

The complaint

Mr S complains that Monzo Bank Ltd (Monzo) won't refund the money he paid for an item he didn't receive.

Mr S 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 S throughout.

What happened

On 24 November 2023, I issued my provisional decision on this complaint. 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 S was looking to purchase a crop harvesting tool to resell for a profit. He came across a product listed online by a retailer (that I'll call L). Mr S says L had hundreds of reviews with an average rating of 4.9 stars out of five. Mr S checked L's social media profile and says he saw thousands of likes which added to his belief of L's legitimacy. He reviewed the photos of the item on L's website. It was being sold for €7,990 and Mr S was having this shipped to another country. Mr S says it would typically sell for £9,000 in the United Kingdom however, L was an international retailer.

On 4 October 2022, Mr S made an international payment of £7,006.88 (inclusive of a £49.68 transaction fee) from his Monzo account, via an international payment processor that Monzo partners with, to the payment details provided by L. After he made the payment, Mr S says L stopped responding to his emails and he didn't receive the item. Mr S then found reviews on a well-known review platform which say L is a scam company.

Mr S reported the matter to Monzo on 11 October 2022. Monzo contacted the payment provider it used to process Mr S' payment, but they confirmed the funds had already left their platform.

Monzo declined Mr S' claim on 24 October 2022 because;

- *Mr S didn't qualify for a refund as the payment was sent internationally and therefore the Contingent Reimbursement Model (CRM) Code, which Monzo has agreed to abide by the principles of, did not apply.*
- *It executed the payment in line with Mr S' instructions.*
- *It has designated pages on its website which provide education on scams. Despite this, Mr S proceeded with the payment.*
- *Mr S does not appear to have completed a reasonable amount of due diligence.*
- *The complaint letter from Mr S does not explain why it's a scam and not a contractual dispute with L.*

Unhappy with Monzo's response, Mr S referred his complaint to our service. Mr S thinks the payment was highly unusual for his account usage and thinks Monzo ought to have intervened and given him a warning about scams. He thinks this likely would have prevented his loss.

Our investigator looked into things and upheld Mr S' complaint. They didn't think the online warning Monzo gave to Mr S was a proportionate intervention to the payment he was making. They said Monzo ought to have contacted Mr S to discuss the payment which would've uncovered the scam. They recommended Mr S be refunded his full outstanding loss of £7,006.88 together with 8% simple interest per year on the refund amount, from the date he made the payment until the date of the settlement.

Monzo didn't accept our Investigator's recommendations. It said;

- As the payment is not covered under the CRM Code, it should not be liable.*
- When Mr S opened his account with Monzo, he stated he would be using the account to make international transfers. Therefore, the activity was as expected, and it didn't have a reason to intervene.*

As no agreement could be reached, this case was passed to me for a decision.

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.

In doing so, 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.

It's not in dispute that Mr S made the payment himself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) Mr S is presumed liable for the loss in the first instance.

Like Monzo, I'm persuaded this case doesn't fall under the CRM Code but for a different reason than Monzo has relied on. The CRM Code only applies where the customer has fallen victim to an authorised push payment (APP) scam. I'm not persuaded that's the case here. I'll explain why.

The Financial Conduct Authority's (FCA) handbook defines an APP as:

a transfer of funds by person A to person B...where:

- (1) A intended to transfer the funds to a person other than B but was instead deceived into transferring the funds to B; or*
- (2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.*

As Mr S intended to transfer the funds to L, I'm satisfied (1) is not relevant here. In order for Mr S' claim to fit the FCA's definition of an APP under (2), I'd need to be reasonably satisfied from the evidence that L intended to deceive Mr S by acting fraudulently.

I accept that Mr S has parted with a significant sum of money, and I've no doubt this has caused him a great deal of distress. Mr S says he hasn't received the item he paid for from L

and he points to reviews left by other people who claim to be in a similar situation to him. However, this doesn't necessarily mean that L set out to deceive Mr S.

Through my own research, I've found reviews about L from people who say they did receive what they paid for, albeit later than expected. So I've weighed these up together with the negative reviews Mr S has referred to. Mr S says he thinks the reviews on L's website are fake. The website shows vastly positive reviews since 2020 and then from 2023, a number of negative reviews which paint L in a bad light. I don't think it's likely a fraudster would go to the trouble of faking positive reviews to then leave fake negative reviews. So I think it's more likely than not that the reviews on L's website are legitimate.

I've also considered other independent reviews on a well-known review site and many of these (both positive and negative) confirm that they received the item they paid for, albeit a long time after they expected it, or perhaps not exactly as it had been described to them. This evidence suggests L has provided goods to its customers in the past, and even after Mr S transacted with them. So I'm not persuaded it was set up entirely to defraud people such as Mr S. And whilst a number of reviews demonstrate a bad customer experience to be had with L, this is not necessarily indicative of a scam.

I've also found that the address listed on L's website is one which does exist and is linked to a business with a similar name (that I'll call B), and has an almost identical website to L. The reviews left online for B again depict customers receiving items after a period of delay, some orders being cancelled or not receiving the item paid for. I think this is significant because B appears to have a physical retail premise overseas which it shares with L, as it's the same address listed on L's website to accept returned goods. Given L seems to have a physical retail premise, which would be very unusual for a fraudulent firm, and L also seems to have fulfilled some of its customer's orders, I find it unlikely that L intended to defraud Mr S.

