

The complaint

Mrs K complains that Monzo Bank Ltd didn't treat her fairly when she fell victim to two investment scams in 2021.

What happened

In January 2021, Mrs K saw an advert which appeared to show celebrities endorsing cryptocurrency investments. A pensioner at the time, she was keen to invest - aiming to supplement her income.

Mrs K contacted one company claiming to offer trading facilities and advice. I'll refer to this company as A.

Having invested a small amount with A, her investment appeared to be doing well. Mrs K was encouraged to invest more. Initially she sent payments from her account held with another bank. All payments went directly to accounts controlled by A.

Mrs K received back a portion of the money she had invested with A on both 3 February and 3 March. These returned sums helped persuade her that all was well.

Mrs K had also seen a second advert, which led her to make contact with another company also purporting to provide trading facilities – I will refer to this as B.

Following B's instructions and to facilitate sending payments to B, Mrs K was shown how to set up wallet accounts in her own name with legitimate cryptocurrency exchanges. Mrs K then set up an account with Monzo on 3 March 2021. Mrs K would subsequently make payments to both A and B from her new Monzo account. But being a new account, Monzo placed limits on bank transfers - restricting how much Mrs K could send in a single day.

On 16 March 2021, Mrs K messaged Monzo through its chat function, saying she'd inadvertently sent a payment of £10,000 to the wrong payment destination. It appears this sum had been sent to a cryptocurrency exchange as instructed by B. I'll refer to the relevant cryptocurrency exchange firm as C.

Shortly after this, Mrs K messaged again to say that thankfully the payment had been returned to her account as unpaid (by C). But due to the limit on daily payments she couldn't resend this sum straightaway. She asked Monzo to increase her limit to allow this.

Later that day she sent Monzo further information about her request – saying *"To buy bitcoin I'd like to transfer £30,000, please"*. Monzo's reply apologised that, due to a high demand for its support team there would be a delay before it could handle her query.

Waiting for this to be agreed, Mrs K sent a further message to Monzo on 17 March asking it to increase the daily payment limit to allow her to send £10,000. She now told Monzo this was to buy a car from a private seller. Monzo carried out an increase to her transfer limit later that day.

A day later, on 18 March, Mrs K sent a payment of £5,000 to C. From her wallet with C, she transferred this money into cryptocurrency and then sent it onward to B. Again, Mrs K was following instructions given by B.

On 24 March, Mrs K sent B a second payment of £5,000, through this same route.

At that point, Mrs K had been expecting to receive a further withdrawal from A. But this withdrawal didn't happen as expected. Having been given excuses and then having been asked to send more money, she began to realise things weren't right. Mrs K searched online and quickly uncovered information suggesting both A and B were not legitimate firms. Ultimately, she accepted she had been scammed.

Around the same time, Monzo contacted Mrs K. It said it had concerns about the payments she'd made. She, in turn, told Monzo what had happened. Both scams were identified.

Monzo then looked into those of Mrs K's losses that had resulted from payments she'd made from its account. Monzo refunded Mrs K for the money she'd lost to scam A (those payments having been sent directly to accounts controlled by A).

But Monzo said it wasn't responsible for refunding her the money she'd lost to B (for which the payments were sent via Mrs K's wallet held with C). Monzo didn't consider it should have had concerns that these payments were at particular risk of being fraudulent in nature. It said Mrs K had sent the money from her Monzo account to an account she owned with C, a legitimate cryptocurrency exchange. The loss had occurred when she'd moved the money on from C to B in the form of cryptocurrency, rather than when she'd moved money from Monzo to her account with C. So, it thought she should take the matter up with C, but Monzo wasn't liable.

However, Mrs K was unable to recover any funds from C – that money had been converted into cryptocurrency and sent on to B. This meant she remained out of pocket by £10,000. Mrs K complained but Monzo reiterated its position.

Our Investigator considered what had happened. He thought the circumstances leading up Mrs K's first transfer to C meant that Monzo should have been concerned Mrs K might be at risk of financial harm. He thought Monzo should have intervened at the time to reassure itself this wasn't the case. Had Monzo done so, the scam would likely have come to light before the payments were made, and therefore Mrs K would not have lost the two £5,000 payments she'd sent to B via C.

However, the Investigator thought it fair that Mrs K should share some of the blame for what had happened. Amongst other things, the supposed investment returns were too good to be true and ought to have prompted Mrs K to carry out additional checks into B (or into A) sooner than she had. The Investigator thought it was fair to split the blame equally. Monzo should refund Mrs K 50% of the loss from these two payments.

Mrs K accepted the Investigator's view. Monzo disagreed. It said a transfer to someone's own account had minimal risk of being liable to cause loss due to fraud. The payments Mrs K had sent from her Monzo account had been received into a legitimate account over which only Mrs K had control. So it didn't agree to refund more than it already had.

