

The complaint

Miss J complains that Monzo Bank Ltd (Monzo) won't reimburse money she lost when she fell victim to an investment scam.

What happened

Miss J was looking to learn to trade and – in September 2020 – came across a company called 365CapitalMarkets. She phoned the company's customer service number after checking customer reviews on Trustpilot and various online forums.

Miss J told the representative from 365CapitalMarkets that she wanted to learn to trade to replace her income from her second (weekend) job which she'd lost during the pandemic. She was assigned an account manager who told her that he would guide and show her trading strategies that could make her around £500, and possibly more, per month. And that he would keep an eye on her trades on her behalf during the week, when she might be busy at work.

Miss J agreed to open a trading account with 365CapitalMarkets (which later turned out to be fraudulent) and paid a small deposit. To facilitate trading on her account, Miss J transferred money from her current account with another bank to her Monzo account, and then made payments using her Monzo debit card. She's explained that she moved funds between her current accounts as her main bank charged a non-sterling transaction fee, and the deposits to her trading account were in Euro.

Miss J's also said that unbeknownst to her, the fraudster opened a cryptocurrency wallet in her name using the identification verification documents she provided to open her trading account. While she thought payments made using her Monzo debit card were being credited to her trading account, the funds were actually transferred to the crypto wallet before being sent on to the fraudster's account.

Miss J was persuaded to send more funds after seeing 'profits' that were made on her trades. She states that she had scheduled phone calls with her account manager two to three times a week and trusted him. But things changed when she asked to make a withdrawal. Miss J says her account manager became aggressive towards her and she was told to deposit even more money to withdraw her available balance or risk losing everything. She emailed the compliance department, but this was ignored.

One day, Miss J's account manager's phone number and email address stopped working. She was contacted by another representative who said he'd taken over and would help her out. Miss J was told she needed to pay £1,000 to cover taxes and the funds would then be released. Desperate to get her initial investment back, she paid the money. But she was unable to make a withdrawal.

Over the next few weeks, Miss J contacted 365CapitalMarkets continuously by phone and email and subsequently learnt that all her money had been lost. She says she wrote 85 negative reviews (which have since been deleted by the reviews website) and eventually

contacted Monzo to report the scam. She also contacted the Financial Conduct Authority (FCA), Action Fraud, and the police.

The following transactions were made using Miss J's Monzo debit card:

Date	Merchant	Amount
17 September 2020	Pay. *.NGA	£194.37
21 September 2020	Bitxtech.com	£4,581.00
22 September 2020	Bitxtech.com	£2,954.67
8 October 2020	Bitxtech.com	£3,938.80
14 October 2020	Bitxtech.com	£5,444.40
15 October 2020	Bitxtech.com	£5,472.60
2 February 2021	Cryptonet.exchange	£1,000.00
	Total loss	£23,585.84

Monzo declined to refund the transactions or raise a chargeback. Miss J complained and unhappy with its response she referred the matter to our service.

Our investigator concluded that Monzo didn't act unfairly in raising a chargeback. He also considered whether Monzo ought to have done more to prevent the payments from being sent in the first instance. It was his view that Monzo ought to have intervened when Miss J authorised the payment of £2,954.67 on 22 September 2020 as it appeared unusual.

Had Monzo done so, the investigator thought that the scam would have unfolded, and further losses would have been prevented. He recommended Monzo to refund all the payments from that point onwards along with interest.

Monzo appreciated that Miss J was scammed, but it disagreed with the investigator's findings. In summary, it said:

- Some financial institutions had banned transactions to cryptocurrency platforms and it often saw people loading Monzo accounts to make large-value payments to cryptocurrency exchanges that would otherwise look out of place.
- The source of funds was another account in Miss J's name and as payments continued over a reasonable period of time Monzo had no reason to interrupt a significant amount of legitimate payment journeys.
- Monzo had no interaction with 365CapitalMarket and had no idea that Miss J was attempting to perform binary trades. As it wasn't involved in the scam, it shouldn't be held liable.
- The disputed transactions didn't trigger its systems as while they were new for Miss J's account, it wasn't unusual behaviour across Monzo's customer base or wider banking industry.
- An intervention may have made a difference to Miss J's decision-making, but Monzo has no reason to stop hundreds of customers a day legitimately spending their money.

Miss J responded and requested that all seven transactions are refunded.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

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.

Recovery

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator – MasterCard in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Miss J was dealing with a company called 365CapitalMarkets. Given the information I've found about it during my research, I'm satisfied Miss J fell victim to a scam rather than simply losing money as a result of a high-risk investment.

But Miss J didn't make the debit card payments to 365CapitalMarkets; she paid three separate cryptocurrency payment processor and exchange firms. This is important because Monzo was only able to chargeback against the merchant she paid, not another party (such as 365CapitalMarkets).

The service provided by the merchants would be to convert or facilitate conversion of Miss J's payments into cryptocurrency. Therefore, the merchant she made the payments to did provide the service that was requested; that being the purchase of the cryptocurrency. The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants Miss J paid.

Duty of care

While I don't think that Monzo could have done more with regards to the recovery of Miss J's funds once it was made aware of the situation, I've also considered whether it ought to have intervened *before* allowing any of the payments to be made.

