

The complaint

Miss M complains that Monzo Bank Ltd trading as Monzo didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Miss M was the victim of a safe account scam. On 26 May 2023, she was contacted by someone I'll refer to as "the scammer" who claimed to work for Company A. The scammer took her through some security questions and told her that someone was trying to access her account. Miss M logged into her Company A account and saw £5,000 worth of transactions, so she believed what she was being told.

The scammer told Miss M to transfer money from her bank account into her Monzo account and then on to a safe account. On 26 May 2023, she tried to make a payment of £955.49, but the payment was declined. A few minutes later she made two successful transfers of £950 each to an account in the name of an individual, followed by three transfers of £1,100, £1,480 and £4,280 to a cryptocurrency exchange company I'll refer to as "C". These funds were then transferred to a wallet address provided by the scammer. The final payment that day was £1,320, which was declined and the account was blocked.

When Miss M realised she'd been scammed, she successfully withdrew £4,187.78 from C. She also contacted Monzo and it refunded payments two and three under the Contingent Reimbursement Model ("CRM") code. But it refused to refund the money she'd transferred to C, so she complained about that and the time it had taken to review the scam claim.

Monzo accepted there had been delays in the time it had taken it to review the scam claim and applied £100 compensation to Miss M's account. It said it had reached out to C, but no funds remained. And it was unable to reimburse the funds because once the money had reached C, the service was considered provided. And it wouldn't be able to raise a chargeback because C hadn't done anything wrong.

It said it didn't intervene because the transfers were made via Open Banking to Miss M's own cryptocurrency account meaning she had set up and authorised a connection between the two accounts using her PIN or biometric security. And as the payments weren't sent from the Monzo app, no warnings could be shown.

Miss M wasn't satisfied and so she complained to this service and our investigator recommended that the complaint should be upheld. He noted payment one was declined as the merchant was classed as high risk by Monzo. And payments two and three had already been refunded under the Contingent Reimbursement Model (CRM) code.

He commented that payments four and five were relatively low value given Miss M had made transactions on her account for £3,478 on 21 February 2022 and £3,800 on 2 March

2022. He noted payments two to five were made within fifty-six minutes, but there was no reason to suspect that payments two and three were related to payments four and five. And as C wasn't a new payee (Miss M had transferred £2 to C on 4 April 2021), he didn't think there was a concerning pattern of spending.

However, he thought Monzo should have been concerned about payment six because by that time, £6,860 had been transferred to the same payee linked to cryptocurrency within 1 hour and 17 minutes, and £4,480 had debited the account in the preceding hour and a half. He thought Monzo should have contacted Miss M to make further enquiries about the purpose of the payments, and had it done so, he was satisfied she would have been honest and explained that she'd been contacted by a third-party who had asked her to move money to a safe account via a crypto public key. With this information, it would have been apparent that she'd been scammed, so he thought Monzo should refund the money Miss M had lost from payment six onwards.

Further, he didn't think Miss M had acted unreasonably because she hadn't ignored any warnings, she hadn't sent the funds in the expectation of getting a return, she thought she was keeping her funds safe as her account with Company A had been compromised. So he didn't think the settlement should be reduced for contributory negligence.

Finally, our investigator noted that Monzo wouldn't have been able to recover the funds because they had already left C by the time Miss M reported the scam to it. And he noted Monzo had paid her £100 compensation for the time taken to investigate the complaint, which he was satisfied was fair.

Miss M has asked for her complaint to be reviewed by an Ombudsman, questioning why Monzo hadn't been asked to refund payments four and five.

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've reached the same conclusion as our investigator. And for largely the same reasons.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Miss M says she's fallen victim to, in all but a limited number of circumstances. Monzo refunded payments two and three under the CRM code but it said payments four and five weren't covered under the Code because Miss M had paid an account in her own name. I'm satisfied that's fair.

I'm also satisfied Miss M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Miss M is presumed liable for the loss in the first instance.

There's no dispute that this was a scam but although Miss M didn't intend her money to go to scammers, she did authorise the disputed payments. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

Monzo is an emoney/money remittance provider and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the FCA's Principles for Businesses and BCBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I've thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Miss M when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Miss M from financial harm due to fraud.

The first payment Miss M tried to make to the scam was declined. She then successfully authorised two transfers to an individual which have since been refunded under the CRM Code.

Payments four and five were the third and fourth successful payment Miss M made to the scam on 26 May 2023. I've considered the nature of those payments in the context of whether they were unusual or uncharacteristic of how she normally ran her account and I don't think they were. Both payments were to a legitimate cryptocurrency exchange that she'd paid before, neither were for particularly large amounts, and it wouldn't have been apparent that they were linked to payments two and three because the payee was different. So, I don't think Monzo missed an opportunity to intervene.

However, I agree with our investigator that by the time Miss M made payment 6, the circumstances were such that Monzo ought to have identified that a concerning pattern of spending was emerging. This was the third consecutive payment that she had made to C in just over an hour and the cumulative total was £6,860, so I think it ought to have intervened.

It should have contacted Miss M either by phone or via its live chat facility and asked her why she was making the payments, whether there was a third party involved and if so how she met them. There's no evidence that Miss M had been coached to lie and so I think she'd have said she'd been instructed to move her funds by someone who had contacted her from Company A, at which point it would have been apparent that she was falling victim to a safe account scam.

Monzo could then have told her she was being scammed and as I haven't seen any evidence that she was keen to take risks – quite the contrary as she was moving her money under the false belief that she was keeping it safe – I'm satisfied she'd have listened to some robust advice from Monzo and the scam would have been stopped. Because of this, I'm satisfied that it failed to intervene in circumstances which could have prevented Miss M's loss and so it should refund the money she lost from payment six onwards.

Contributory negligence

I've considered whether the settlement should be reduced for contributory negligence. Having considered the circumstances of this scam, I'm satisfied it was sophisticated and I don't think it was unreasonable for Miss M to have thought it was genuine, especially as it appeared that the account she held with Company A had been compromised. She therefore genuinely believed that she was doing what was necessary to keep her funds safe. Consequently, whilst there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Recovery

I don't think there was a realistic prospect of a successful recovery because Miss M paid an account in her own name and the funds were moved onwards from there.

Compensation

Monzo paid Miss M £100 compensation for failings in the customer service she received after she reported the scam to it and I'm satisfied that's fair and that it addresses the impact those failings had on her.

My final decision

My final decision is that Monzo Bank Ltd trading as Monzo should:

- refund payment 6, minus the £4187.78 credit she received from C.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If Monzo Bank Ltd trading as Monzo deducts tax in relation to the interest element of this award it should provide Miss M with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 2 April 2024.

Carolyn Bonnell
Ombudsman