

## The complaint

Mr G complains that Monzo Bank Ltd didn't do enough to protect him from the financial harm caused by two investment scams, or to help him recover the money once he'd reported the scams 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.

Mr G met someone on social media who I'll refer to as "the scammer". The scammer told him where she lived and explained she had a job, but she made extra money from trading in cryptocurrency. She recommended an investment company which I'll refer to as "Q" and offered to help Mr G set up a trading account. He updated his cryptocurrency account and made an initial payment of £300 via a payments platform which I'll refer to as "S". The scammer showed Mr G how to make trades and he was satisfied the website looked professional and that the company was legitimate.

In November 2022, Mr G met a second scammer on the same social media platform. They began to communicate via WhatsApp, and she told him she only had to work part-time due to the investments that she did. She recommended an investment company which I'll refer to as "T" and sent him a link to open an account.

The scammers told Mr G to first purchase cryptocurrency and then load it onto online wallets. Between 20 November 2022 and 28 November 2022, he made eight transfers to S totalling £17,724. On 30 November 2022 he withdrew £475.54 from S.

When Mr G decided he wanted to make a withdrawal from the first investment, he was told he'd need to invest more funds to cover the withdrawal fees. He borrowed some money from his brother and on 27 November 2022 he paid £10,000 to S.

On 29 November 2022, Mr G was told he'd have to invest another £12,000 in the first scam before he could make withdrawals. This prompted him to research Q, and he realised he'd been scammed. He also researched T and couldn't find any information. He realised he'd been scammed when he tried to make a withdrawal and was asked to make further payments to the platform.

Mr G complained to Monzo with the assistance of a representative who argued the payments were unusual when compared to Mr G's spending history. They said S is often used in investment scams, so Monzo should have questioned him about the payments. On 20 November 2022, he made two high-value payments to the same beneficiary and on 27 November 2022, he said the funds were being transferred for an investment, so he should have been asked for more information about the circumstances of the investment.

But Monzo refused to refund any of the money. It said it had reached out to the beneficiary bank to try and recover the funds, but none remained. It said Mr G had authorised the payments and the money sent from his Monzo account weren't the scam payments. It said it

provides scam education on its website and he had previously received warnings when making similar payments.

It said Mr G had made two payments to S on 11 May 2022 (before the scam) and when he made the first payment, he was presented with a warning asking whether someone could be trying to scam him, which he confirmed he'd read before continuing. It also explained that he applied for a limit increase on 27 November 2022 and when asked what the increase was for, he said *'I'm a trader and use money on different platforms'*. It agreed to the increase and warned him *'if you have any concerns about the payment, please don't send any money as it can be very hard to recover.'*

Monzo also said Mr G didn't complete reasonable due diligence on either of the investments stating he didn't meet the scammers or representatives of the investment companies in person and the investment was too good to be true. It further argued social media isn't a reliable source for investment advice, and he should have been concerned that he was repeatedly told to invest more funds. Finally, it said he was given scam education when he made the fourth payment, yet he went ahead without undertaking further due diligence.

Mr G wasn't satisfied and so he complained to this service with the assistance of his representative. He said Monzo ought to have intervened because the payments were suspicious, and he carried out research in relation to both investments and didn't find anything untoward. He said he wanted a full refund of the money he'd lost plus £500 compensation and legal costs.

Monzo maintained it had warned Mr G it would be impossible to reclaim the money when he made the payments on 11 May 2022 and being asked to pay a release fee should have been a red flag.

Our investigator recommended the complaint should be upheld. She didn't think Monzo needed to intervene in the first five payments because Mr G had previously made payments of similar value, the payments weren't made in quick succession, and he'd previously made payments to a cryptocurrency merchant. But she felt the sixth payment was out of character due to the amount, which represented a significant increase in spending. Further the payment was funded by two large credits which were paid into the account the day before, reducing the balance to just £58.44.

She thought Monzo should have contacted Mr G when he made the sixth payment and as there was no evidence suggesting he'd have been dishonest, she felt he'd have described how he came across the investment, the name of the companies he was investing with, the checks he'd carried out and the returns he was expecting. And she was satisfied that with this information, Monzo would have been able to detect and prevent the scam. Because of this she thought it should refund the money Mr G had lost from the sixth payment onwards.

Our investigator went on to explain that she thought the settlement should be reduced by 50% for contributory negligence because Mr G had trusted the word of an individual from the internet who he'd never met in person, and he didn't carry out any checks on either of the scam companies. She noted the scammer had told Mr G she'd never lost money on an investment, and that nothing could go wrong, which was too good to be true.

