

The complaint

Mr M complains that Monzo Bank Ltd (Monzo) won't refund the money he lost to a scam.

What happened

I've included a table of the disputed payments:

Date & Time	Transaction	Amount
22/9/23 20:30	Card payment to cryptocurrency exchange (B)	-£100
23/9/23 20:51	Card payment to cryptocurrency exchange (B)	-£250
24/9/23 20:59	Card payment to cryptocurrency exchange (M)	-£10
26/9/23 21:21	Card payment to cryptocurrency exchange (B)	-£1,050
30/9/23 20:34	Card payment to cryptocurrency exchange (B)	-£4,500
30/9/23 21:37	Card payment to cryptocurrency exchange (K)	-£100
1/10/23 13:34	Credit/Reversal from to cryptocurrency exchange (B)	+£4,500
1/10/23 23:54	Card payment to cryptocurrency exchange (M)	-£3,000
2/10/23 14:56	Card payment to cryptocurrency exchange (M)	-£250
2/10/23 19:09	Card payment to cryptocurrency exchange (M)	-£1,700
6/10/23 13:29	Card payment to cryptocurrency exchange (M)	-£4,000
7/10/23 08:43	Card payment to cryptocurrency exchange (M)	-£4,000
7/10/23 13:12	Card payment to cryptocurrency exchange (M)	-£265
19/10/23 05:16	Card payment to cryptocurrency exchange (M)	-£4,000
25/10/23 12:48	Card payment to cryptocurrency exchange (M)	-£1,500
27/10/23 09:22	Card payment to cryptocurrency exchange (M)	-£3,000
27/10/23 12:51	Card payment to cryptocurrency exchange (M)	-£4,000
	Total loss	£27,225

The background to this complaint is well known to both parties, so I won't repeat it in detail here, but in summary I understand it to be as follows.

Mr M was looking to earn some additional income to repay his debts. Around October 2023, he entered a trading investment with a company (that I'll call K), after he was contacted by a 'professional investor' who asked if he wanted to invest. He also says he saw the investment advertised on social media.

After Mr M had made several payments towards this investment, he attempted to withdraw his 'profits'. He was able to withdraw some of his funds, but when he tried to make further withdrawals, he was asked for more payments for things like taxes. Mr M realised he'd been scammed so he reported it to Monzo on 8 November 2023.

Monzo declined to refund Mr M because it said he paid the funds to his own cryptocurrency wallets, so it considered the service as having been provided. It noted the payments from Monzo to said cryptocurrency platforms were genuine. And the scam happened when the funds were withdrawn from the platforms and sent to the scammer. So, it referred Mr M to the cryptocurrency platforms to pursue his claim.

Unhappy with this outcome, Mr M referred his complaint to our service and our Investigator upheld it. As Monzo didn't provide the information we'd asked it for by the specified deadline, our Investigator proceeded to assess the case with the information they'd obtained from Mr M. They concluded Monzo ought to have intervened when Mr M made a £4,500 payment on 30 September 2023. And had it done so, the further loss would've been prevented. However, they said Mr M should share 50% liability by way of contributory negligence. So, they recommended Monzo refund 50% of Mr M's outstanding loss from and including the £4,500, with 8% simple interest from the date of the scam to the date of the settlement.

In response to our Investigator's assessment, Monzo sent its evidence in defence of the complaint. It maintained its position on the complaint and added that Mr M didn't complete due diligence when entering the investment. And it highlighted several issues which it thinks ought to have caused Mr M concern about the legitimacy of the investment such as the means and method of communication with the fraudster, and unrealistic rates of return. It explained that it also would not be able to recover Mr M's funds via a chargeback process, as Mastercard payments have no chargeback rights for gambling and investment related transactions.

However, Monzo did accept that it spoke to Mr M on 13 October 2023 to query some credits into his account. And during these conversations, which continued to 19 October 2023, it missed the opportunity to identify that he was falling victim to a wider scam. So, it made an offer to refund 50% of the final three payments Mr M made (a refund of £4,250) with 8% simple interest.

Mr M didn't accept this offer. And our Investigator endorsed their opinion to Monzo. But Monzo continued to disagree. It said it didn't have a valid reason to intervene on the payments, until Mr M explicitly told it what the payments were for, as it did not think the payments were unusual. It quoted the Payment Services Regulations and a recent Supreme Court case (*Philipp v Barclays Bank UK PLC* [2023] UKSC 25).

