evolving, it's important that firms continuously update their fraud detection systems to keep up to date with common scams. I accept that purchase scams are well-known across industry and would certainly be considered a 'common' scam. But the specific variance of purchase scam in this case, that being the purchase of a skilled worker visa, is not one which I'd consider to be 'common' at the time the payments were made, as it was not yet well-known across industry. Whilst I agree this scam is becoming more prevalent over time, I'm mindful the payments were made over a year ago. I'm therefore not persuaded it would have been reasonable to expect Monzo to have factored this specific type of purchase scam into its online warnings when Mr O made the payments. I find it likely that had Mr O been asked to select a payment purpose, he'd have got to a point where a purchase scam warning likely would have been given. But given how varied purchase scams can be, I'm also not persuaded that even a broader warning about 'purchase scams' would have been specific or impactful enough to resonate with Mr O.

I accept that during a conversation with Mr O, Monzo might have been able to uncover enough about what Mr O was doing to warn him that something didn't sound quite right, even without the knowledge of 'visa purchase' scams. But this is not a case where I'd expect Monzo to have made direct contact with Mr O, such as via a phone call, to discuss things further. Having reviewed Mr O's account statements from January 2023, I can see he has made similar debits on his account, such as a £5,000 debit in March 2023, a £2,000 debit in June 2023, and two debits of £2,500 both on the same day to the same payee in July 2023.

I consider that a proportionate intervention here would have been a written effective warning, but for the reasons I've explained, this would not have made a material difference to the success of the scam. And for these reasons, I find that Monzo is not liable for Mr O's loss.

Recovery of funds

Monzo says Mr O raised his scam claim on 21 August 2023, and it contacted the bank he sent the funds to the same day. But unfortunately it was advised that none of Mr O's funds remained.

As the payments were made on 12 August 2023, I don't think any swifter action on Monzo's part would've likely impacted the outcome for Mr O. I think it's more likely than not that funds would have been moved on by the fraudster by the time Mr O reported it to Monzo.

Whilst I'm very sorry Mr O has fallen victim to this cruel scam – and I have no doubt it's had a huge impact on his life both financially and emotionally, for the reasons I've explained, I don't find Monzo can fairly or reasonably be held liable for his loss.

My provisional decision

My provisional decision is that I do not intend to uphold this complaint about Monzo Bank Ltd.

Monzo did not confirm whether or not it accepted my provisional decision. However it did clarify that Mr O reported the scam via the in app chat on 21 August 2023 around 21:00.

Mr O didn't accept my provisional decision and he made a number of arguments which I've summarised below;

- Mr O was vulnerable to this scam because of his ongoing health issues at the time, and because of the urgency of resolving his visa requirements to maintain legal status in the UK.
- Mr O's colleague referred him to the fraudster, and this provided a degree of credibility. It is therefore understandable that he did not exercise the same level of scrutiny as he would under normal circumstances.
- Monzo ought to have intervened on the transaction and a direct warning or conversation with Mr O could have significantly mitigated the risk of the scam proceeding.
- The previous large transactions I referred to in my provisional decision were not related to visa sponsorship. The sudden appearance of a large payment for such a purpose should have raised red flags. Monzo ought to be able to distinguish between regular large transactions and those which deviate from a customer's typical spending pattern.
- Banks are expected to continuously update their fraud detection systems and keep up to date with emerging scams. The principle of protecting customers from fraud does not hinge on the specific type of scam being well known, but rather, the overall duty to safeguard customers from suspicious activity.
- Mr O acknowledges that Monzo contacted the recipient bank promptly once he reported the scam. However he did not think my provisional decision sufficiently addressed whether Monzo could have done more to recover his funds through early intervention and detection measures.
- Mr O thinks Monzo ought to refund 50% of the loss, because whilst he says he should have conducted further due diligence, Monzo has not done enough to try to prevent the scam.

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.

I've considered Mr O's further comments, to decide whether or not I should depart from my provisional decision. However, having done so, I'm not persuaded there is a compelling basis for me to do so.

Mr O has referenced the CRM Code's provision for vulnerable consumers. The CRM Code says that:

'A Customer is vulnerable to APP scams if 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.'

