

The complaint

Ms W is unhappy that Monzo Bank Ltd won't refund her the money she lost after she fell victim to a scam.

Ms W is represented in this complaint by a solicitor, but for simplicity I will refer to Ms W throughout this decision, even when referencing what her representatives have said on her behalf.

What happened

Ms W fell victim to an investment scam in February 2023. She was sent a message on social media that appeared to be from someone she knew, recommending a cryptocurrency investment platform. After she was sent a link, she looked at the website for this platform and decided to get involved by paying an initial fee (which she did from a credit card) and submitting her contact details. Ms W was then contacted by an individual, claiming to be an adviser, who would help her to learn about cryptocurrency trading. Unfortunately, and unknown to Ms W at the time, she was dealing with scammers, this was not a legitimate investment opportunity.

The scammer encouraged Ms W to download some remote access software and to open the Monzo account and a cryptocurrency account to facilitate her trades. Ms W was able to make some small withdrawals from the trading platform, and then began making larger deposits into the scheme. In total Ms W made seven payments from her Monzo account, totalling £26,090, to her cryptocurrency account and then on to the scammer. Although she was able to make two small withdrawals, totalling £152.45, when Ms W asked to withdraw her total profits (which she believed were around \$48,000) she was asked to pay additional fees and commission, and ultimately realised she had been the victim of a scam.

Ms W raised the matter with Monzo. But it didn't consider it could be held liable for the payments Ms W had made, it said her loss had been from her cryptocurrency account, not her Monzo account. It also said that it had provided a warning when she first set up the cryptocurrency account as a new payee, and did not feel that the payments she then went on to make were unusual enough to have warranted any further intervention.

Unhappy with Monzo's response, Ms W brought her complaint to this service. One of our Investigator's looked into things, and felt the complaint should be upheld in part. In summary our Investigator thought that Monzo ought to have intervened at the time Ms W attempted to make the third payment to the scam, for £5,000 on 9 March 2023. They thought this payment would have appeared unusual enough to warrant some more in-depth intervention from Monzo.

The Investigator felt that, if Monzo had asked Ms W some reasonable questions about the payments she was making, then it was more likely than not that the scam would have come to light, and that Ms W's further loss could have been prevented. However, the Investigator did consider that Ms W should also share responsibility for her loss, so they recommended that Monzo refund 50% of the payments made from the third payment onwards, plus some interest.

Ms W accepted the Investigators findings, but Monzo did not. It maintains that Ms W's loss was not incurred from her Monzo account, so does not consider it has any liability for that loss. And as it didn't agree that there was anything concerning about the payments that should have flagged them as a potential scam risk, it says that it acted in line with industry standards when making the payments, and says that stopping those payments would have been a breach of its duties.

As no agreement could be reached the complaint has been passed to me for a final decision.

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.

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.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Ms W's account is that Ms W is responsible for payments she has authorised herself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Monzo's December 2021 terms and conditions gave it rights (but not obligations) to block payments if it suspects criminal activity on a customer's account. It explains if it blocks a payment it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post)

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected criminal activity

- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, whilst the current account terms did not oblige Monzo to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And, whilst Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

Overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Monzo should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

I've therefore considered whether the instructions given by Ms W (either individually or collectively) were unusual enough to have expected additional checks to have been carried out before the payments were processed. To decide this, I've reviewed the activity on Ms W's account to see if there was anything that should have triggered some intervention from Monzo. This is often a finely balanced matter, and I acknowledge that Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Having considered the first two payments of the scam, on balance, I can't fairly say they were so unusual or suspicious enough to have alerted Monzo that Ms W may have been at risk of financial harm. Ms W opened her Monzo account purely for the purposes of her 'investment' and so there was no existing account history against which Monzo could compare her payments, this means that Monzo would be relying on generic indicators of risk. And I don't think the value of these payments would have been enough to trigger any concerns.

However, the third payment Ms W made was for £5,000, a significant amount on its own, but also now part of an emerging pattern of increasing payments to a cryptocurrency provider, it was more than twice the previous payment and was the second large payment in two days. Monzo will be aware that multiple escalating payments being made in fairly quick succession, and to payees associated with cryptocurrency, can often be indicative of financial harm. So with this in mind, I think Monzo ought to have had some concerns about this payment, and made further enquiries before allowing it to be processed. I do acknowledge that the payments in dispute here were made to a cryptocurrency account in Ms W's own name, and so would have appeared less risky overall to Monzo. However, just because a payment is to an account in the consumer's own name that does not mean it bears no risk at all, and I would still expect Monzo to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

So I consider that Monzo should've contacted Ms W directly about the payment for £5,000 before processing it. Had Monzo done so and asked proportionate questions, I've no reason to think Ms W wouldn't have been honest about the detail behind the payments – that they were for an investment in cryptocurrency that she had heard about via social media.

Given Monzo's familiarity of scams, including investment scams such as this, I think this would've been a red flag. And so, at this point, I think Monzo ought to have highlighted to Ms W that there was a significant risk of it being a scam and encouraged her to not make any further payments. I've no reason to doubt that Ms W would have acted on such advice. I think it's reasonable to assume, that had she been given a clear warning that it was very likely she was being scammed, Ms W would've most likely not proceeded with making the £5,000 payment to the scammers, nor the subsequent payments she made. It follows that I consider Monzo's lack of intervention led to Ms W suffering the loss from this point.

I've taken account of Monzo's comments that Ms W's loss was from her cryptocurrency account, not her Monzo account. But my role here is to consider the complaint in front of me, which is a complaint about Monzo's role in the payment journey. And, in doing so, I have found that Monzo did not act fairly and reasonably in the circumstances of this case. And whilst it is possible that Ms W may have cause to complain about the cryptocurrency exchange's role here, I am not persuaded it would be fair to reduce the award in this complaint solely for that reason. Ms W is entitled to complain only about Monzo, and I am satisfied that Monzo could have prevented some of the losses she suffered if it had acted fairly and reasonably.

I have though thought about whether, overall, Ms W did enough to protect herself from the scam, and I don't think she did. Ms W says she was told about the investment platform by someone she knew, via a social media message. But Ms W appears to have begun making payments to the scheme without first carrying out any independent checks to make sure that it was a legitimate investment opportunity or receiving any official documents regarding the scheme she was supposedly investing in. And her initial contacts with the scheme appear to have involved several separate businesses – the investment platform, another firm that her 'adviser' worked for, and a third firm that she made the initial payment to – but I've not seen anything to suggest that Ms W questioned this or looked for any information about these different firms. In addition, as the scam progressed, she was being asked to pay commission and fees which exceeded the amounts she'd actually invested, including paying an amount twice because it had 'been sent to the incorrect account'.

So, considering the specific circumstances of this case, on balance, I think that there was enough going on and sufficient red flags that Ms W ought reasonably to have taken further steps to protect herself. I therefore think it would be fair and reasonable to make a 50% reduction in the award.

Finally, I've considered whether Monzo did all it could to try and recover the money Ms W lost once she had reported the scam to it. But given that the payments Ms W made were to buy cryptocurrency, I don't think there is anything Monzo could have done to recover those funds, so I don't consider that it has missed an opportunity to recover the money Ms W lost to the scam.

Putting things right

To resolve this complaint Monzo Bank Ltd should;

- Refund Ms W 50% of the money she lost from the point she made the payment for £5,000 on 9 March 2023 onwards (inclusive)
- Pay 8% simple interest on this amount to compensate Ms W for the loss of use of these funds, from the date of each payment to the date of settlement.

My final decision

I uphold this complaint. Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 28 March 2024.

Sophie Mitchell
Ombudsman