

The complaint

Miss D complains that Monzo Bank Ltd ('Monzo') won't refund the money she lost in a scam.

What happened

Miss D says that her brother received a call on 7 July 2022 which he now knows followed a fake message from a delivery company. The caller told Miss D's brother that he was from the fraud department of a bank I'll refer to in this decision as bank A. Miss D's brother was told his account had been compromised when someone tried to take out a loan in his name. Bank A was conducting an investigation as there was a suspicion that a member of staff at bank A was involved. Miss D's brother made payments from his account, as instructed by the caller.

Miss D lives in the same house as her brother and was aware of some of the calls. Her brother told her that her accounts might be at risk because he had sent funds to her from his compromised account. Miss D also spoke to the caller, who didn't know any personal details about her, and asked who she had accounts with and for balance details. Miss D explained she had accounts with five banks, including bank A and Monzo. The caller led Miss D to believe all her accounts were at risk and said she needed to transfer her funds to dummy accounts which had been created as part of bank A's investigation. The transfers would show whether staff were tampering with the payments.

The caller persuaded Miss D to take out a £10,000 loan with another bank and transfer this to her Monzo account and then on to a dummy account on 7 July 2022. The following day Miss D was advised to transfer a further £8,500 from her Monzo account to a second personal account. She was under the impression that all funds would be returned to her.

Miss D was told that a police officer would visit her home, but this didn't happen, and she received a voice message from another bank's fraud department about suspected fraudulent payments and became confused. After contacting the FCA and Action Fraud Miss D opened fraud claims with all the banks involved. She reported what had happened to Monzo on the morning of 9 July 2022.

Monzo considered Miss D's claim under the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) which Monzo hasn't signed up to but has committed to follow. It said it wouldn't reimburse Miss D as she didn't take enough steps to check who she was paying and what she was paying for, and it took appropriate steps to try to recover Miss D's funds.

Miss D was unhappy with Monzo's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part and that Monzo should reimburse 50% of Miss D's loss plus interest. She said that Monzo could fairly rely on the reasonable basis for belief exception to reimbursement in the CRM Code, but that Monzo hadn't met its standard as the warning provided to Miss D wasn't effective. The investigator also thought that Monzo should have intervened when out of character payment requests were made and that had it done so, Miss D wouldn't have gone ahead with the payments from her Monzo account. Finally, the investigator said that Monzo had done what it could to recover Miss D's funds.

Monzo didn't agree with the investigator's findings. It said that under the CRM Code if an exception to reimbursement applies – and the investigator concluded Monzo could fairly apply the exception – then it has no liability. Monzo went on to say that it has sophisticated monitoring controls in place which are designed to meet the main aims of the CRM Code (reducing the occurrence of APP scams, increasing the proportion of victims who are reimbursed and minimising disruption to legitimate payment journeys). Finally, Monzo said that it was unfair to recommend reimbursing Miss D 50% of her loss based on criteria that doesn't exist in the CRM Code.

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'm sorry to hear about this cruel scam and the impact it has had on Miss D.

In deciding what's fair and reasonable in all the circumstances of a 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. Having done so I have reached the same outcome as that of our investigator and for broadly similar reasons.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But Monzo has agreed to consider claims in line with the CRM Code and also have a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

The CRM Code requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- The customer made 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 outlined in the CRM Code that do not apply to this case.

Taking into account all of the circumstances of this case, including the characteristics of Miss D and the complexity of the scam, I think the concerns Monzo has raised about the legitimacy of the transactions Miss D made are enough to support its position that it can rely on an exception to reimbursement. I don't think she had a reasonable basis for believing the person she transacted with was legitimate. In reaching this conclusion I've considered what steps Miss D took to reassure herself about the legitimacy of the transactions, and whether it was reasonable for her to proceed with the payments.

- The scammer spoke to Miss D after he had spoken to her brother and established that Miss D's brother transferred funds to her from his account. But Miss D has an account herself with bank A and didn't question why bank A wouldn't reach out to her directly.
- Miss D has said she didn't complete any checks other than to look up the number she was called from because she thought she was speaking to someone from a genuine bank. She also hasn't been clear about exactly when she looked up the number but has said it was after a few payments and that not all calls were from a spoofed number.

