

The complaint

Miss W complains that Monzo Ltd did not refund the £4,146.30 she says she lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Miss W arranged to hire a marquee for her wedding from a company I'll call 'X'. After paying the initial deposit from a third-party bank, she made the final payment of £4,146.30 on 5 March 2023 from her Monzo account. Following this, she could no longer contact X and later found they had gone into administration due to financial issues.

She raised a scam claim with Monzo who felt this was a civil dispute and didn't meet the definition of an authorised push payment scam. But they did pay Miss W £75 for the delay in responding to her claim.

Our Investigator looked into the complaint and felt that while X was a legitimate firm, it was more likely it was aware it could not provide the service C had paid for when it accepted the £4,146.30. So, they recommended a full uphold under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. Monzo did not agree with the outcome and asked for a review from an ombudsman.

I issued a provisional decision in which I felt it was more likely this met the definition of a civil dispute and not a scam, so I did not recommend Monzo provide a refund. My provisional decision read as follows:

It isn't in dispute that Miss W authorised the payment of £4,146.30. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an authorised push payment (APP) scam.

While Monzo is not a signatory to the voluntary CRM Code, which provides additional protection to scam victims, it has agreed to abide by the principles of it. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

“This Code does not apply to:

b) 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.”

I’ve therefore considered whether the payment Miss W made to X falls under the scope of an APP scam as set out above. Having done so, I don’t agree that it does. I’ll explain why in more detail.

I can see X was incorporated on Companies House in July 2016 and made regular account filings over the years. An online search shows it was active on a number of websites, appeared to be professional and there are no warnings of bad reviews or scams associated with it.

I’ve reviewed the receiving bank statements for X and can see the account appears to operate as a genuine business, dealing in marquee hire. And looking at the earlier communication between Miss W and X, it follows the pattern you would expect of a genuine business and client relationship. On balance, X appears to be a legitimate company, which would ordinarily mean Miss W’s case would fall into the definition of a civil dispute.

What is left to decide is if X knowingly took Miss W’s money, knowing it would not be able to provide the service she paid for, in order to gain financially from her loss. As I am unable to know exactly what X’s intentions were, I’ve reviewed all of the evidence available to me to consider what I think is more likely in the circumstances.

I’ve reviewed the timeline of events. I can see Miss W made the initial deposit in March 2022 and was aware the final payment would be due a few months before the wedding in May 2023. So, it follows that a reminder of payment would be issued around February/March of 2023 and one was sent on 3 February 2023.

I appreciate Miss W feels the date she made the payment, 5 March 2023, is the most important date, however I think the date that payment was requested is important. As it is possible that is the point at which X felt it could provide the service she had requested, though I want to acknowledge it is also possible this was an automated payment request sent by X.

I have been given evidence confirming X began discussions with an advisory service on 9 February 2023 about what its options were generally in relation to the financial situation of the company. While this shows X was having financial issues at that point, I don’t think this indicates it was aware the business would be wound up and that it would not be able to provide the service Miss W had paid for. It was not until 21 March 2023 that the process of liquidation was officially announced to creditors, which is a month and a half after X requested final payment from Miss W.

As mentioned before, I have reviewed the statements for X’s accounts. I am unable to go into detail about what these show for data protection reasons, however I am satisfied that Miss W’s funds were not used for fraudulent purposes, in the sense that they were not immediately removed from the account or used for personal gain by X.

With all of the above in mind, I don’t think the funds were requested with the intention to defraud Miss W of her money for fraudulent purposes. Instead, I think it’s more likely this is a case of unfortunate timing, and X failing to update Miss W about the situation when it became clear the business was on a path to liquidation. So, I do not think this fits the definition of a scam, and instead it is more likely a civil dispute between Miss W and X. It

follows that Miss W is not entitled to a refund of her loss under the CRM Code.

I can see that Monzo did not provide a response to Miss W's claim in a timely manner, and this must have been frustrating for her. I can see Monzo has already awarded her £75 compensation in recognition of their error, and overall I think this is fair compensation in the circumstances.

Monzo responded and accepted my provisional findings.

Miss W did not think I had understood her original complaint, which was that Monzo failed to make a chargeback claim when she felt X had acted fraudulently. Miss W also felt, in summary, that X was aware it was in the process to be wound up when she paid the final deposit on 5 March 2023 and that this amounted to fraudulent trading.

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 Miss W's additional comments carefully, and having done so my provisional findings have not changed. I'll explain why in more detail.

Miss W says the crux of her complaint was that Monzo did not consider a chargeback claim for the payment of £4,146.30. Ordinarily, when a consumer feels they have been the victim of a scam, a business will determine whether the payment fits the definition of an APP scam to see if the funds can be recovered from the beneficiary bank. The type of payment is important, as it will determine what protections apply to it.

In Monzo's final response letter, they explained that the payment of £4,146.30 was a faster payment, and not a card payment. Meaning it was not covered under the chargeback scheme, which only applies to payments made by card. This is why they reviewed the payment under the CRM Code, which also applies to faster payments. And from the evidence I have seen, I think they have reviewed this correctly. This is because the evidence provided shows this was a faster payment, meaning it is not covered under the chargeback scheme. But it can still be reviewed under the CRM Code.

I explained in my provisional decision that X appeared to be a genuine business that provided a genuine service to customers, but I had to decide whether X took Miss W's money knowing it would not be able to provide the service she paid for, in order to gain financially from her loss.

Miss W has reiterated that when she made the payment on 5 March 2023, X was in the process of being wound up, so she feels they took her payment with fraudulent intentions. However, I explained in my provisional decision that I feel the date on which the payment was requested was the most important. Which was when the invoice was sent on 3 February 2023. I explained that X began discussions with an advisory service on 9 February, but I did not think this indicated they were aware the business would be wound up and that they would not be able to provide the services they had requested payment for.

So, I felt it was more likely this was a case of unfortunate timing and that X failed to update Miss W about the situation when it became clear the business was on a path to liquidation. And I highlighted that after reviewing the receiving bank statements, I was satisfied Miss W's funds were not used for fraudulent purposes, in the sense that they were not immediately removed from the account or used for personal gain by X.

I therefore still think this does not fit the definition of a scam, and instead it is more likely a civil dispute between Miss W and X. It therefore follows that Miss W is not entitled to a refund of her loss under the CRM Code. I want to add that I'm sorry Miss W went through this experience, and I understand this must have been very stressful for her. I hope this decision has gone some way to explain why I have not asked Monzo to reimburse her in the circumstances.

My final decision

I do not uphold Miss W's complaint against Monzo Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 27 September 2024.

Rebecca Norris
Ombudsman