She felt he should also have been concerned about the fact he was engaged with two separate investments, both involving women he'd met on social media and yet he went ahead despite repeatedly expressing concerns. And he had some previous experience of cryptocurrency investments and the associated risks. Finally, our investigator was satisfied there was no chance of a successful recovery and she didn't think Mr G was entitled to any compensation or costs for legal fees.

Mr G has accepted our investigator's recommendation, but Monzo has asked for the complaint to be reviewed by an Ombudsman. It has argued that Mr G was entitled to send money between his accounts in line with the legal precedent of *Philipp v Barclays*. And he didn't have reasonable belief which meets the CRM exception rules.

### **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 starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr G's account is that he is responsible for payments he's authorised himself. 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 6 December 2021 terms and conditions gave it rights to block payments where it suspects criminal activity on the account.

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 fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

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.

It's not in dispute that Mr G was scammed, but although he didn't intend his money to go to scammers, he 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*

I've thought about whether Monzo could have done more to prevent the scams 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. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of wider scams, so I need to consider whether it ought to have intervened to warn Mr G when he 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 Mr G from financial harm due to fraud.

I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr G normally ran his account and while I accept he'd received a warning about payments he'd made in May 2022 and S is a legitimate merchant which isn't necessarily linked to cryptocurrency, I think Monzo should have intervened when Mr G made the sixth payment. I agree with our investigator that the first five payments were low value and so there would have been no reason for Monzo to intervene, but the sixth payment was for £10,000, which is a significant amount and unusual for the account.

Based on the value of the payment and the fact it was significantly higher than the previous payments Mr G had made to S and it was unusually high for the account (between August 2022 and November 2022 Mr G hadn't made any debit card payments over £180 and all the faster payments were to established beneficiaries), I think Monzo ought to have contacted him via its live chat facility and asked him why he was making the payments, whether there was a third party involved and if so how he'd met them, whether he'd downloaded remote access software, whether he'd been promised unrealistic returns, whether he'd made any withdrawals, whether he'd been coached to lie, whether he'd done any due diligence and whether he'd been advised to make an onwards payment from the cryptocurrency exchange.

There's no evidence that Mr G had been coached to lie, in fact when he applied for a limit increase on 27 November 2022, he had been open about the fact he was trading, so I'm satisfied he'd have responded to these questions honestly, and Monzo would have realised he was likely being scammed. It could then have provided scam education and tailored warnings and as I haven't seen any evidence that Mr G was keen to take risks or that he'd previously ignored any tailored warnings, I think he'd have ultimately decided not to make any further payments to the scam.

Because of this I'm satisfied that Monzo's failure to intervene when Mr G made the sixth payment represented a missed opportunity to have prevented his loss and so it should refund the money he lost from that payment onwards.

### *Contributory negligence*

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence and, in the circumstances, I don't think Mr G did enough to prevent his own loss.

Mr G has explained that he wasn't promised a particular rate of return and in recent years instances of individuals making large amounts of money by trading in cryptocurrency have

been highly publicised to the extent that I don't think it was unreasonable for Mr G to have believed what he was told by the broker in terms of the returns.

Mr G had paid the merchant before, and I understand he'd fallen victim to other, unrelated scams. But I accept these scams were sophisticated and he believed the scammers were genuine people with who he was building a relationship. He has also explained he didn't know about the FCA, and he did some basic research but didn't uncover anything which raised concerns.

However, I agree with our investigator that Mr G ought to have taken greater care when taking investment advice from people he'd met on social media and the fact he'd become engaged in two separate investments in similar circumstances ought to have raised concerns. So, I think the settlement should be reduced by 50% for contributory negligence.

### *Compensation*

I've thought carefully about everything that has happened, and with all the circumstances of this complaint in mind, I don't think Monzo needs to pay any compensation given that I don't think it acted unreasonably when it was made aware of the scam. And Mr G wasn't entitled to compensation for legal fees, as our service is free to access.

### *Recovery*

Mr G has described that he paid an account in his own name and from there the funds were moved to online wallet in the control of scammers, so I'm satisfied there was no prospect of a successful recovery.

### **My final decision**

My final decision is that Monzo Bank Ltd should:

- Refund the money Mr G lost from the sixth payment onwards, less any credits received during the scam period.
- this settlement should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest\*, per year, from the respective dates of loss to the date of settlement.

\*If Monzo Bank Ltd deducts tax in relation to the interest element of this award it should provide Mr G with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 October 2024.

Carolyn Bonnell  
**Ombudsman**