

The complaint

Mrs C complains that Monzo Bank Ltd failed to do enough to protect her when she fell victim to a cryptocurrency investment scam.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

Mrs C has explained that in early 2022 she found information via a well-known social media platform concerning potential crypto investments via a trader I'll refer to as F. Mrs C says the information appeared to include an endorsement from a celebrity consumer champion. Mrs C says she followed a link to a trading website that appeared to be professional and genuine. After Mrs C supplied some contact details, a member of staff quickly contacted her to discuss potential crypto investments.

Mrs C went on to forward identification to F and has explained she was told they were required to complete Know Your Customer (KYC) and Anti Money Laundering (AML) compliance checks. Mrs C sent an initial payment of \$250 from a credit card. Mrs C says she was then given access to a trading platform that showed the deposit of \$250 and contained her personal information along with balances, profit and trading performance data. Mrs C says the initial deposit she made appeared to return a substantial profit. Mrs C says she was then asked to open an online crypto wallet and was given assistance by the scammers to do so.

After further discussions with F, Mrs C was persuaded to make a larger investment. On 5 April 2022 Mrs C transferred £5,000 into her Monzo bank account. On the same day, Mrs C set up a new payee - a business I'll refer to as K (an exchange that allows consumers to purchase crypto currency). Mrs C made an initial faster payment of £1,000 followed by a larger payment of £4,000 around 12 minutes later. There was no intervention by Monzo.

Mrs C has told us that in the weeks that followed, F's agents began to pressurise her to invest more money. And in June 2022 Mrs C realised she may've been a victim of a scam when she was asked to make a large payment in order to release the profits from her trading account. Mrs C was ultimately unable to withdraw her funds and became suspicious that F was asking for more. So, Mrs C contacted Monzo and asked for assistance in recovering her funds and raised concerns she'd been the victim of fraud.

Monzo contacted K, the business where Mrs C's funds had been sent, on the same day but was unable to recover Mrs C's funds. K responded within a few days to confirm Mrs C's funds had been traded and withdrawn so couldn't be recovered.

A claims management company working on Mrs C's behalf raised a complaint with Monzo. It said Monzo had failed to provide reasonable warnings or intervene to help protect Mrs C from being a victim of fraud. Monzo issued a final response on 4 July 2023 explaining that the payments had been authorised by Mrs C. Monzo didn't agree it had made a mistake by

allowing the payments to go through without intervention. Monzo didn't uphold Mrs C's complaint.

Mrs C's complaint was referred to this service and passed to an investigator. They weren't persuaded that Monzo's decision to release the first payment of £1,000 was unreasonable in the circumstances. But the investigator upheld Mrs C's complaint as they thought the payment of £4,000 was uncharacteristic in terms of Mrs C's account history. The investigator thought Monzo should've identified the £4,000 payment as potentially fraudulent and contacted Mrs C to carry out some checks before approving it. And the investigator thought an intervention of that nature from Monzo's fraud team would most likely have identified all the hallmarks of an investment scam if the payment had been picked up for further checks.

The investigator thought there were some red flags they'd have expected Mrs C to pick up on and asked Monzo to refund 50% of the £4,000 payment made on 5 April 2022 plus interest.

In response, Monzo said that it only had an obligation to intervene if it suspected fraud. But as there was no suspicion of fraud, Monzo said it correctly authorised the payments. Monzo added that as it had no suspicions of fraud, its terms and conditions didn't oblige it to step in and block the payments Mrs C wanted to make.

In addition, Monzo said the payment had been made to a third-party business to an account in Mrs C's name. Monzo said it wasn't reasonable to expect an intervention every time a customer makes an unusually high payment from their account as it would result in thousands of unnecessary interventions every day. Monzo also said the payment of £1,000 to a new payee followed by a payment of £4,000, 20 minutes later, wasn't unusual even taking the deposit of £5,000 on the same day into account. As Monzo asked to appeal, Mrs C's complaint has been passed to me to make 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. I've taken the step of issuing a provisional decision as I've reached a different conclusion to the investigator concerning how to fairly resolve Mrs C's complaint.

In response to the investigator, Monzo said it was obliged to carry out Mrs C's instructions as per the relevant terms and conditions. The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs C's account is that she is responsible for payments she 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 terms and conditions v2.2 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 carry out 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- *FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6).¹*
- *Banks have a longstanding regulatory duty "to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime" (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).*
- *Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found*

¹ Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.²

- *Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).*
- *The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.*
- *Monzo has agreed to abide by the principles CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.*

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.*

² For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

- *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.*

Should Monzo have intervened?

