

The complaint

Mr P complains that Monzo Bank Ltd (“Monzo”) have failed to refund £4,000 he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. In summary, Mr P was scammed into sending £4,000 as he was tricked into believing he was investing in cryptocurrency through Santander.

Our investigator upheld the complaint. He considered the payment was unusual enough for Monzo to have intervened, as there were no similar payments that were even close to £4,000 having been made from his account in the previous year.

He thought that such an intervention would have prevented the scam, and so recommended that Monzo refund the money. However, as there were some clear indications of something suspicious unfolding, the investigator also thought that Mr P should bear some responsibility for the loss as well, for failing to question what he was being asked to do. So, he recommended a deduction of 25% be made to the refund in recognition of Mr P’s contributory negligence.

Monzo disagreed, so the matter has been escalated to me to determine.

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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it for these reasons:

- Monzo have said that this payment did not trigger their fraud prevention systems, so they do not believe there is any reason for them to refund the money Mr P has lost. They have also said that the Contingent Reimbursement Model (CRM) Code does not apply to this transaction and have posed questions around what obligation they have to otherwise refund Mr P outside of the Code.
- I acknowledge that the CRM Code does not apply to the transaction. But Monzo ought to be aware of our general position on a Payment Service Providers’ safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.
- It is common ground that the disputed payments were ‘authorised’ by Mr P for the purposes of the Payment Services Regulations 2017 (‘the Regulations’), in force at

the time. This is because they were made by him using the legitimate security credentials provided by Monzo.

- However, I've considered whether Monzo should have done more to prevent Mr P from falling victim to the scam, as there are some situations in which a payment service provider should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated firm such as Monzo that Mr P's account was being subjected to unusual and uncharacteristic activity. I can see from Mr P's statements that he did not have any recent history of making any payments over £1,000. The largest payment that left his account prior to this was for an amount of around £460. So, a payment of £4,000 represented an increase of over 700% from his normally spending pattern.
- I appreciate the payment may not have been significant in the wider scheme of payments that Monzo sees on a regular basis. However, good industry practice indicates that it is not what a bank's *typical* customer would do that should be used as the benchmark for detecting suspicious activity, but whether a transaction is unusual or uncharacteristic for the *individual* customer.
- In this instance, the £4,000 payment represented a significant deviation from the usual activity seen on Mr P's account and ought reasonably to have been regarded as unusual and out of character by Monzo. As a result, there were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).
- Had Monzo asked such questions, I'm satisfied it would have become apparent at that point that Mr P was falling victim to an investment scam. Monzo have raised the point that Mr P provided inconsistent testimony and gave misleading information when he first reported the fraud, as he originally said he didn't recognise the payee. As such, Monzo do not think Mr P would have told them what he was doing if they had intervened.
- However, I can see that Mr P was subsequently forthcoming with all the details of what had happened as soon as Monzo sought clarification on whether it was an unauthorised payment he was disputing, where he explained that he had been duped into making the payment by a scammer. So, while I appreciate Mr P may not have given full details at the very outset, I don't consider this to be an indication that he wouldn't have told the truth if Monzo had intervened in him making the payment. He hadn't been coached to lie about the purpose of the payment by the scammer, and there is no reason to believe that he wouldn't have told Monzo about the investment he thought he was making.
- Mr P has also said that at the time this happened he was going through a bereavement and his mental health was suffering, so I understand that he may not have been thinking rationally at the time, particularly amongst the stress that comes with realising you have lost a significant amount of money. But overall, I'm not persuaded that Mr P would have lied to Monzo about what he was doing if he had been questioned.
- In light of this, I think Mr P's losses were foreseeable to Monzo. And I'm satisfied that had they contacted him and asked relevant questions, it would have been apparent

that he was falling victim to a scam. In other words, but for Monzo's failure to make further enquiries, it would have been on actual notice that Mr P was going to suffer financial harm from fraud.

- Had Monzo provided Mr P with a warning, it would have likely alerted him to the common issues arising in relation to cryptocurrency scams which, in turn, would have led him to second guess the scammers credentials and why he was being asked to invest money by a bank. The result of this is that it would have likely stopped Mr P from making the payments. Therefore, I'm satisfied that Monzo can fairly and reasonably be held responsible for the loss Mr P has suffered, as I think they could have ultimately prevented it.
- Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). In this instance, I think it ought to have appeared highly unusual that a bank would cold call one of its customers asking them to invest in anything, let alone in cryptocurrency, which banks such as Santander do not deal in. Mr P has also said himself that he thought the investment too good to be true at times. So, on that basis I think it would be fair and reasonable for him to share responsibility for the loss he has sustained. In all the circumstances, I consider it would be fair for Monzo to reduce compensation by 25%.

My final decision

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to refund the money Mr P lost as a result of the scam, less a 25% deduction in recognition of Mr P's contributory negligence.

Monzo should also pay 8% simple interest per annum on this amount, from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 October 2022.

Jack Ferris
Ombudsman