In light of this disagreement, I have been asked to make a final decision on the matter.

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.

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 be good industry practice at the time.

Under the relevant regulations, and in accordance with general banking terms and conditions, banks have an obligation to execute an authorised payment instruction without undue delay.

As a consequence, the starting position is that liability for an authorised payment rests with the payer, even if they made that payment as the consequence of a fraud or scam - for example as part of an investment scam such as this was.

However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though the customer authorised the transactions. I consider that a bank also has a duty to take reasonable steps to protect its customers against the risk of fraud and scams.

These two payments were authorised transactions even though Mrs K was the victim of a sophisticated scam. She authorised the payments, and under the Payment Services Regulations 2017 she is presumed liable for the loss in the first instance.

A voluntary code exists to provide additional protection against some types of scam (the Contingent Reimbursement Model Code – CRM Code). Whilst not a signatory, Monzo has committed to apply it where it would be relevant.

But as things currently stand, the CRM Code can only apply to payments made directly to another person. Payments sent to a customer's own accounts (even where this merely an intermediate step on the way to a scammer) aren't covered by the CRM Code. In short, that means the CRM Code provisions are not relevant to Mrs K's complaint – because her payment instruction was to send money from Monzo to an account held in her own name at C.

However, the CRM Code is not the full extent of the protections that might be applicable in cases such as this. 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 payment service providers are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

Given this, I've thought carefully about Monzo's obligations in this case.

I must of course, take into account that Mrs K was a relatively new customer of Monzo – with

only limited previous activity to compare her actions against. I've also taken into consideration the role Monzo had here – it wasn't the only financial institution involved.

On the latter point, Monzo observes that the transfer from its account to Mrs K's own account with C is not the point at which she actually suffered a loss. Her loss didn't crystallise until the later transfer out of the account with C, and ultimate receipt by B.

I've taken account of what Monzo points here. But as noted above, I am also mindful that when Mrs K made these payments, Monzo's duty extended beyond the initial obligation to make the payment in line with her instructions.

In particular, I consider that as part of good industry practice, Monzo should have been looking out for payments or payment patterns that might reasonably be considered indicative of the potential for financial detriment to its customer. And by the time of this scam, it is reasonable to expect Monzo was aware of the hallmarks of cryptocurrency-based scams. For instance, the FCA (the regulator) had specifically drawn attention to the increasing risk of this type of scam and its typical features in mid-2018. That was over two years prior to this scam taking place. As a matter of good industry practice, I'd expect this type of intelligence to have been recognised by Monzo before the time of the scam that affected Mrs K and incorporated into its prevention measures.

Her prior pattern of account usage also involves larger sums being transferred in before being sent onwards, all occurring within a relatively short space of time. Prior to making the payments now under dispute, Mrs K had specifically mentioned the purchase of cryptocurrency in a message on the Monzo chat system.

In this message, Mrs K had made Monzo aware that she was intending to make another substantial payment, significantly exceeding her current daily payment limit, and that this was connected to the intended purchase of cryptocurrency. The request to allow this size of transfer to be made on a single day, rather than over the course of three, suggests a degree of urgency (itself a hallmark of the potential for financial harm).

I think it is also relevant that this happened very shortly after Mrs K had reported to Monzo that she'd accidentally sent £10,000 by faster payments transfer to the wrong payment details (a payment that also appears linked to her subsequent successful payments to C and onwards to B).

Two days later, Mrs K requested the first £5,000 transfer to cryptocurrency exchange C. Given the information Monzo already knew by this point, I'm satisfied there was enough going on for Monzo to have been aware that what was happening had the hallmarks of a possible cryptocurrency scam. I understand that Monzo later did identify this very concern, when it proactively contacted Mrs K at the start of April - although of course that being too late to prevent these payments being made.

In these circumstances, I find Monzo should reasonably have had concerns that these payment requests could be indicative of potential financial harm to Mrs K. I find there was enough going on here that it should have identified this at the time of each payment (or indeed, even earlier, at the point where Mrs K had made payments to A).

Given the above, I'd expect Monzo to have taken the step of delaying the payment request until it could satisfy itself that this was not the case - in other words, that the transaction would not in fact lead to financial harm for its customer. For example, this could have been accomplished by contacting Mrs K and asking some discrete questions about the transaction (through Monzo's chat function or another suitable communication channel).

In fact, Monzo had the opportunity to raise these concerns with Mrs K when she'd first told the bank what she was intending to do (via her chat messages) – some two days prior to the first of the payments here. The factors that ought to have led to concern were present at that point.