Our Investigator addressed these comments and maintained their view. They thought Monzo was going against their own terms and conditions by not intervening on the payments where it suspects fraud. There also seems to be a disagreement between our Investigator and Monzo as to whether the recipient accounts Mr M paid were within his control.

As no agreement could be reached, this case was passed to me for a decision to be issued.

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.

In doing so, 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.

It's not in dispute that Mr M made the payment to the fraudster himself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) Mr M is presumed liable for the loss in the first instance.

However, 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 payment service providers are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In light of the above, I've thought about whether Monzo treated Mr M fairly in its dealings with him, when he made the payments and when he reported the scam, or whether it should have done more than it did.

Having done so, I agree with the outcome our Investigator reached and for broadly the same reasons. I'll explain why.

Should Monzo have fairly and reasonably made further enquiries before it processed Mr M's payments?

I agree with our Investigator that there was enough going on when Mr M made the £4,500 payment on 30 September 2023, for Monzo to be concerned he was at a heightened risk of financial harm from fraud.

Firstly, I've reviewed Mr M's account statements from March 2023. I acknowledge this is not Mr M's main banking account, so I accept Monzo might not hold as much knowledge about how Mr M routinely transacts, compared to his other account providers. Having said that, there was sufficient usage on the account each month for Monzo to get an idea of what is typical for Mr M and what is not. I note the following:

- The account was used for low value day to day spending such as card payments and faster payments, as well as transfers between his Monzo 'pots'.
- The largest debit on the account prior to the scam, was a £200 faster payment made in May 2023.

It therefore follows that the £4,500 card payment to a cryptocurrency platform was not *typical* for Mr M's account activity in any way. And, by this point, Mr M had made four payments to the same cryptocurrency platform (B) in just over a week. And with each payment, the value was more than doubling in size. So, I'm satisfied a clear pattern had begun to emerge which ought to have concerned Monzo.

In assessing the risk associated with the pattern of payments, I've also considered that cryptocurrency scams have grown in prevalence over the recent years. And by October 2023, when these transactions took place, firms like Monzo had been aware of the risk of multi-stage scams involving cryptocurrency for some time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022, by which time many leading firms have placed restrictions on such transactions. So, by the time of the scam, I'd expect Monzo to recognise that cryptocurrency related transactions carry an elevated risk of the likelihood of the transaction being related to a fraud or scam.

Overall, I am persuaded Monzo ought to have intervened and made further enquiries with Mr M to check he wasn't at risk of financial harm from fraud, before processing this payment. In reaching my decision that Monzo should have made further enquiries, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*.

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 25 April 2023 terms and conditions gave it rights to:

1. Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
2. Refuse to make a payment if it suspects the customer is a victim of fraud. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

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.

In this case for the reasons I have explained, I am satisfied it should have intervened. And if it had, Mr M wouldn't have continued with the payments.

I have no reason to believe Mr M would've misled Monzo about the circumstances behind the payments. When Monzo made enquiries with Mr M about the source of some recent credits into his account, he was truthful. He explained he'd borrowed loans from family members to make investments. And when asked about some recent debits on his account,

he confirmed these payments were made towards an investment. However, Monzo didn't ask any more questions about the investment. And it missed a further opportunity at that point to expose the scam.

But had Monzo made such enquiries at the point he made the £4,500 payment, I'm satisfied it would've been able to identify that Mr M was more likely than not falling victim to a cryptocurrency investment scam.

As I've already explained, such scams were well known to Monzo at the time, and through some basic enquiries, it could have uncovered some common features of this scam applied to Mr M, such as:

- The investment was advertised on social media
- Mr M was contacted out of the blue
- He was borrowing funds to make investments, seemingly outside of his affordability
- He was being pressured to make further payments
- He was being guided/supported by a third party 'professional investor'
- He was being promised unrealistic rates of return (Monzo says he was guaranteed 20-70% profits within 30-300 seconds)
- He was encouraged to open third party accounts to facilitate the investment

And in uncovering the scam Mr M was falling victim to, Monzo ought to have given him a targeted cryptocurrency investment scam warning and explained the high likelihood that he'd lose his funds if he proceeded.