- Miss D didn't question the fact the scammer didn't know any personal details about her even though he said he was from a bank she had an account with.
- It didn't make sense for Miss D to move funds from her Monzo account to try to catch a fraudster at bank A, a totally unrelated bank. There's no evidence that Miss D questioned this or understood how the different banks were meant to be linked.
- Miss D was told to take out a loan and send the loan funds from her Monzo account. Again, it's hard to see how taking out a loan and transferring it from a Monzo account could help catch out branch staff at bank A.
- Before she transferred funds from her Monzo account Miss D had already made a transfer from a third-party account. The scammer told Miss D to lie to this other bank when it intervened. I consider Miss D ought reasonably to have had serious concerns about being asked to lie to her bank.
- I will cover below why I don't consider the warnings Monzo provided to Miss D when each new payee was set up weren't effective under the CRM Code. But there were parts of the warnings that directly related to the scam that ought to have led to a more cautious approach, and Miss D had received a brief warning from the first bank.
- The scam spanned two days, so Miss D had the opportunity to reflect on what she had been told and complete checks. Miss D hasn't suggested that she was told to act urgently.
- Miss D transferred funds to two different personal accounts. I think she ought reasonably to have had concerns about this.
- Miss D was told to expect a police visit on 8 July 2022. This didn't happen and she still made a further payment the following day.

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement may be fairly applied (as I am satisfied Monzo can establish here).

Those requirements include the provision of what the CRM Code defines as an 'Effective Warning' when a firm identifies an APP scam risk in relation to a payment. I have considered the evidence provided by Monzo to determine whether I am persuaded it has established that it met its standards under the terms of the CRM Code when Miss D made the payments.

I'm satisfied that Monzo ought reasonably to have identified an APP scam risk when each of the payments were made. The first transaction was for £10,000 and was to a new payee. Miss D's statements show that in the six months before the scam she hadn't made any payments for more than £2,000. She then made a second transaction to another new payee that was significant the following day.

Monzo has said that it provided Miss D with a new payee warning and what it describes as a low friction warning when each transaction was made. The new payee warning was very general and simply asked, "*Could your payment be to someone trying to scam you?*". The other warning Monzo provided during the payment journey said,

"Could someone be trying to scam you?"

Stop if:

X You were told your account is at risk, to make an unexpected payment, or to take out a loan.

...

X You were told to ignore warnings like this

You may lose money if this is a scam".

The warning above includes some features that are relevant to the scam Miss D fell victim to but is very general and doesn't bring to life common features of this type of scam and the steps Miss D should take to avoid falling victim to it. As Monzo didn't ask Miss D to provide a payment reason it was unable to provide a tailored warning. I'm satisfied the warnings Miss D was provided with when each transaction was made didn't meet the minimum standards set out in the CRM Code so weren't effective.

I turn now to the points raised by Monzo in response to the investigator's view. Monzo is incorrect in saying that if a firm can fairly rely on an exception to reimbursement, it has no liability to a customer. This conclusion ignores the section of the CRM Code that relates to "Standards for Firms" and the section relating to "Allocation" (and in particular ALL2(2)(b)) which says:

"Where one Firm only has breached the SF and an exception under R2(1) or R2(2)(b) applies, the Customer will receive a 50% reimbursement from the Firm that breached the SF."

I have set out above why I consider that under the CRM Code Monzo should share responsibility for Miss D's loss.

Monzo also has more general obligations to be on the lookout for unusual and out of character transactions. Like the investigator, I consider Monzo should have intervened when the unusual transactions were made to satisfy itself Miss D wasn't at risk of financial harm. I consider effective intervention would likely have led Miss D to question the numerous red flags I have raised above and prevented the loss but, for the reasons stated above, Miss D would share responsibility for the loss. The only significance of this finding is that Monzo should pay interest from the date of loss rather than the date Monzo made its decision not to reimburse Miss D under the CRM Code.

Finally, I'm satisfied Monzo acted promptly and did what I'd expect it to do to try to recover Miss D's funds once it was made aware of the scam.

In summary, I find that Monzo failed to meet its requirements under the CRM Code. In these circumstances I find it fair and reasonable that Monzo should now share liability for the resultant loss with Miss D as is required under the terms of the CRM Code. That means it should have reimbursed her 50% the relevant payments. In addition, interest should be awarded as set out below.

My final decision

I require Monzo Bank Ltd to:

- Pay Miss D £9,250; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss D how much it has taken off. It should also give Miss D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 March 2024.

Jay Hadfield
Ombudsman