

The complaint

Mr B 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.

In December 2022, Mr B came across a social media page for a company which I'll refer to as "C". The page claimed C could help clients 'build an investment pot' and see excellent returns depending on how much they invested. C had over 2,000 followers and the page featured stories from clients talking about their investments.

Mr B decided to follow C on social media and after a week he was contacted by someone I'll refer to as "the scammer" who said he'd seen his interest in the platform. The scammer said he'd do all the work on his behalf for a small fee and explained that C used AI technology to work out the best time to invest. He said that if Mr B invested £100, he would see a return of £1,000, and Mr B agreed to start with an initial investment of £450.

The scammer showed him how to create accounts with several cryptocurrency exchange companies. He told him to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet. Between 5 January 2023 and 29 March 2023, he made 35 payments to seven different payees totalling £39,301.90 using both a debit card and faster payments from his Monzo account.

The scammer remained in constant contact with Mr B, telling him how well his initial investment was doing. On 15 February 2023, he received some inheritance which he was encouraged to invest to gain higher returns. But he didn't receive any withdrawals during the scam period, and he eventually realised he'd been scammed when he said he couldn't make any further payments and he lost contact with the scammer.

Mr B complained to this service with the assistance of a representative who said Monzo had failed to provide any fraud protection throughout the scam. He said Monzo ought to have intervened because the payments were for large and unusual amounts, Mr B had set up five new payees linked to cryptocurrency, he made multiple payments made to the same payee on the same day, and there were large amounts of money coming into the account before quickly being transferred out.

Our investigator felt the complaint should be upheld. He explained Mr B couldn't have a valid chargeback claim against the legitimate cryptocurrency companies he paid because they had provided the services as intended. But he felt the £4,119.60 payment on 16 February 2023 was unusual and that Monzo ought to have contacted Mr B to ask further questions about the payment. Had it done so, he was satisfied he would have disclosed the involvement of the third party and the scam would have been detected. Monzo should then

have provided a scam warning and he was satisfied Mr B would've listened to the advice and stopped making any further payments.

However, he thought the settlement should be reduced by 50% for contributory negligence because the messages he'd seen between Mr B and the scammer showed he was promised a return of £100,500 from a £1,000 investment. And the messages showed he'd suspected C was operating a scam before he made the payments.

Responding to the view, Monzo said it reached out to the recipient banks, but it didn't receive a response. It said the payments were verified using 3DS, so it was unable to dispute the payments as fraudulent. And it was unable to raise a dispute through Mastercard because when the payments were made and exchanged for cryptocurrency, the service was deemed provided.

It said it acted in accordance with Mr B's instructions to make the payments and that he made the payments despite having been provided with and having access to education on scams. Specifically, when Mr B made the first payment to a new payee, he was shown a scam warning which instructed him to stop if the offer sounded too good to be true. Mr B confirmed that he'd read the information and wanted to continue. It said the warning was impactful because it clearly stated that it is almost impossible to reclaim the money. It also explained that it has designated pages on its website including, 'Keep your money safe from fraudsters', and social media scams.

Monzo said Mr B didn't check who he was paying and had proceeded with the payments despite the fact he hadn't met the scammer. It argued that social media isn't a reliable source for investment advice and the returns were unrealistic. He made no attempt to verify the scammer's authenticity and had sent payment for a deal that was too good to be true.

It maintained the payments from Monzo weren't scam payments because he was paying other accounts in his own name, so it can't be considered the point of loss. And the payments didn't result in any material loss as Mr B suffered loss when he sent the cryptocurrency on to the scammer's account.

Monzo also argued there are no regulatory requirements for it to intervene and interrupting a legitimate payment journey contradicts regulator expectations, as set out in the *Philipp v Barclays* ruling which states that 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 also argued that it's possible Mr B wouldn't have told it about the involvement of the third party and our investigator's view that intervention would have prevented the scam is arbitrary because there are no facts to provide evidence in support of either side of the argument. It asked for the complaint to be reviewed by an Ombudsman arguing that the payments which took place after 16 February 2023 were to legitimate businesses and an account in Mr B's name, so they were legitimate payments that didn't result in any material loss.

My provisional findings

I thought about whether Monzo could have done more to recover Mr B's card payments when he reported the scam to it. Chargeback is a voluntary scheme run by Mastercard 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 B).

Mr B's own testimony supports that he used cryptocurrency exchanges to facilitate the transfers. Its only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Mr B's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I was satisfied that Monzo's decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

There's no dispute that this was a scam, but although Mr B 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 B'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. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to genuine cryptocurrency exchange companies. However, 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 B 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 B from financial harm due to fraud.

