

## **The complaint**

Mrs G is unhappy Monzo Bank Ltd won't refund the money she lost as the result of a scam. In making her complaint Mrs G is represented by a solicitor. For ease I'll refer to Mrs G throughout this decision.

## **What happened**

Mrs G fell victim to an investment scam where she made a number of payments between January and April 2021.

Based on the submissions of both parties, I understand the fraud occurred as follows. She was cold called by someone claiming to be a broker who talked to her about investing in cryptocurrency. The caller communicated with Mrs G in her native language which she's said resulted in instant rapport and trust.

Mrs G was told the more money she invested the higher returns she would make. The scammer used remote access to open the account with the cryptocurrency exchange (I'll refer to as B) in Mrs G's name, and showed her how to send her funds onto them via B. On 15 January 2021, Mrs G made an initial investment. She made a payment of £501 from her Monzo account to B. From Mrs G's account with B, the scammers via remote access showed her how to send on the funds. Within ten days she was told she'd made £300 plus in profits.

Mrs G made another payment of £2,002 on 29 January 2021, from her Monzo account to her account with B. In total she sent £2,503 in January 2021. Mrs G says she was then told her account/investment had gone up to around \$10,000 to \$13,000.

At the end of March 2021, Mrs G wished to withdraw money from the investment due to her financial circumstances. To withdraw the investment returns she was told she'd need to pay fees. She made a payment of £600 on 30 March 2021 and, further payments of £1,750, £955, £640, £655, £700, £1,000 and £1,100 on 31 March 2021. These payments were made after she was told she needed to pay 20% commission. Mrs G made a final payment of £1,760 on 1 April 2021. In total Mrs G sent £11,663 from her Monzo account to her account with B and, from there she sent this onto the scammers.

Mrs G was then told due to fluctuations between different currencies, the withdrawal could not be made, and she was asked to make further payments to withdraw the funds. It was at this point Mrs G became suspicious that this may be a scam and contacted Action Fraud and the police.

Mrs G contacted Monzo on 7 April 2021 to report the scam. Monzo having looked into things, declined to provide a refund. It said it was not liable for the losses incurred. As Mrs G disagreed with this, she brought her complaint to our service.

Our Investigator upheld the complaint in part. He agreed the payments weren't caught by the Contingent Reimbursement Model (CRM Code) as the money was paid to an account in Mrs G's own name. However, he thought Monzo ought to have done more and that it missed

an opportunity to discuss the payments Mrs G was asking to make in more detail. Had it done so, he thought the scam would have been prevented and Mrs G wouldn't have lost all the money she sent as part of the scam. However, when considering whether Mrs G had acted reasonably when making the payments, he felt she should share some of the liability for her loss. On this basis, our Investigator concluded Monzo should refund 50% of Mrs G's outstanding loss, from and including the payment of £640 made on 31 March 2021.

Monzo didn't agree. It reiterated that Mrs G was not eligible for reimbursement under the CRM Code as the money she sent from her Monzo account went to an account in her name with the cryptocurrency exchange (B). Monzo considers it is not liable as the money was in Mrs G's control once it exited her Monzo account and, it feels the complaint lies with B.

Monzo also doesn't think it is the bank's place to ask Mrs G questions about the payments she made, and it feels Mrs G would've only proven that the money was being moved to her own account with B. Further, Monzo in response to our Investigator's view says Mrs G has been grossly negligent.

I issued my provisional decision on 7 July 2022 explaining why I wasn't minded to uphold Mrs G's complaint. I have set out my provisional findings below.

#### *My provisional findings*

*My role in considering this complaint is limited to considering the action or inaction on the part of Monzo and whether, if it ought to have acted differently, it would've been able to prevent the scam.*

*In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

*I've first considered whether Mrs G is entitled to a refund under the CRM Code. Monzo is not a signatory to the CRM Code which requires firms to reimburse customers who have been the victims of Authorised Push Payments (APP) scams like this in all but a limited number of circumstances. But it has agreed to act in accordance with it. But in this particular case, I'm afraid the CRM code doesn't apply. I say this because, the CRM code refers to APP where the transfer of funds is transferred to another person. In this case, Mrs G transferred money from her Monzo account to another account in her name with B. And while I recognise Mrs G has explained the scammers set up the account via remote access – she has also told us via remote access the scammers guided her on how to make the payments from her account with B onto them. So, based on what we've been told, I'm persuaded Mrs G had control of the account. This means Monzo isn't required to consider her complaint under the CRM Code as Mrs G didn't transfer her funds to another person but to another account in her name.*

*So, I've gone on to think about whether Monzo could have done anything else to prevent the scam; bearing in mind good industry practice at the time and considering what's fair and reasonable in the circumstances of the case.*

*In broad terms, the starting position at law is that a bank is 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.*

*I have taken that into account when deciding what is fair and reasonable in this case. But I am also mindful that when Mrs G made the payments, Monzo should fairly and reasonably*

*also 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). And there are circumstances where a bank should fairly and reasonably take 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.*

*Having thought very carefully about Monzo's actions, I can't currently safely say it acted unfairly and unreasonably in allowing the payments to be made. And I'm not persuaded Monzo should reasonably have been expected to prevent the loss. I say this because, overall, I don't think the payments she made were remarkable enough to have caused Monzo concern.*