Had Monzo asked Mrs K more about the payments and what these were for, I've seen nothing to suggest she'd have done otherwise than to tell the bank what she fully believed was happening at that time. I consider it more likely than not that this would have in turn prompted additional checks before releasing the payment. Carrying out those checks, as happened a few weeks later when the scam was uncovered, would have meant the scam would have come to light sooner and before the payments took place. For example, both A and B were the subject of FCA warnings at the time something readily uncovered by a quick internet search.

So had Monzo acted as I consider it should, the scam involving B would have been uncovered prior to these payments being made to C. I find it most likely that these payments would thus have been prevented, as would the ensuing loss. I think it is fair and reasonable to find Monzo liable here because I find this potential loss was reasonably within the bank's contemplation at the time - given what it already knew and what I consider it should have established.

In summary, because Monzo did not take the steps I find it should have done, and because those steps would likely have prevented Mrs K's loss, I consider it fair for Monzo to share some of the responsibility here.

I would reiterate, that in reaching this finding, I have taken account of Monzo's arguments concerning the point of loss. But I am satisfied that based on what it knew, Monzo should have taken further steps to protect its customer and that this would have made a difference here. I consider this reflects what was reasonably expected of Monzo, in light of both good industry practice and awareness of cryptocurrency-based scams at the time.

Lastly, Monzo makes the further point that if it should be held liable when Mrs K was transferring money from her Monzo account to C, then the other financial firms involved should equally be considered liable for not acting when she transferred money from her original bank to her Monzo account and also the subsequent transfers from C to B.

But I'm not persuaded this argument changes the situation here. In particular, the first £5,000 payment transfer from Monzo to C was preceded by interaction between Monzo and Mrs K, during which the Mrs K had explained the link to cryptocurrency and indicated the size and speed with which she wished to make a future payment. It is not clear to me that the same applied to Mrs K's transfers from her original bank to Monzo or that the other bank could have identified they might be connected to a potential cryptocurrency scam - in the way I have found Monzo ought to have.

As for C, the payments being made inward and outward seem likely to have appeared exactly as would normally be expected usage for an account of that type – being principally intended as an account into which fiat currency would be transferred and then used to purchase cryptocurrency. And I have seen nothing to indicate that it would have known the recipient of the cryptocurrency was B – typically blockchain addresses are inherently anonymous.

In short, Monzo was in a different position to Mrs K's other bank and C. The payment pattern and chat interactions between Monzo and Mrs K meant it had both a better understanding of the potential risks here, and better cause and opportunity to intervene and thus prevent the ultimate financial harm.

Should Mrs K share responsibility?

I've explained above why I think it is fair and reasonable for Monzo to bear some liability for what happened. I have gone on to consider whether it would be fair for Mrs K to bear a share of this responsibility. All considered, I agree with our Investigator. I find it would be fair for both parties to equally share responsibility for the losses following on from Mrs K's payments to C. I will explain why.

I have taken into account everything Mrs K has submitted and understand her motivation for seeking to invest as she did. I accept she was the victim of two cruel scams here. She entered into the arrangements she did with A and B in the belief she was entering into genuine investment opportunities. I have considerable sympathy for her and the impact of the resulting losses.

But I think there were several aspects here that should reasonably have led Mrs K to have had concerns that what she was being asked to do wasn't legitimate.

Firstly, the returns it seems she was being offered and then told she'd achieved were significantly higher in size and rapidity than could be expected for legitimate investments, including those bearing significant levels of capital risk. In short, what she was being told was simply too good to be true. At the very least, I consider this should have prompted additional caution before proceeding. But based on what I've seen, Mrs K hadn't taken even basic steps to validate what she was being told (such as checking whether B was registered with the FCA) before she sent considerable sums of money.

Relevant here, when Mrs K later looked a little further into both A and B she was able to relatively quickly identify that these were likely not legitimate investment companies. With that in mind, while I have considerable sympathy for Mrs K, I consider she should fairly bear a share of the responsibility for the losses she incurred in relation to the two £5,000 payments she made to B.

It is unclear how Mrs K would have utilised the funds she lost through this scam had the relevant payments been prevented. But she would not have been deprived of these funds for the time she has been. In the circumstances I consider it fair that Monzo should add interest to the amount it should now refund Mrs K at the rate of 8% simple interest per year.

My final decision

For the reasons outlined above, I've decided it is fair and reasonable to partly uphold Mrs K's complaint about Monzo Bank Ltd. I therefore require Monzo Bank Ltd to pay Mrs K:

- the sum of £5,000, being 50% of the money lost through these two payments, less any amounts already reimbursed or returned to Mrs K relating to these specific payments; and,
- 8% simple interest per year on this amount, calculated from the date Mrs K made each payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 21 December 2022.

Stephen Dickie
Ombudsman