I've gone on to consider whether Monzo should have fairly and reasonably made further enquiries before it processed Mrs C's payments.

In the complaint submission, we've been told that Mrs C was vulnerable as she was a widow, had faced a recent change in financial circumstances and was suffering with mental health issues around the time of the application. I don't doubt what Mrs C has told us but I have to consider whether Mrs C's vulnerabilities would've been something Monzo was aware of at the time she made the payments. I've reviewed the available information but I haven't seen anything that would've highlighted Mrs C's vulnerable situation to Monzo before the payments were authorised. As I'm satisfied Monzo wasn't aware of Mrs C's circumstances at the time of the payments, I can't say it unfairly failed to take them into account or treated her unfairly on that basis.

I note that Monzo's final response to Mrs C says that the payments were instructed via Open Banking which meant it was unable to present a warning before they were authorised. But the Open Banking payment was a Faster Payment. And Monzo is required to exercise reasonable skill and care, pay due regard to the interests of its customer and follow good industry practice to help protect the account and funds. That includes monitoring accounts for payments that could indicate that its customer was at risk of financial harm. That means Monzo needed to ensure it had systems in place to monitor Mrs C's account for unusual transactions or other indications she may've been the victim of fraud. I'm satisfied that as a payment service provider Monzo could have intervened in an Open Banking payment for fraud detection and prevention purposes, much like it would do with other Faster Payments that include the relevant risk factors.

I've reviewed Mrs C's Monzo bank statements and I think it's fair to say the value of payments made were generally modest. In the six months preceding the payments Mrs C made to the scammers, there weren't any transactions that approached the value of the payments that were lost. And Mrs C's account balance was generally under £1,000 during this period. So I'm satisfied that a deposit of £5,000 on 5 April 2022 followed by payments of £1,000 and then £4,000 12 minutes apart to a new payee were out of line with the overall account history.

I've considered whether Monzo ought reasonably to have stepped in when Mrs C made the first payment to K as a new payee. Whilst I understand Mrs C was a victim of fraudsters, I don't think the payment was of a sufficient size to have expected Monzo to pick it up for additional checks. In my view, it was reasonable for Monzo to release the first payment to K on 5 April 2022 without intervention.

The second payment was substantially higher at £4,000 and sent to K around 12 minutes after the first. I'm satisfied this payment was significantly larger than any others Mrs C had made in at least the previous 6 months and was out of character for her account. As the investigator said, the payment of £4,000 showed a rapid escalation in the amounts being

sent to a new payee. I also think it's reasonable to note that Mrs C had transferred the original £5,000 into her account on 5 April 2022 before making the payments which, in itself, was unusual and out of character. The payments were also being made to a well-known cryptocurrency platform and I think Monzo should've been aware of the increased risk of fraud associated with payments of this nature.

Monzo has confirmed the payments were released after Mrs C authorised them without any intervention. But I think Monzo should've picked up on signs that Mrs C was at risk of harm by fraud and intervened when she instructed it to make the payment of £4,000.

Would an intervention have made a difference?

If Monzo had intervened, it could've asked Mrs C about the circumstances of the payment she had instructed. In particular, it could've asked Mrs C about whether she had control of the cryptocurrency she was purchasing, whether there was someone managing the investment on her behalf, the returns she was promised and how she found out about the investment. I haven't seen anything to suggest Mrs C wouldn't have been candid with Monzo in answering questions of this nature. And I think those answers would most likely have revealed to a member of Monzo's fraud team Mrs C was falling victim to a commonly occurring scam.

Can Monzo be fairly held liable for Mrs C's loss?

I understand Mrs C transferred the funds to an account in her name with K rather than directly to the fraudsters. But, for the reasons I've set out above, I'm satisfied that it is fair to say Monzo is responsible for Mrs C's loss of the payment of £4,000. As noted, the potential for a multi-stage scam of this nature ought to have been well known to Monzo and as a matter of good practice it should fairly and reasonably have been on the lookout for payments that represented an additional scam risk, including those involving multi-stage scams.

In my view, Monzo should've fairly and reasonably intervened before approving the £4,000 payment and, if it had, it is more likely than not that the scam would've been identified at that time. And if the scam had been identified before the payment of £4,000 was made, Mrs C wouldn't have lost those funds.

To what extent is Mrs C responsible for the loss?

