

The complaint

Mr M is unhappy Monzo Bank Ltd won't reimburse him the money he's lost after he fell victim to a scam.

Mr M in bringing his complaint to our service is being represented by solicitors. For ease, I will refer to Mr M throughout this decision.

What happened

Mr M had been thinking about investing in Bitcoin to help support a family member. He said he'd read endorsements by well-known celebrities, which persuaded him to invest.

A friend of Mr M's introduced him to a company that they were investing in at the time. Mr M's friend had invested around £2,000 and said they'd made a return of £9,000. Mr M says he researched the company online and checked the website which he said appeared professional. Due to his friend's recommendation, Mr M says he was persuaded the firm was genuine. Unbeknown to Mr M at the time he was in contact with fraudsters.

A messaging group between the company, Mr M and his friend was set up via a messaging app. Mr M says this was where the three individuals' spoke about investing. Mr M wasn't sure about setting up an account for himself and was hesitant to invest. So, the company suggested he send funds to his friend, so that they could invest as part of a joint account. Mr M says this reassured him.

On 5 July 2021, Mr M sent via an account he held with a different bank, £9,000 to his friend. It was following this; he says he was encouraged to open his own account which he agreed to. Mr M opened an account with a cryptocurrency exchange.

Mr M said he was initially encouraged to invest £25,000 to maximise his profits. However, he explained he didn't have this amount but would try to get £21,000. Mr M's explained his friend told him about their investments and profits and he could also see the trading on the joint account which convinced him to make the payments.

In July 2021, Mr M made the following eight payments to the fraudsters, totalling £20,900;

28 July 2021	£50
28 July 2021	£7,000
28 July 2021	£2,900
28 July 2021	£50
28 July 2021	£500
28 July 2021	£400
29 July 2021	£5,000
29 July 2021	£5,000

The payments were made to the cryptocurrency account that Mr M had opened in his name and from there he sent the money onto the fraudsters to the wallet details he'd been given. Mr M says he made the payments this way as the company told him that banks would block

larger payments. Mr M says he was asked by the fraudster to download software so that they could make sure everything was being done correctly.

Mr M explained each time he made a payment from his cryptocurrency account, he could see this on the trading account that the funds had seemingly moved to, and he'd been given access to.

On 28 July 2021, around midday, Mr M contacted Monzo in order to increase his daily account transfer limit, which he says was done with no questions being asked by the bank. Following his contact with Monzo via its chat function, his bank transfer limit was increased until midnight that same day.

When making the payments on 29 July 2021, Mr M says the cryptocurrency account held in his name was placed on hold due to it believing he'd sent £5,000 twice. Mr M said he informed the fraudster who assured him everything was fine.

There appears to have been communication between Mr M and the fraudster in early August 2021, but he says towards the end of August 2021 the contact stopped. Mr M says this prompted him to try to make a withdrawal through the company's website, but he received no response.

On 20 August 2021, Mr M reported he'd been the victim of a scam to Monzo via its chat function.

Mr M explained he still had access to the trading account and that he received contact from the company on 11 October 2021, telling him that if he paid 5% of the current balance on the account, he would be able to withdraw the funds.

Monzo investigated his claim but declined to reimburse him the money he lost. It didn't consider the payments Mr M made were fraudulent. This was on the basis; Mr M made the payments to an account in his own name. It considered Mr M's case under the Contingent Reimbursement Model (the CRM Code) and said Mr M was shown a warning which it felt met the requirements to be impactful. Monzo didn't attempt to recover the payments Mr M made due to the funds being sent to an account in his own name.

Unhappy with Monzo's response, Mr M brought his complaint to our service. One of our Investigators looked into things and upheld the complaint in part. He recommended Monzo should reimburse 50% of Mr M's losses from and including the second payment of £7,000. Plus, pay the savings account interest rate of 0.01% AER on the 50% refund from the date the funds debited the account until the funds are returned. He said this because:

- He considered Monzo ought to have been concerned about the second payment Mr M asked to make of £7,000. This was because he thought this payment was out of character to the previous account activity.
- He considered the online warning Monzo say it presented to Mr M, but he didn't think this went far enough. When thinking about the £7,000 payment, he thought Monzo ought to have contacted Mr M to speak about the payment before allowing it to be processed. Had it done so, he was satisfied this would've made a difference and the scam could've been prevented.
- Whilst he recognised Mr M made the payments to an account in his own name with the cryptocurrency exchange, he felt had intervention happened, the bank would've been on notice that Mr M was at risk of financial harm. Therefore, while he recognised the losses didn't arise from the initial payment, he thought they ought to have been within the contemplation of, and foreseeable to Monzo.

- Our investigator also considered whether Mr M had acted fairly and reasonably in the circumstances. Having done so, he thought Mr M should share responsibility for his loss due to his actions.

