

The complaint

Mr S is unhappy Monzo Bank Ltd won't refund the money he lost as the result of a scam.

What happened

Mr S was told through a colleague about an investment opportunity with an online platform – I will refer to as B. Mr S says he carried out an internet search and he found positive reviews about B. He says he also checked the company website and it looked to be legitimate. He got in contact with the broker for B and exchanged messages via a messaging app. He was told to make two payments to a cryptocurrency provider – so in March 2021 Mr S made two payments of £10,000 each to the cryptocurrency provider. He says he saw the warning Monzo provided but was manipulated by the scammer. Mr S says he then shared screens with the scammer through a remote desk application and his funds were moved by the broker for, what he was led to believe was, further trading with B. Mr S was provided with a log in to a portal so he could see how his investments were doing. When Mr S tried to withdraw money, he was told he needed to pay tax and this is when he realised it was a scam.

Our investigator upheld the complaint. She considered that Monzo didn't go far enough and missed an opportunity to discuss the payments with Mr S. She also felt Mr S had acted reasonably in the circumstances.

Monzo didn't agree. It said the loss was from the cryptocurrency provider and not from his Monzo account. It explained a trading association has made it clear that liability for these types of scams should lie with the cryptocurrency firms. Monzo also provided Mr S with the following warning:

"Remember: Legitimate investments will never guarantee profit. Legitimate investments aren't arranged over social media or things like WhatsApp."

"Check out the company. See if they're a legitimate company here [providing a link to the Financial Conduct Authority's Financial Services Register]. Don't pay unless they're registered with the FCA and you're certain you can trust them."

It said there is a balance to be struck between the benefit of protecting its customers, whilst not being overly disruptive in adding unnecessary friction to legitimate payment journeys and it can't prevent every possible scam transaction. It also considers, if it had reached out to the consumer in this instance, it's unlikely it would have prevented the scam.

I issued my provisional decision on 5 July 2022, explaining why I was thinking of reaching an outcome that differed in some respects to the investigator's.

Mr S has nothing further to add. Monzo did not accept the provisional decision. It reiterated its position that it doesn't consider it is liable because the payments were made into an account in Mr S's own name. It also said it had systems in place for unusual activity and it provided a warning that I agreed should have caused the consumer concern. Therefore, it

did all it could, and it doesn't think it reasonable that I'm asking it to reimburse 50% of the money lost.

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 have considered Monzo's response to my provisional decision. But as I explained in my provisional decision - I don't agree that Monzo is not liable - simply because the money was transferred to an account in Mr S's name. Monzo had a responsibility to be on the look out for unusual activity and protect consumers from financial harm. I also acknowledged in my provisional decision that there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

The payments were unusually large and as such, were out of character for Mr S. The transfers were made to a cryptocurrency account. As I explained in my provisional decision - cryptocurrency scams had been increasing in frequency and both the Financial Conduct Authority (FCA) and Action Fraud had published specific warnings about these scams in 2018. In my view, by the time of these transactions, Monzo had had time to understand these warnings and put mechanisms in place to detect and prevent this particular type of fraud.

Whilst I acknowledged Monzo provided a warning (and I concluded that the warning should have caused Mr S concern), I still don't think Monzo did enough here. I think Monzo could and should have done more to warn Mr S about these particular types of scams – given industry warnings about these scams at the time. Where I think both parties could have done more – the fair and reasonable outcome is for both parties to share the responsibility.

So, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint in part. For completeness, I have set this out below.

The payment was made to an account in Mr S's name, so it isn't covered under the Contingent Reimbursement Model (CRM) code. But I've gone on to consider whether Monzo should've prevented the payments from being made.

Should Monzo have prevented the payments from being made?

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam.

It is not in dispute that Mr S authorised the scam payments. It is also not in dispute that Mr S was duped by the scammers into instructing the bank to transfer money to a cryptocurrency account and on from there into the scammer's account. The scammers deceived him over a messaging platform into thinking he was making a legitimate cryptocurrency investment for further trading. As I understand it, payments to the cryptocurrency provider were used to purchase cryptocurrency which was then placed in a wallet in Mr S's name and from there the scammer moved the money into his own wallet. So, although Mr S did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

I appreciate the loss did not occur directly from Mr S's Monzo account. And I have noted the guidance issued by a trade association to banks such as Monzo. But, taking into account the law, regulator's 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 banks 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 declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I accept there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. And it doesn't automatically follow that Monzo is liable for a loss, just because a customer is a victim of fraud.

In response to the view, Monzo agreed the £10,000 payments were larger than previous payments from the account - although it says they weren't significant in the wider scheme of payments from the account. I'm not sure what it means by this latter statement, but I agree the payments were unusually large and as such, were out of character for Mr S. Other than payments to his own account or savings pot, the highest payment out of the account within the previous six months was for £1,389.

