

## **The complaint**

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

Mr G came into contact with someone I'll refer to as "the scammer" who told him about an opportunity to invest in a new business which was based overseas and made school shoes. The scammer said they needed investment to pay for production, lawyers, banking, and contracts and that the return would be 50% on each production batch.

The scammer communicated with Mr G through WhatsApp stating he'd taken samples to a number of schools and had been offered contracts to supply shoes for twelve large schools. He said the contracts were worth millions and sent photographs of samples of the shoes on WhatsApp. Mr G also had a call with one of the school principals and did research which satisfied him the investment was genuine and potentially profitable.

Mr G agreed to go ahead with the partnership and persuaded a friend who I'll refer to as "Mr F" to invest as well. Mr F paid money into Mr G's account on the basis he would receive a share of the profits and receive back his financial contribution with interest. Between 23 June 2022 and 4 July 2022 Mr G made twelve payments from his Monzo account to two different international accounts via money transfer services on the understanding the funds would be used to buy materials and machines.

Mr G later learned there had been problems registering the company and the business account had been blocked. Production of the shoes was delayed, and the scammer said they would have to borrow funds to pay for the account to be re-opened. In September 2022, Mr G was contacted by someone claiming to be a lawyer who said he would negotiate the re-opening of the account, the fee for which included his expenses such as food, travel, and medical bills.

He realised he'd been scammed when he saw on social media that the scammer wasn't who he claimed to be. He complained to Monzo stating it had failed to recognise the payments were being made as part of a scam, but it refused to refund any of the money he'd lost. It said it executed the payments in accordance with Mr G's instructions and it provided education on investment scams on its website.

It said Mr G didn't query the identity of the scammer, despite only speaking to them remotely and he wasn't given any documentation such as a contract or proof the scammer was applying for the company to be registered. It also said he failed to question why he was required to send large sums of money for the scammer's expenses or the unusual request to pay fees for a lawyer to negotiate the re-opening of the business account.

Monzo explained the payments weren't covered under the Contingent Reimbursement Model (CRM") code because they were made with a debit card and there would be no chargeback rights because the payments were for an investment and were authorised by 3DS.

Mr G wasn't satisfied and so he complained to this service with the assistance of a representative who argued that the payments were unusual because in the twelve months before the scam, he only spent £295 per week, using the account for day-to-day spending.

So, the large and frequent scam payments represented a clear change in the operation of the account. They said that if Monzo had contacted Mr G to question him about the payments it would have discovered he'd received unsolicited contact from the scammer who he'd never met in person, he was making multiple payments to unblock a bank account and he'd borrowed money to fund the investment.

Monzo further commented that it was unable to dispute the payments as fraudulent as Mr G had authorised them. It said it has several systems in place to detect when fraud may be occurring, but its systems didn't indicate Mr G was at risk of financial harm.

Our investigator thought the complaint should be upheld. He explained card payments aren't covered under the CRM code and there weren't any chargeback rights as the money transfer service had provided the service Mr G paid for.

He didn't think the initial payments were concerning because they were relatively low value and Mr G's account history showed he often paid the same merchants more than once a day. He also noted the payments were spread out amongst other genuine card usage. But he thought the second payment of £2,306.99 on 28 June 2023 ought to have raised concerns because it was an exact duplicate of the previous payment to the same merchant just seven minutes before and brought the cumulative daily spend to just under £5,000.

He thought Monzo should have asked Mr G to confirm that he'd made the payment and had it done so he was satisfied he would have confirmed he was sending funds overseas to invest in a start-up business. And he thought further questions around the circumstances would've probably had exposed the scam. So, he thought Monzo should refund the money Mr G had lost from the eighth payment onwards.

However, while he accepted Mr G was presented with documents and pictures of cheques and that he had spoken to the scammer, our investigator thought he should have made more effort to check their identity, particularly as he later uncovered the scam on social media. He noted there was no evidence that the factory ever existed, the documents were crudely made, and Mr G was given conflicting and unexpected reasons for the payments he was asked to make. Consequently, noting the scam payments were mostly funded by Mr F, not Mr G, he thought Monzo should refund the payments Mr G had made from 29 June 2023 onwards, less 50% for contributory negligence.

Monzo asked for the complaint to be reviewed by an Ombudsman. It accepted it should have contacted Mr G, but it didn't accept it should be held liable because the payments were between Mr G's own accounts, so no fraud took place from Monzo.