Mr M through his representative accepted our Investigator's view but Monzo disagreed for a number of reasons. Some of these include, but are not limited to:

- It shouldn't be held liable for 50% of Mr M's loss as the funds were sent to an account in his own name – so the payments Mr M made from his Monzo account to the cryptocurrency account held in his name were not scam payments.
- Had intervention taken place and further questions been asked, Monzo considers it would have revealed that Mr M was paying funds to his own account.
- It reiterated that the payments were made to an account in his own name and therefore, there was no reason for it to have had concerns or for it to consider reimbursing him 50% of the loss.

As an agreement couldn't be reached the complaint has now been passed to me for a decision.

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'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Having considered everything, I uphold this complaint in part. I will now explain why.

It's not in dispute that Mr M authorised the scam payments. Mr M was duped by the fraudsters into instructing the bank to transfer money to a cryptocurrency account which he held in his name and from there he sent the money onto the fraudsters. So, while Mr M didn't intend for the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and condition of his account he is presumed liable for the loss in the first instance.

However, in accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customers as a result.

As our Investigator explained, the payments Mr M made as part of this scam are not covered by the CRM Code. This is because the CRM Code covers Authorised Push Payments when the funds are transferred to another person and not to a consumer's own account. In this case, Mr M sent the funds to a legitimate cryptocurrency exchange account in his own name. So, the provisions of the CRM Code don't apply here.

Nonetheless, there are some situations in which Monzo should reasonably have had a closer look at the circumstances surrounding these transactions. I consider that as a matter

of good practice, Monzo should've been on the lookout for unusual and out of character transactions. However, it must also balance this against its obligation to process payments in line with its customer's instructions and the terms and conditions of the account. I acknowledge that this can at times be a difficult balance to strike.

Were the payments Mr M made unusual or out of character?

I've looked at what I think is the heart of the matter here, being; should Monzo have recognised Mr M's payments as being suspicious and intervened to try and mitigate the risk of him falling victim to financial harm from fraud.

When considering Mr M's account activity, I agree with our Investigator's conclusions that at the point he made the £7,000 payment, Monzo ought to have reasonably been concerned. I say this because from reviewing Mr M's bank statements, from April 2019 up to the scam payments, I can't see that Mr M had made a payment of this size and amount previously. The largest payment I can see Mr M made prior to the scam payments was for around £4,000 which was to an account he held in his name and regularly made payments to. Here, Mr M set up a new payee to a cryptocurrency exchange, made an initial payment of £50 that day, followed by a much larger payment of £7,000. I think this ought to have caused Monzo concern – given the amount Mr M was paying to crypto assets increased in a short space of time, which is often an indicator of a scam.

While I accept that buying cryptocurrency is a legitimate exercise, both the FCA and Action Fraud had warned of cryptocurrency exchange and forex trading scams in 2018. And in May 2019 Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something regulated businesses including Monzo, ought to take notice of. So even if Mr M had been sending money to a legitimate cryptocurrency exchange, it didn't follow that his money was safe, or that he wasn't at risk of financial harm due to fraud or a scam.

The evidence provided by Monzo shows that an online warning was provided to Mr M when he set up the new payee and made the initial payment of £50. But that no warnings were provided for any of the scam payments made after this. I consider the first payment of £50 to be unremarkable given the low amount of the payment and previous account activity. So, I don't think a warning was required for this payment. That said, our Investigator within his view commented on the online warning Monzo say Mr M was provided with at the time he made the initial payment. For completeness and the avoidance of doubt, I agree with our Investigator that the warning didn't go far enough to bring to life the common features of the scam Mr M was falling victim to. I consider the warning to be general in nature and pointed to various issues not apparent to this scam – in particular, there is no mention of cryptocurrency at all. But in any event, for the reasons I've explained above, I think Monzo ought to have got in touch with Mr M to ask him questions about the second payment of £7,000 before processing it.

Would intervention have prevented the fraud?

Our Investigator said had Monzo got in touch to make enquiries with Mr M about the purpose of the payments before allowing them to be made, he thinks this would've made a difference. In setting out his reasons within his view, he posed some questions that Monzo could have asked Mr M at the time. Monzo in its appeal has highlighted that it needs to be acknowledged these questions have been provided with the benefit of hindsight, knowing what we know now and that it does not necessitate that if it had asked similar questions at

the time, that it would have been able to have prevented the payments from taking place. It raised that Mr M could've given the bank different information.

I've thought carefully about what Monzo has said. Inevitably it's very difficult to know what would have happened had Mr M been contacted at the time and asked a few questions about the activity he was carrying out. In such situations, I have to reach my findings based on what I think is more likely than not to have happened.

Having done so, had intervention taken place, I'm persuaded there are some clear red flags here that Monzo likely would have identified and pointed out to Mr M. From what I've seen, Mr M wasn't an experienced cryptocurrency investor. I think a professional body, such as Monzo, highlighting some of the red flags present would have caused him to question what he was doing. Given that Mr M has told us he was initially hesitant to invest and only did so initially as part of a joint investment with his friend.