So, the payments for £10,000 were payment instructions that Monzo ought to have realised warranted additional checks before it simply processed them without question. I appreciate the transactions triggered a high friction warning, but I don't think the warning went far enough. I think in a situation like this Monzo should have spoken with Mr S to check everything was in order, to protect him from the risk of financial harm. I have therefore thought about what most likely would have happened if Monzo had spoken appropriately to Mr S about his instructions for £10,000 payments on 8 and 12 March 2021, before it executed them.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers. Cryptocurrency scams had been increasing in frequency and both the Financial Conduct Authority (FCA) and Action Fraud had published specific warnings about these scams in 2018. In my view, by the time of these transactions, Monzo had had time to understand these warnings and put mechanisms in place to detect and prevent this particular type of fraud.

So, it may have appeared on face value to have been a legitimate payment to a legitimate organisation. But even though the money appeared to be going somewhere safe or on (as it did) from here to the consumer's own wallet, I don't think the conversation should have stopped there.

Based on the industry warnings at the time, I think Monzo ought to have had a good enough understanding of how these scams work – including that consumers often move money to a wallet in their own name before moving it on again to the fraudster or (as was the case here) the fraudster having control or access to the wallet.

If Monzo had asked who Mr S was paying his cryptocurrency to, how he had been contacted, and whether he'd parted with personal details in order to open a trading account, I think Mr S would have told them about B and that he had shared personal details with them and Monzo would have been concerned about this. With further questioning, I think Monzo would have been on notice that Mr S was falling victim to a scam. And if Monzo had given Mr S some warnings about cryptocurrency scams including pointing out that scam firms can manipulate software to distort prices and returns and scam people into buying non-existent currency – I think this would have caused sufficient doubt in Mr S's mind not to proceed with the payments. In other words, if Monzo had carried out further or better questioning in line with the bank's duty of care, it seems probable that Mr S would have become credulous about the scam in time and stopped the payment (and any further payments) in its tracks. The fraud would have failed; and Mr S would not have lost £10,000 or the transaction that followed.

Could Mr S have done more to mitigate his losses?

I've thought carefully about what Monzo's obligations were, as set out above. But another key issue is whether Mr S acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Mr S should bear some responsibility by way of contributory negligence.

- Mr S confirmed he saw the warning provided by Monzo. This clearly advised that legitimate investments aren't arranged over 'things like WhatsApp'. And Mr S did use a messaging platform exchanging many messages for quite some period of time. I appreciate the scammer told Mr S that all businesses do investments this way now. But I think the message from the bank ought to have concerned Mr S and warranted further checking.
- Mr S shared screens and bank details with the scammer and allowed them to access his cryptocurrency account. I appreciate he understood this to be so B could share investment opportunities, information, and show how the investment worked, but I think this ought to have caused Mr S concern.
- The warning also said to check whether the business was FCA registered and Mr S told us he did not check to see if B was FCA registered.
- There were warnings published by the FCA about cryptocurrency scams at the time. Given the warning guided Mr S to the FCA website and Mr S acknowledges he did visit the FCA site, I think a more detailed search about cryptocurrency investments would've provided at least some results which would've indicated that the offer was probably fraudulent.

I appreciate Mr S did do some research on B and it appeared to have a legitimate website. And Mr S did check whether the business was legitimate by clicking on the link to the FCA website. He also said there were no warnings after a google search and two positive reviews. But overall, I don't think this was enough to disregard some of the clearer warning signs here.

Overall, I'm not satisfied that a reasonable person would've believed this was a genuine situation or would've proceeded without doing substantive investigation and checks to verify all the information they were given – which I think would've shown inconsistencies and issues in the information provided. On that basis, I think it's reasonable for Mr S to share the responsibility with Monzo and reduce the refund on all of the payments by 50%. Therefore, Monzo should refund 50% of all the payments Mr S made from the payments of £10,000 on 8 and 12 March 2021.

I don't say any of this to diminish the fact that Mr S has been the victim of a cruel scam. I sympathise with him for that and I know he will be hugely disappointed by this decision – especially as it differs in some respects from the investigator's opinion. But I do think this is the fair and reasonable outcome in all the circumstances of this complaint.

Putting things right

To put things right Monzo Bank Ltd must:

- Refund 50% of all the payments Mr S made as a result of the scam
- Pay interest on the above refund at 8% simple per annum from the date the payments debited the account, until the date of settlement.¹

My final decision

For the reasons above, my final decision is I uphold this complaint in part and require Monzo Bank Ltd to put things right for Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 August 2022.

Kathryn Milne
Ombudsman

¹ If Monzo is legally required to deduct tax from the interest should send Mr S a tax deduction certificate so he can claim it back from HMRC if appropriate.