I've thought carefully about Mr O's submissions on this matter. I accept that his ongoing health conditions being exacerbated by his job at the time, was a clear motivation to source a new job. I can also appreciate that sourcing a specific job which met the requirements of his visa, would have been stressful. But on balance, I'm not persuaded, when considering

the particular circumstances of this case, that Mr O was unable to reasonably protect himself from the scam. Largely for the same reasons our Investigator explained in their view, I'm satisfied Mr O had the capacity and understanding to query the legitimacy of what was being offered. And, in light of his past experience of applying for visas and specific employment, he ought to have recognised that what was being asked of him was not quite right. I'm therefore in agreement with our Investigator that Mr O is not eligible for reimbursement under the CRM Code on the basis of vulnerability. And so, I must decide whether a valid exception to reimbursement fairly applies.

As I explained in my provisional decision, I am satisfied Monzo has fairly established that Mr O lacked a reasonable basis for belief. It's not entirely clear whether or not Mr O is challenging this point. On the one hand he has argued that his colleague's recommendation provided credibility. However, he has also said he ought to have done more due diligence and on this basis, he should share 50% of the liability. Whilst I have already accepted that a recommendation from a colleague might have been persuasive, his colleague had not used the services of the fraudster before. So I'm not convinced that this recommendation was persuasive enough to outweigh the clear causes for concern in the fraudster's proposals. Therefore, as Monzo has fairly established it can hold Mr O at least partly liable, I then need to consider whether it is also liable for failure to meet the standards for firms.

Firms ought to take *reasonable* steps to protect customers from financial harm. However, that's not to say that a firm can reasonably prevent every single suspicious payment made or prevent customers falling victim to every single type of scam out there. I accept that Monzo ought to have attempted to give Mr O an effective warning when he made the £4,000 payment. However, I maintain that it would not be reasonable to expect Monzo to have given a warning which was specific to visa purchase scams. I agree firms ought to continuously review and update their warning systems to keep up to date with common scams, but it would not be reasonable to expect a firm to include a warning about every single variance of scam that is out there. And I'm not persuaded that the specific scam Mr O fell victim to, could fairly be considered a 'common' scam at the time.

Monzo needs to strike a balance in the extent to which it intervenes in payments, against the risk of unduly inconveniencing or delaying legitimate payment requests. Whilst Mr O argues that Monzo ought to have been concerned by the sudden appearance of a large transaction relating to visa sponsorship, it could not have reasonably known, without speaking to Mr O that this is what the disputed payments actually related to. The payments were made to an individual's account and had no reference to the visa sponsorship. Nor do I think either payment was drastically dissimilar from previous transactions Mr O had made. So I am not in agreement that this is a case where Monzo ought to have made direct contact with Mr O, such as via phone call, to ask further questions about the payments he was making. The extent to which I think Monzo ought to have intervened, was in giving Mr O an online written effective warning. And for the reasons I've already explained, I'm not persuaded this would have prevented Mr O's loss. Therefore Monzo's failure to meet the standard has not had a material effect on preventing the scam that took place.

As Monzo has clarified, Mr O reported the scam at or around 21:00 on 23 August 2023. Monzo reached out to the bank Mr O sent his funds to, by 22:39 the same day. Mr O doesn't seem to be disputing that Monzo acted promptly here. But, for the avoidance of doubt, given the payments were made over 10 days prior, I'm not persuaded that swifter action from Monzo from the point at which Mr O reported the scam, would have made a material difference to the amount recovered. On the balance of probabilities, it's more likely than not that the funds had already been removed by the fraudster. And, as I don't think Monzo ought to have made direct contact with Mr O to discuss these payments, I'm not persuaded it could have prevented the loss, or attempted to recover Mr O's funds at any point prior to him reporting the scam.

Taking the above into account, as well as the contents of my provisional decision, I am satisfied Monzo has fairly established that under the CRM Code it is not liable for Mr O's loss. I know this will be disappointing for Mr O, but I will not be departing from the outcome of my provisional decision.

My final decision

For the reasons I've explained, I do not uphold this complaint about Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 16 January 2025.

Meghan Gilligan
Ombudsman