*In thinking about whether the payments Mrs G made were out of character and unusual I have reviewed the typical pattern of Mrs G's account usage. To do this I have looked at the account statements provided prior to the scam. This is often a finely balanced matter, and Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud. From Mrs G's account statements, I can see her account was fairly new. It had been opened around five months prior to the scam payments with the account being used from mid-November 2020. Because of this, when looking at the previous account activity prior to the scam payments, the account activity/usage is somewhat limited given how long she'd had the account and been using it. Not too long after Mrs G started using her Monzo account, she set up a new payee and made her initial payment to her account with B. This was the payment of £501 on 15 January 2021. I don't think this payment ought to have flagged with Monzo as potentially suspicious or an indication that she may've been at risk of financial harm. I say this, as I don't find setting up a new payee in and of itself an indication of fraud. After all there is a first time for everything. And I also don't find the value of the payment ought to have caused Monzo concern.*

*I've then gone on to think about the further payments Mrs G made. The second payment of £2,002 was made around 14 days after the first payment. And at the point Mrs G made the second payment to the account in her name with B, this was now a payment to an existing payee. While I note from the limited account activity, she hadn't made a previous payment of this value, I don't think this payment ought to have stood out to Monzo as particularly suspicious or remarkable.*

*The next payment Mrs G made was on 30 March 2021, around two months after the initial two payments made to B. This payment was for a lesser value than the one made on 29 January 2021 and again was a payment to a now existing payee. Given the time between the previous payments and the payment on 30 March 2021, I'm also not persuaded this payment ought to have flagged with Monzo.*

*I am mindful on 31 March 2021 Mrs G made seven payments in total to B and that credits were received into the account prior to the payments made. I've thought carefully about this, but with all things considered, I can't safely conclude the payments she made to B on 31 March 2021 ought to have been a red flag to Monzo. I acknowledge the payments Mrs G made were to B which was a cryptocurrency exchange. And I recognise there is a balance the banks need to strike, in terms of its customers who genuinely invest in cryptocurrency and in it identifying those that are unusual and out of character. With this in mind, I don't think the sole fact that a transaction is made to a cryptocurrency provider in and of itself means the transaction is expected to flag with the bank.*

*In this case, I have to keep in mind, given the payment to B early on in the accounts usage, that by the time of the payments on 31 March 2021, payments to B would've appeared*

*somewhat typical for the account. There were credits made into Mrs G's account prior to the payments she made to B but I can see she had received a credit into her account ahead of making a payment out prior to the initial payment she made in January 2021. So it follows that I'm not persuaded the credits prior to the payments themselves ought to have put Monzo on notice that Mrs G might have been at risk of financial harm in this particular case. So with all things considered, I'm not currently persuaded the payments Mrs G made here were so unusual or suspicious to Monzo that it ought to have intervened and asked questions about the payments in the particular circumstances of this case before the payments were processed.*

*Did Monzo do enough to try and recover Mrs G's money once it was aware of the fraud?*

*Mrs G reported the scam to Monzo at around 13:30 on 7 April 2021 and, around 18:50 Monzo asked Mrs G some questions to get a better understanding of the scam. This message was responded to by Mrs G around 13:55 on 8 April 2021 – with Monzo then sending notification to the beneficiary bank around 16:16 that day.*

*From the above, there was some delay by both parties in the lead up to notifying the beneficiary bank of the loss.*

*However, from the information provided, I'm mindful Mrs G has explained the scammer used remote access to guide her in how to move the funds from her account with B onto the scammer. As Mrs G has told us the funds were moved out of the account prior to the scam being reported to Monzo, I don't find any delays to have impacted the recovery of the funds since there were no funds to recover at the point Mrs G made Monzo aware of the scam.*

Monzo didn't reply to the provisional decision by the deadline given and so it's been taken that it has nothing further to add. Mrs G's representative replied disagreeing with the findings and provided additional comments. I've read the further comments and summarised these as:

- Mrs G disagrees that the payments she made weren't remarkable enough to have caused the bank concern – particularly in respect of the £2,002 payment.
- Mrs G believes five months of account activity is enough to establish the typical account usage and, for her to make a payment of £2,002 is high, in comparison to her typical spending behaviour.
- There was information available at the time about cryptocurrency exchanges, such as B that the bank ought to have known about, and at the time Mrs G made the payments to B it would've had the time to put mechanisms in place to detect this type of fraud.
- Mrs G believes the original outcome reached by the investigator was fair in the circumstances, particularly due to the high frequency of payments on the same day.

### **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'd like to assure Mrs G that I've thought carefully about the additional comments provided, but having done so, I don't find these change my conclusions.

The additional comments provided, reiterate Mrs G's thoughts about the payments she made and why she thinks they were unusual for her account and ought to have caused

Monzo concerns – given who the payments were being sent to. But within my provisional decision, I've already set out my reasons as to why I don't agree (copied above) and so I won't repeat them again here.

In summary, I don't think the payments Mrs G made were so unusual or suspicious to Monzo that it ought to have intervened and asked questions about the payments in the particular circumstances of this case before the payments were processed. I also don't find any delays in notifying the beneficiary bank of the loss to have impacted the recovery of the funds since there were no funds to recover at the point Mrs G made Monzo aware of the scam.

I know this will come as a disappointment to Mrs G and that she does not agree with my findings, but for the reasons I've explained above and within my provisional decision (copied above), I can't safely say Monzo ought to reimburse the money Mrs G has lost.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 31 August 2022.

Staci Rowland  
**Ombudsman**