It argued that in *Philipp v Barclays*, the regulator and the court upheld that they expect banks to carry out customers wishes and it's inappropriate for it to decline to do so. It also commented that it would be unreasonable to require it to intervene in thousands of transactions to uncover potential losses in transactions it's not involved in.

## **My provisional findings**

I thought about whether Monzo could have done more to recover Mr G's payments when he reported the scam to it. Chargeback is a voluntary scheme run by Mastercard/Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed.

Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Monzo) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr G).

Its only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the money transfer service would have been able to evidence they'd done what was asked of them. So, any chargeback was destined fail, therefore I was satisfied that Monzo's decision not to raise a chargeback request against the money transfer service was fair.

There's no dispute that this was a scam, but although Mr G 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.

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 didn't 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 was satisfied that, taking into account longstanding regulatory expectations and requirements and what I considered 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.

### *Prevention*

I thought about whether Monzo could have done more to prevent the scam from occurring altogether. Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed 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.

The payments didn't flag as suspicious on Monzo's systems. I 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 I thought they were. The first six payments were relatively low value and so I didn't think Monzo needed to intervene. But the seventh payment of £2,306.99 occurred seven minutes after the sixth payment, which was to the same payee for the same amount. Crucially, this brought the cumulative spend that day to £4,613.98 and the payment was the fifth payment Mr G had made to the payee in five days. So, I thought there was a pattern of spending which ought to have raised concerns and that Monzo ought to have intervened.

However, based on the value of the payment and the fact Mr G was paying an account in his own name with a legitimate money transfer service, I thought a written warning that broadly covered scams would have been proportionate to the risk. And even though I didn't think Mr G was keen to take risks, I noted he was satisfied that both himself and Mr F had done reasonable due diligence to the extent that I didn't think a written warning would have made any difference to his decision to go ahead with the payment.

Mr G had explained that both himself and Mr F had spoken to the scammer and had satisfied themselves the investment was legitimate. Mr F had spoken to someone he believed was a school principal, and they had both reviewed documents produced by the scammer. So even though I agreed with our investigator that Monzo missed an opportunity to intervene, I didn't think this represented a missed opportunity to prevent Mr G's loss.

### *Recovery*

I didn't think there was a realistic prospect of a successful recovery because the funds were transferred directly from the money transfer companies to the scammers account.

### *Compensation*

I stated that Mr G wasn't entitled to any compensation or legal costs.

## **Developments**

Mr G's representative has responded to state that he doesn't agree with my provisional findings. They have stated that Monzo held a full banking licence, so the standard needed was an intervention, not a generic written warning.

They have argued that Monzo should have intervened because the payments were high value international payments which had become increasingly frequent, and they don't accept a written warning was proportionate to the risk. They have stated that the red flags include the fact the scammer contacted Mr G through an unsolicited message, he'd never met the scammer in person, the 'business' bank account had been frozen, and he was asked for money multiple times per week, so probing questions would have revealed the scam.

They've argued that Mr G should have been told to check the FCA register and the warning signs to look out for in investment scams. This would have been effective because he would have followed the advice and seen there were red flags present.

## **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.

I've carefully considered the additional comments raised on Mr G's behalf but I'm afraid the findings in my final decision will remain the same as the findings in my provisional decision.

Mr G's representative has correctly pointed out that Monzo is a bank, not an electronic money institution ("EMI"). They have also argued that a written warning wasn't proportionate to the risk.

I've considered whether the fact Monzo isn't an EMI means it should have contacted Mr G to ask probing questions about the purpose of the payment, and I don't think it does. I accept the seventh payment ought to have raised concerns and there were red flags present which would likely have been uncovered with probing questions. I also accept Mr G would likely have acted on advice to check the FCA register, which might have led him to realise he was being scammed. But as I explained in my provisional findings, even considering the pattern of payments and the cumulative spend for the day, Mr G was paying an account in his own name with a legitimate money transfer service, so I maintain my position that a written warning would have been proportionate to the risk and that this wouldn't have made any difference to his decision to go ahead with the payment. So, while I agree Monzo missed an opportunity to intervene, I don't think it represented a missed opportunity to have prevented Mr G's loss.

I'm sorry to hear Mr G has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Monzo is to blame for this and so I can't fairly ask it to do anything further to resolve this complaint.

## **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 June 2024.

Carolyn Bonnell

**Ombudsman**