Mr B was shown a warning each time he set up a new payee. The warning wasn't tailored to cryptocurrency scams, but I was satisfied it was appropriate for the first four payees, to which Mr B was making low value payments.

Monzo contacted Mr B on 23 February 2023 when he tried to transfer £1,500 to one of the cryptocurrency exchanges. During the live chat that followed, he was open about the circumstances, and he was given a written warning explaining that genuine investment opportunities will never guarantee profits, scammers will often claim to work for genuine investment companies, and they may ask customers to open cryptocurrency wallets and to send the cryptocurrency to a new wallet address.

The warning was followed with a call where Mr B was asked more questions about the investment. He told the call handler he was being assisted by a third party who he'd found on social media and that he was communicating with them via WhatsApp. He also said he hadn't received any returns from the investment.

The call handler concluded that Mr B had been making payments to a scam and gave him a tailored warning about cryptocurrency investment scams. The warning was very detailed and included information about the use of social media and legitimate cryptocurrency exchanges to encourage consumers to send cryptocurrency to fraudulent digital wallets.

I was satisfied the advice was very clear and Mr B was left in no doubt that he'd been scammed. He was also warned not to contact the scammers because they would try to explain the various red flags, and this was followed with written advice concerning how he could avoid being scammed again and how to raise a scam claim. Consequently, I was satisfied that the intervention was effective and that Monzo didn't need to take any additional measures.

Unfortunately, Mr B went on to make further payments to the same payee two weeks later but as this followed an effective intervention from Monzo on 23 February 2023, I couldn't fairly say it missed an opportunity to prevent this loss. And as the payments were low value payments to established payees in respect of which Monzo had already given an effective warning, I didn't think it missed any further opportunities to intervene.

I considered whether Monzo ought to have intervened sooner than 23 February 2023, and I thought that when Mr B made the tenth payment of £3604.65 on 16 February 2023, it should have done more than provide a new payee warning because this was a significant payment

to a cryptocurrency merchant and the cumulative spend for the day was £4,604.65. Not only was this unusual for the account, but Mr B was paying a high-risk merchant which was identifiably linked to cryptocurrency. So, I thought Monzo should have intervened.

However, I didn't think this represented a missed opportunity to have prevented the scam because Mr B made further payments to the scam after the intervention on 23 February 2023, so I didn't think an earlier intervention would have made any difference. Consequently, I wasn't minded to uphold the complaint.

Compensation

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

Recovery

Mr B had described that he paid accounts in his own name and from there the funds were moved to an online wallet in the scammer's control, so I was satisfied there was no prospect of a successful recovery.

Developments

Mr B's representative has stated that Mr B doesn't accept my provisional findings. They've argued that the new payee warnings weren't enough due to the risk associated with the payees. They've also suggested Monzo should have intervened on 3 March 2023 because the cumulative spend on 2 March 2023 and 3 March 2023 was £3,491.78, and it was on notice from the intervention on 23 February 2023 that Mr B was potentially falling victim to a scam. They've said it should have placed additional security measures on the account and given an effective warning, which would have stopped the scam.

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 considered the additional points raised on Mr B's behalf, but I'm afraid the findings in my final decision will be the same as the findings in my provisional decision.

I remain satisfied that the new payee warnings were proportionate to the risk because even though Mr B was paying cryptocurrency merchants, the payments were low value and so I'm satisfied the warnings were proportionate to the risk.

The representative has also said Monzo should have intervened on 3 March 2023 because the cumulative spend on 2 March 2023 and 3 March 2023 was £3,491.78. I accept these payments occurred after the intervention on 23 February 2023 when Mr B was told that he'd been making payments to a scam. But on that occasion, he was given a detailed tailored warning about cryptocurrency investment scams including information about the use of social media and legitimate cryptocurrency exchanges to encourage consumers to send cryptocurrency to fraudulent digital wallets. The advice was very clear, and he was warned not to contact the scammers again because they would try to explain the various red flags. He was also given written advice concerning how to avoid being scammed again and how to raise a scam claim. I remain satisfied that the intervention was effective, Mr B was left in no

doubt that he'd been scammed and Monzo didn't need to take any additional security measures.

I accept Mr B went on to make further payments to cryptocurrency merchants two weeks later, and I note the argument that the cumulative spend on 2 March 2023 and 3 March 2023 was £3,491.78. But these transactions followed an effective intervention, Mr B was paying established payees, and £3,491.78 wasn't unusual when compared to the recent spending on the account. So, I wouldn't have expected Monzo to intervene again.

I'm sorry to hear Mr B 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 tell 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 B to accept or reject my decision before 1 August 2024.

Carolyn Bonnell
Ombudsman