I've also reviewed L's website and find it to be functionable and detailed, with various photos of the item and a video on how to handle the item. L has numerous items for sale and claims to ship worldwide (except to the United Kingdom) and suggests it accepts card payments. This level of detail points more to it likely being a genuine site than a fraudulent one. I note Mr S was having the item shipped to a third party in another country. It's unclear why this is, but it supports that L ships to various countries. The reviews I've seen on the well-known review site have also been left by customers from various countries, so it seems likely it does ship to various countries, which would be unusual for a fraudulent firm. Whilst it's possible that a fraudster could have set up L's website to mimic that of a legitimate retailer, taking into account that some of L's customers received their items, I think it's likely L is a legitimate retailer.

All in all, whilst I don't doubt L has some questionable methods of operating its business, there isn't sufficient evidence to support that L intended to deceive Mr S from the outset. There are a number of reasons why Mr S might not have received the item he paid for, some of which might have been outside of L's control such as shipping failures or customs issues. Unfortunately businesses can operate poorly or be mismanaged such that contracts are breached and agreed goods or services aren't provided. But that doesn't necessarily amount to evidence of an intent to defraud.

As I've concluded that Mr S' claim arose from a dispute between him and L, this is not something I'd expect Monzo to get involved with. That also means Monzo would not have any obligation to try and recover Mr S' funds, though I can see it did attempt this and unfortunately the funds had been sent overseas prior to Mr S reporting it. It also follows that Monzo had no obligation to prevent Mr S from transacting with L – a legitimate retailer. Whilst Monzo should take reasonable steps to protect its customers from fraud and scams, it has no obligation to protect Mr S from a bad bargain.

I'm sorry that Mr S has lost this money, but I don't think Monzo has acted unfairly in declining his claim. As the evidence supports Mr S' claim is the subject of a buyer-seller dispute with L, which is not something Monzo should fairly and reasonably have protected Mr S against, I've provisionally found that Monzo is not liable for Mr S' loss.

My provisional decision

For the reasons I've explained above, I do not intend to uphold this complaint.

Monzo accepted my provisional decision and had nothing further to add.

Mr S submitted further arguments in response to my provision decision. He said when searching L online, there are dozens of reviews which attest to L scamming people. There are significantly more negative reviews than positive. He also said there is another company (that I'll call G), which shares the same web address as L but contains a different domain extension. And that company has a profile on the same well known review site which seems more aligned with the reviews I've referenced in my provisional decision. Mr S implied L had impersonated this other company which shared an almost identical web address. And I had acknowledged the similarities between the two websites in my provisional decision.

Mr S also said that even if it's not an impersonation, then just because a business has acted legitimately in the past does not preclude it from going on to act fraudulently in the future. Had Monzo intervened, an online search would have exposed the discrepancies between L and this other similar site.

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 carefully considered Mr S' further submissions, but I'm not persuaded to change my decision.

Turning to Mr S' first point about the online reviews. I acknowledge there are two profiles on the same well known independent review site for two companies with very similar names. One profile relates to L and the other relates to G. However, G's profile contains mostly positive reviews, whereas L's profile contains mostly negative. However, the reviews I've relied on to reach my provisional findings were specifically found on L's profile on the independent review site and on L's website – the web address for which was provided in evidence by Mr S. I have not confused the two. It's important to note that it's not just the presence of positive or negative reviews that I have relied on to reach my decision. I've considered that the reviews, both positive and negative in sentiment, describe customers having received items from L suggesting it was not set up entirely to defraud people such as Mr S. So my conclusions drawn from said reviews, as set out in my provisional decision, remain the same.

Following on from this point, whilst I accept that legitimate organisations can turn fraudulent, I don't agree that's what happened here. As explained in my provisional decision, online reviews on L's profile suggest customers have received goods and services from L, both before and *after* Mr S transacted with L. I've taken this into account when deciding whether L scammed Mr S at the time he transacted with them, and I don't believe it did.

Finally, I do acknowledge and accept that scammers can impersonate legitimate companies, and this is something I considered before issuing my provisional decision. However, this

doesn't change my decision that there is insufficient evidence to support that L intended to deceive Mr S from the outset. Had L impersonated G, this would not explain the reviews left on L's website and independent review site confirming L had, at points, provided goods/services its customers paid for. Nor would this explain why L appears to have a physical retail presence overseas which is shares with B.

I also note Mr S' comments that I have acknowledged L and G shared near identical website, but my comments in the provisional decision was not in reference to L and G. In fact, I would not agree that L's website is near identical to G's website. In my provisional decision, I explained that the overseas address listed on L's website is linked to a business with a similar name (that I called B in my provisional decision). It is B that I've considered to have a near identical site to L.

For the above reasons, Mr S' additional points do not persuade me to reach a different outcome to that set out in my provisional decision.

My final decision

For the reasons explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 February 2024.

Meghan Gilligan
Ombudsman