Our Investigator, was further persuaded that Mr M would've shared this information with Monzo had it asked him questions about the payments, after he'd listened to a call between Mr M and his other bank (whom he holds an account with). It was from this account with a different bank that Mr M made a £9,000 payment to his friend prior to setting up his own account with the company and making the payments from his Monzo account. While I've been unable to listen to this call, I have seen our Investigator's transcript of the call. From what I've seen, Mr M was open and forthcoming. When asked questions about the £9,000 payment he explained it was for an investment and, when asked how he'd verified the company as genuine, he explained he trusted his friend and indicated that he hadn't done any checks on the company – other than an online search and checked its website.

I've not seen anything that suggests Mr M was given a cover story and so I've no reason to doubt he would have explained what he was doing – and it appears he openly did so when speaking with his other bank. Whilst I accept Monzo had no duty to protect Mr M from a poor investment choice, or give investment advice, it could have provided him with information about the high risks associated with these types of investments and common hallmarks of scams which were present in this case. Had Monzo asked Mr M about how he was introduced to the investment, what checks he'd already carried out to confirm its authenticity and brought to life what investment scams looked and felt like, I think the likely answers he would've given should have caused concern.

I do acknowledge Mr M says he trusted the recommendation of his friend and says he believed the company to be genuine. But in speaking with Mr M about the payments, had Monzo provided him with information about the Financial Conduct Authority (FCA), in light of his early reluctance to invest, I'm persuaded he would've listened and thought about what Monzo had told him. Had Mr M then checked the FCA register, he would've seen that a warning about the company had been added in June 2021 – which was before he made the first payment to the fraudster.

Even, if only some of the circumstances surrounding the payment was revealed, I think it is more likely than not that this ought fairly and reasonably to have given Monzo cause for concern. It follows that on balance, I think it likely that Monzo would have been able to prevent the further payments had it intervened and provided a very strong warning and advice on these types of frauds.

But that isn't the end of the matter, I also need to consider whether Mr M ought to bear some responsibility for the loss he incurred.

Should Mr M bear some responsibility for his loss?

Having carefully considered all the evidence, I find Mr M ignored some red flags which ought to have given him cause for concern. Because of this, I think Mr M should bear equal responsibility for his loss. I will now explain why.

Mr M carried out little to no research on the company prior to deciding to invest. I do recognise Mr M was introduced to the company by his friend who had already invested with them and, had told him about their investments and profits. But he's confirmed he didn't see any information that supported or showed this. He was further told by his friend that they'd tripled their investment in around three weeks. Given Mr M said he was initially hesitant to invest due to him being sceptical about 'easy money', I think this ought to have been a flag – and led him to proceed more cautiously. I think this rate of return seemed too good to be true.

In chat messages Mr M has provided, I can also see the fraudster told Mr M there was a 35% starter bonus from the investment, when he was setting up his account with the company. This he was told would be an additional 10,000 dollars. I don't think this was a realistic offer and again was a flag that ought to have struck Mr M as seeming too good to be true.

Further, Mr M has told us that the fraudster told him to make smaller payments rather than a payment for the full amount he was looking to invest, as they'd experienced issues previously with the banks blocking legitimate payments. This ought to reasonably have raised questions with Mr M as to why a genuine investment company was giving him instructions that encouraged him to circumvent a banks fraud detection systems. I think this ought to have fairly and reasonably given Mr M pause for thought and at least prompted him to ask further questions.

All in all, I'm persuaded there was enough going on that ought to have reasonably led Mr M to adopt a more cautious approach to the payments he was making. Because of this, I find Mr M should therefore take responsibility for half the funds Monzo likely could have prevented being paid. I mean no discourtesy to Mr M in reaching this finding as I acknowledge he was the victim of a sophisticated and cruel scam. But I must be fair to both parties and acknowledge where he could have done more to ensure he was dealing with a legitimate company.

Recovery of funds

I've thought about whether Monzo did all it could to try and recover the money Mr M lost. Monzo say it didn't make any attempts to try to recover Mr M's funds as it said a fraud claim couldn't be raised against himself. It said it advised Mr M that he needed to raise these payments with the cryptocurrency exchange, so that it could try and retrieve the funds for him.

I don't think it reasonable that Monzo decided not to attempt recovery. But having said this, given that Mr M has told us he sent his money from his Monzo account to the account he held in his name with the cryptocurrency exchange, and from there then moved this onto the fraudsters. I don't think Monzo would've been able to recover any funds - even had it contacted the receiving bank. So, it follows that I don't think it missed an opportunity to recover the money Mr M sadly lost.

Putting things right

For the reasons I've explained above, Monzo should reimburse Mr M 50% of the money he lost, from and including the second payment of £7,000. I calculate this to be £10,425.

The funds used to finance the payments Mr M made to his cryptocurrency exchange account originated from his savings account which he held with another bank. Mr M has provided information relating to his savings account which shows the account interest rate as 0.01% per annum. So, I consider Monzo should add interest to the settlement set out above (less any tax properly deductible) at the originating savings account rate – from the respective dates of loss to the date of settlement.

My final decision

My final decision is that I uphold this complaint in part.

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

Staci Rowland
Ombudsman