I'm persuaded Mr M would've taken heed of a targeted warning from Monzo about cryptocurrency investment scams. I say this because Mr M was investing to make extra income to clear his debts. He was in a difficult financial position prior to the scam and had he learned that by proceeding with the payments, he would in fact end up worse off, I don't believe he'd have gone ahead.

Is it fair or reasonable for Monzo to be held liable for Mr M's loss?

I accept there is a dispute over whether Mr M held accounts with the merchants he paid. And Monzo feels it is not liable for losses that potentially occurred on another platform.

For the avoidance of doubt, I'm satisfied that, had Monzo, having identified the payments as unusual and suspicious, asked relevant questions of Mr M, it would have been apparent that he was falling victim to a cryptocurrency investment scam.

In other words, but for Monzo's failure to make further enquiries, it would have been on actual notice that Mr M was going to suffer financial harm from fraud. So, Mr M's losses, though not arising from the initial transfer, ought to have been within the contemplation of, and foreseeable to Monzo. Therefore, and taking into account what's fair and reasonable in all of the circumstances, I'm satisfied it can be held responsible for the loss Mr M has suffered (subject to a deduction for Mr M's own negligence, which I'll come on to explain).

Should Mr M share liability for his loss?

I've thought carefully about whether it would be fair and reasonable for Mr M to share liability for his loss, by way of contributory negligence.

I accept there were some more plausible elements of the scam which persuaded Mr M the investment was genuine, such as having access to what appeared to be a functional investment platform and being able to make some withdrawals. But taking into account the overall scam and what was being promised, I agree with our Investigator that he ought to have held some concerns about the requests being made of him. And this should have prompted a more cautious approach from him.

Mr M told our service he was approached by the fraudsters, and he saw the investment advertised on social media. But aside from checking the website link they gave him, it's not clear that Mr M took any additional steps to check the investment was legitimate. Given he's told us the fraudsters were pressuring him to make more trades, and he wasn't given a plausible explanation as to why he couldn't withdraw, I do think he ought to have taken a more cautious approach. I do empathise with Mr M's motivations for investing – he was trying to improve his financial standing, as he was struggling at the time. However, in light of the overall circumstances, I've concluded that it would be fair to reduce the amount Monzo pays Mr M in relation to his outstanding loss because of his role in what happened. Weighing the fault that I've found on both sides, I think a fair deduction is 50%.

Recovery of funds

I'm satisfied there was no reasonable prospect of Monzo being able to recover Mr M's funds via a chargeback process. Mr M's dispute is with the fraudster. And he didn't make the payments directly to the fraudulent platform. Instead, his payments were made to legitimate cryptocurrency exchanges. It seems more likely than not that the services paid for likely would have been provided. And in any event, Mastercard's chargeback scheme does not offer chargeback rights in these circumstances, where the transaction relates to gambling or investments. So, I'm in agreement with our Investigator that Monzo couldn't have pursued a chargeback.

Putting things right

For the reasons I've explained, Monzo ought to refund 50% of Mr M's loss from and including the £4,500 payment made on 30 September 2023. I calculate this to be a refund of £12,907.50.

*Total sum of disputed payments (in table above) made on or after 30/9/23 = £30,315
£30,135 – credit of £4,500 (in table above) = £25,815
£25,815 – 50% deduction = £12,907.50*

Mr M has said he was able to make a couple of small withdrawals (£84 + £189), and these were paid into an external account. I've considered what Mr M has said about those returns, but given their size compared to the overall loss (on both this Monzo account and external accounts from which he also suffered a loss) and that Mr M isn't being fully refunded, I still consider a refund of £12,907.50 to be fair in this case.

I've considered that some of the disputed payments were funded by loans from family members – some of which he has repaid, and some he has not. I'm also mindful that Mr M's reason for investing was to try to clear the debt he was already in, and he's found himself in a worse off position financially since the scam. He's also had to rely on forms of credit to cover his day-to-day expenses since. I'm therefore satisfied that overall, he has suffered detriment due to being deprived of these funds. And I am persuaded that Monzo should pay 8% simple interest on the full refund amount, from the date of the disputed payments, until the date of the settlement.

My final decision

My final decision is that I uphold this complaint about Monzo Bank Ltd in part and instruct it to:

- Refund £12,907.50
- Pay 8% simple interest on this amount from the date of the disputed payments until the date of the settlement (less any tax lawfully deductible)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 April 2025.

Meghan Gilligan
Ombudsman