

The complaint

Mr B complains about Monzo Bank Ltd.

He says that Monzo didn't do enough to protect him when he became the victim of a scam and would like Monzo to refund him the money he has lost.

What happened

Mr B was introduced by a friend to an investment opportunity in cryptocurrency offered by a company which I will refer to as 'C'. Mr B's friend explained to him that he had been investing for some time and has been making profits on his investments.

Mr B's friend helped him open an account with C, and Mr B was impressed with the seemingly professional nature of the investment portal and began making payments. He was also added to a WhatsApp group with other investors where they would discuss their trades.

Mr B made the following payments

| Date | Payee | Payment method | Amount |
|-------------|-----------------------|-----------------------|---------------|
| 12/11/2023 | P – a crypto exchange | Faster payment | £1,000 |
| 13/11/2023 | P – a crypto exchange | Faster payment | £3,000 |
| 20/11/2023 | P – a crypto exchange | Faster payment | £1,305 |
| 20/11/2023 | P – a crypto exchange | Faster payment | £100 |
| 20/11/2023 | P – a crypto exchange | Faster payment | £40 |
| 20/11/2023 | P – a crypto exchange | Faster payment | £320 |
| | | Total | £5,765 |

Mr B became concerned when others in the WhatsApp group began to complain about issues making withdrawals, and after trying to make a withdrawal himself realised he was unable to do so – and he then realised he had been the victim of a scam.

He complained about what had happened to Monzo and said that as the payments were unusual for his account, it should have identified he was being scammed and intervened in what he was doing.

Monzo didn't uphold his complaint.

Mr B then brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld. They said that they didn't think that the payments were identifiably going to a crypto account, and as Mr B's account didn't have any other transactions apart from the scam payments, it was difficult to say that the payments should have stuck out as unusual or suspicious to Monzo.

Mr B asked for an Ombudsman to make a decision, so the complaint was passed to me. I have previously issued a provisional decision where I explained I intended to uphold Mr B's complaint in part.

Mr B accepted the provisional decision. Monzo asked for more time to respond. I allowed an extension to 2 September 2024, but Monzo hasn't responded. As such, I see no reason to depart from my provisional decision and finalise it below.

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.

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Having done so, I've decided to uphold Mr B's complaint in part. I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr B authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Monzo should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Mr B when he authorised payments from his account or whether it could and should have done more before processing them.

In reaching my decision, I have also considered 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 terms and conditions gave it rights (but not obligations) to block payments if:

- We suspect criminal activity on your account
- We're protecting you from fraud

It explained that if it blocked a payment, it would let a customer know as soon as possible via one of its usual channels which could be the Monzo app, email phone or mail.

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 or if it was protecting a customer from fraud.
- It had a contractual right to delay payments to make enquiries where it suspected criminal activity or fraud.
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity or 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

Having considered the payments in question here, I don't think that Monzo needed to get in touch with Mr B when he made the first payment as I don't consider it to have been sufficiently unusual or suspicious enough for Monzo to have had concerns at this point, and I can't reasonably expect it to intervene with every payment, even if it is going to a crypto provider. However, I do think that Monzo should have got in touch with Mr B when he made the second payment - to check that everything was in order and ask Mr B about what he was

doing – the intention being to uncover a potential scam and protect Mr B from financial harm, but it didn't do so.

I understand that Mr B made the payments via 'Open Banking' – which is another type of Faster Payment. Monzo has suggested that due to the Financial Conduct Authority (FCA) technical standards, that friction has not been added to the payment journey and so no intervention was required. However, when following a customer's instruction to make a faster a payment, Monzo should still exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe.

This includes looking out for payments which might indicate the consumer is at risk of financial harm. Monzo should fairly and reasonably have had systems in place to look out of character or unusual transactions, or other signs that might indicate that its customer were at risk of harm from fraud. Monzo, as ASPSP, can intervene on open banking payments for fraud detection and prevention purposes the same as it would with any other faster payment that displays risk factors.

In this instance, although Mr B's account didn't have any previous transactions other than the first payment made as the part of the scam for Monzo to compare his usual activity to, the payment pattern emerging was a sharp increase in the amount being sent to a known crypto provider – and by the time Mr B made his payments, Monzo should have been aware of the associated risks with this type of payment and common scam scenarios and tactics.

Taking this all into account, I think that Monzo should have contacted Mr B, and asked him appropriate and probing questions about what he was doing and why. Mr B has confirmed that he wasn't coached by anyone about what to say to his bank – so I think he would have been honest about what he was doing and told Monzo he had been introduced to C by his friend and added to a WhatsApp group with other investors. I think he would also have told them that he had been given access to a portal which appeared to show his investment.

Monzo should then have given Mr B an effective warning about the common signs of a crypto scam – including the use of falsified trading portals, the promise of unrealistic returns, and explained that sometimes 'investors' are able to withdraw small parts of their investment early on in the scam, effectively breadcrumbing them into believing legitimacy of the investment and persuading them to make further payments.

I don't believe that if Mr B had been provided with such a warning, he would have ignored it – and so I think that Monzo missed an opportunity to intervene here, and it could have prevented the loss from the second payment.

I do need to consider if Mr B should bear some responsibility for the loss – and having thought about this carefully, I am not persuaded that on this occasion that a deduction for contributory negligence would be appropriate. I'll explain why.

Mr B was not an experienced investor and was told about the opportunity by a trusted friend who appeared to have already made a profit. I don't know what further research Mr B did before deciding to go ahead with his payments, but even if he had completed further due diligence, I don't think that there was anything that Mr B could have located online about C that would have caused him concern. While there are now numerous negative reviews about C now available, these were published after Mr B had already made his payments, and the FCA warning about C wasn't published about C until 12 December 2023.

Monzo was the expert in these matters – not Mr B – and I think that it could have established Mr B was likely being scammed from the information Mr B would have provided to it had it intervened at the appropriate time.

Putting things right

Monzo Bank Ltd should refund Mr B from and including the second payment.

I calculate this to be £4,765. On top of this, Monzo Bank Ltd should also pay Mr B 8% simple interest from the date the payments were made until settlement (less any lawfully deductible tax).

My final decision

I uphold this complaint in part. Monzo Bank Ltd should put things right as set out above.

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

Claire Pugh
Ombudsman