The disputed payments were authorised by Miss J using her debit card and associated security credentials. So, under the relevant regulations, she's considered liable unless there's evidence that Monzo could and should reasonably have done more to protect her against the risk of fraud and scams, and that this would have made a difference to her decision-making.

Monzo ought to have been monitoring accounts to counter various risks; having systems in place to identify unusual transactions or other indicators that its customer was at risk of fraud; and, in some situations, making additional checks before processing payments or declining them altogether to protect its customer from possible financial harm from fraud.

I've considered Monzo's argument that it didn't know Miss J was performing binary trades as the payments were sent to cryptocurrency exchanges. I accept that buying cryptocurrency is a legitimate exercise. But 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 that regulated businesses, including Monzo, ought to take notice of.

Monzo states that there's been an increase in customers loading their Monzo account and making high-value transactions to cryptocurrency exchanges because some other payment service providers have banned such transactions. But even if Miss J had been sending money to a legitimate cryptocurrency exchange, it didn't follow that her money was safe, or that she wasn't at risk of financial harm due to fraud or a scam.

By the time Miss J made the payments, I think Monzo had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or trading account. So, I'm not persuaded by Monzo's comments.

I wouldn't have expected Monzo to have picked up the disputed payments as being suspicious solely based on the merchant names. There were no regulator warnings in place about them when Miss J made the payments. But this isn't the end of the matter.

I've considered the operation of Miss J's account in the year leading up to the payments. This is to determine whether they were so unusual or uncharacteristic that I think Monzo ought to have intervened.

I don't consider the first payment was out of character for Miss J's account activity. Although the second payment was of a much higher value and going to a new payee, in my view it wasn't so unusual or uncharacteristic that I think Monzo ought to have intervened. Afterall, it isn't unusual to make a one-off payment that's higher than the usual account activity.

But by the time Miss J made the third payment (the next day), I think it ought to have triggered an alert on Monzo's systems and I consider it would have been reasonable for it to have paused the payment pending further investigation. Given the quick succession of the second and third payments, the frequency of payments to the same payee, the amounts involved, and the fact that the payment was to a cryptocurrency exchange, I consider it would have been reasonable for Monzo to have properly questioned Miss J *before* executing her authorised instruction.

Had Monzo carried out its due diligence and duties and asked Miss J about the payment, I've no reason to doubt that she would have explained what she was doing and the true purpose of her payment to the cryptocurrency exchange. She had been given no reason to think she had to hide this information from her bank, and neither had she been coached by 365CapitalMarkets to tell them something different.

At the time of the third payment, there wasn't information available to Monzo that 365CapitalMarkets was involved in a scam. The earliest regulator warning wasn't published until November 2020, when the Belgian regulator added 365CapitalMarkets to its list of fraudulent online trading platforms. So, I accept that Monzo had no duty to protect Miss J from a poor investment choice or give investment advice. But it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing with a legitimate person or firm – such as checking that the firm was regulated in the UK or abroad.

Monzo could have also drawn on its own knowledge and information that was in the public domain – mentioned above – about the high risk associated with cryptocurrency and Contracts for Difference (CFD) trading and the potential for fraud. It could have also provided Miss J with a potential scam warning.

Had Monzo done more, I'm satisfied that Miss J would have looked further into the investment opportunity in general, including whether 365CapitalMarkets was regulated here

in the UK or abroad. She could have discovered that it wasn't. She could have also discovered that her payments weren't directly going to her trading account. Indeed, it's likely that Miss J would have come across the various scam warnings involving cryptocurrency exchanges.

I'm persuaded that a meaningful intervention from Monzo would likely have exposed the scam. And I think it's more likely than not that the intervention would have caused Miss J to stop from going ahead with the payment, thereby preventing further losses. I therefore hold Monzo liable for these losses.

Contributory negligence

I've also carefully thought about whether Miss J is partly to blame for what happened. And having done so, I'm not persuaded that she is.

Miss J's told us that apart from holding an ISA with a high-street bank, she had no other investment experience. But she did carry out some research on 365CapitalMarkets before deciding to invest. A bank might be knowledgeable about checking for regulation, etc. but I don't believe the same could be said for a layperson, particularly when they have little or no investment experience.

I don't think Miss J could have foreseen the risk that the company she was dealing with was a scam. And although she had become concerned with 365CapitalMarkets when she unsuccessfully tried to make a withdrawal in late 2020, Miss J made a further payment of £1,000 as she genuinely believed that she needed to pay tax for the funds to be released. She simply didn't appreciate what she was doing or the consequences of her actions.

All in all, I'm satisfied that there was no contributory negligence on this occasion and Miss J was simply the unwitting and blameless victim of a clever fraudster. The bank was the professional in financial matters; she was a layperson.

Putting things right

To put matters right, Monzo Bank Ltd needs to reimburse Miss J all the disputed payments from 22 September 2020 onwards as set out in the table above. That means payments three to seven.

As the account Miss J transferred the money from to facilitate the debit card payments was also a current account, I consider that it would be fair and reasonable for Monzo to also add simple interest at 8% per year, calculated from the date of loss to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint and require Monzo Bank Ltd to put things right for Miss J as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 19 September 2022.

Gagandeep Singh
Ombudsman