Our investigator thought there were red flags that should've caused Mrs C to realise there was something amiss with the information and advice she received from the fraudsters. In particular, they thought that variations in the email addresses used and lack of formal paperwork provided was suspicious. The investigator also felt Mrs C hadn't done much research or due diligence in terms of F's activities before making the payments and that the returns promised were too good to be true. As a result, the investigator thought a deduction of 50% of the £4,000 payment was reasonable in terms of Mrs C's contributory negligence. But I've reached a different conclusion.

Mrs C has explained she found the investment opportunity on a well-known social media platform. The investment appeared to be backed by a popular consumer rights champion which Mrs C says made it appear genuine and trustworthy. Mrs C is essentially saying she had no reason to take the view that the information she found was part of a scam. I think that's reasonable in the circumstances of Mrs C's case.

Monzo's raised the point that Mrs C didn't check F with the Financial Conduct Authority (FCA) and that it isn't a regulated business. I accept that F wasn't regulated, but there are

lots of firms operating in the crypto arena in the same way. I also note Mrs C hasn't provided any evidence she was given documentation by F beyond the email exchanges provided. And that there's an argument that the level of returns were too good to be true.

Even accepting those points, I can understand why Mrs C placed weight on the information she found online, including the endorsement from the well-known consumer champion. In addition, whilst the proposed profits were substantial, crypto investments do have a reputation for high risk/high returns. So whilst I understand why Monzo may have raised these points, I haven't been persuaded that Mrs C would reasonably have known they were often features of investment scams.

Further, I wouldn't expect a normal consumer to necessarily pick up on what are reasonably minor variations in the email addresses used by the scammers. Mrs C's added that when she signed up with F she was asked to supply documents to verify her identity and address for KYC and AML purposes – in line with how other genuine businesses operate. I've seen F's requests to Mrs C and they appeared to be professional with a substantial level of guidance provided explaining how documents should be provided – as a genuine business would have. Mrs C corresponded with several different people at F, including over the phone. The responses appeared genuine and professional. That indicated to Mrs C that F was operating as a legitimate business, in much the same way as a genuine investment firm would. Mrs C's explained all these points reinforced her view at the time she was dealing with a genuine business.

I also think it's fair to add that Mrs C first made a far smaller payment of \$250 from another account before she invested further. Mrs C has told us the initial \$250 deposit appeared to have been added to her trading account with F and that she was able to view its performance and the increase in the value of her investment. It was after Mrs C's initial investment appeared to increase that she decided to invest more. I appreciate the platform and information Mrs C was shown was actually part of what was a sophisticated scam. But I'm not persuaded it's reasonable to have expected Mrs C to have known that. In my view, that shows Mrs C did exercise caution in the way she made payments and only chose to make a larger investment after she was persuaded her initial payment had performed as planned.

Mrs C wasn't an experienced investor. As such, I'm satisfied Mrs C's inexperience meant she was most likely unaware of the sorts of checks she could complete in the absence of any intervention or scam advice from her bank.

Taking all the available information into account and considering Mrs C's case on the balance of probabilities, my view is her decision to make payments on 5 April 2022 to fund what she believed to be a genuine investment with F was reasonable based on what she knew at the time. I haven't been persuaded that there are grounds to make a deduction for Mrs C's contributory negligence in this case. So I think the fairest approach is for Monzo to refund the whole of the £4,000 payment Mrs C made.

I've thought about the whether Monzo acted reasonably when Mrs C brought the scam to its attention and if it did enough to try and recover the funds she lost to see if it should refund the remaining £1,000. But Monzo contacted the business the funds were sent to on the day Mrs C raised her concerns about fraud (albeit some hours later). Monzo received a response that confirmed the funds had already been removed from the account which meant they weren't available to be refunded. I'm satisfied Monzo took reasonable steps. As I haven't found Monzo acted unfairly by releasing the first payment for £1,000 and I'm satisfied it took reasonable steps to try and recover the lost funds, I haven't found grounds to award a refund of that payment to Mrs C.

Based on all the available evidence, I've made the provisional decision to increase the overall award in this case and intend to direct Monzo to refund the £4,000 payment Mrs C made on 5 April 2022 in its entirety and apply interest.

I invited both parties to respond with any additional points or comments they wanted me to consider before I reached my final decision. Both parties responded to confirm they had nothing further to add.

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.

As neither party has provided new information for me to consider, I see no reason to change the conclusions I reached in my provisional decision. I still think Mrs C's complaint should be upheld, for the same reasons.

My final decision

My decision is that I uphold Mrs C's complaint and direct Monzo Bank Ltd to settle by refunding the £4,000 payment she made on 5 April 2022 plus interest at 8% from that date to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 11 April 2024.

Marco Manente
Ombudsman