

The complaint

Mr H is unhappy Monzo Bank Ltd won't refund the money he lost as the result of a scam.

What happened

As I understand it, Mr H initially came across a cryptocurrency trader I will refer to as C – around September 2020. He made a number of payments - initially from his other bank account (which was subject of a different complaint) – into a cryptocurrency wallet and from there onto C for what he thought was further trading. From the evidence he has shared – during the same time - it seems he then came across another cryptocurrency trader - I will refer to as B. When Mr H first logged the scam claim with Monzo, he explained he was cold called sometime in November. The messages with B began on 17 November 2020. Mr H says he checked the validity of B through social media, word of mouth and internet searches. They provided him with a link to a website – which is no longer available – but at the time Mr H registered his complaint – Monzo noted that it looked unprofessional.

Between 9 November 2020 and 20 January 2021 Mr H made a number of payments to a cryptocurrency wallet with a genuine provider - I will refer to as A. From there he transferred funds to the scammer's wallet. Mr H asked for his investment to be returned and when no money was forthcoming – he realised he had been scammed.

Our investigator upheld the complaint. He considered that Monzo didn't go far enough and missed an opportunity to discuss the payments with Mr H from the second transaction on 16 November 2020 onwards.

Monzo didn't agree. It said the loss had occurred from the cryptocurrency provider A and not from Mr H's Monzo account. It explained a trading association has made it clear that liability for these types of scams should lie with the cryptocurrency firms.

I issued my provisional decision on 2 December 2022, explaining why I was thinking of coming to an outcome that differed in some respects to the one our investigator reached.

Monzo did not accept the provisional decision. It reiterated its stance that it shouldn't be held liable for the loss and considers the complaint should be directed at the platform where the funds were lost.

Mr H also responded. He said he was socially manipulated and engineered and coerced to engage in these fraudulent crimes. He said that Monzo should have had enough knowledge of this type of scam at the time. Mr H also said given his vulnerability and the fact he'd never traded before Monzo should not rely of his own inconsequential reasonable due diligence – especially where subsequent payments were much larger.

Mr H also mentioned that Monzo failed to uphold the Banking Protocol – which enables staff to alert the police of suspected fraud. Mr H doesn't think he was to blame for what happened but will accept a 20% deduction as his responsibility is slim compared to that of a large UK financial institution.

I have summarised the key transactions below:

Date	In (£)	Out (£)	To/from	Originating account
24/10/2020		2	A	
09/11/2020		700	A	
16/11/2020		5,000	A	business account
16/11/2020	6,900		business account	
20/11/2020		5,000	A	business account
20/11/2020	9,800		business account	
29/11/2020		2,000	A	business account
29/11/2020		1,000	A	business account
09/12/2020		3,700	Mr H other account	
17/12/2020		500	A	
17/12/2020	500		A	
17/12/2020		500	A	
17/12/2020	500		A	
17/12/2020	1,000		business account	
15/01/2021		500	A	business account
18/01/2021		500	A	business account
18/01/2021	1,000		Mr H other account	
18/01/2021		500	A	Mr H other account
20/01/2021		900	A	500 Mr H other account 400 Monzo current
20/01/2021		2,000	A	Mr H other account
20/01/2021	2,000		Mr H other account	

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 have thought carefully about both parties' responses to my provisional decision.

It is not in dispute that Mr H has fallen victim to a cruel scam. That is not what I am considering here. As I said in my provisional decision, I'm only considering whether the bank, which had no involvement in the scam itself, should be held responsible for what happened.

I also agree Monzo ought to have had enough knowledge of this sort of scam at the time. But I also need to consider whether Mr H's could have done something to mitigate his losses or should share some responsibility for his loss. I feel it's appropriate Mr H to share responsibility in this case because I feel some of Mr H's actions or inactions (outlined in my provisional decision) have contributed towards his losses. And whilst I acknowledge Mr H feels his responsibility is slim; I feel it is fair to split the responsibility 50/50 between the parties in his case.

The Banking Protocol – which Mr H has mentioned – does not apply here as this is only relevant to branch-based transactions.

Monzo has reiterated its previous arguments which I have already considered (and explained why I don't agree) when reaching my provisional decision.

So, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be to uphold this complaint in part. For completeness, I have set this out below.

I understand this has been an extremely difficult time for Mr H and his family and I am sorry to hear of the impact the scam has had on him mentally - to the extent he has now been hospitalised. There is no doubt Mr H has fallen victim to a cruel scam and lost considerable money.

When I consider cases like this – I am looking at whether the bank – who was not party to the scam itself – should have done more. It doesn't automatically follow that Monzo is liable for a loss or all of the losses, just because a customer is a victim of fraud.

I appreciate some time has elapsed since the events in question but in bringing the complaint – both to Monzo and this service – Mr H has largely referred to being scammed by C. But he also supplied messages with what looks to be another organisation – B. I think B and C were two separate 'cryptocurrency traders'. I say this as - in the long chain of messages with B - Mr H refers to C and some of his concerns which eventually led to him discovering he was scammed by C. I say all of this because I feel some of the testimony is blurred between the two scams. Ultimately, I think it is likely that there was some crossover between the two scams and the payments Mr H made from his Monzo account – with earlier payments going to C and later ones to B.

Should Monzo have prevented the payments from being made?

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 terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam.

It is not in dispute that Mr H authorised the scam payments. It is also not in dispute that Mr H was duped by the scammers into instructing the bank to transfer money to a cryptocurrency account and on from there into the scammer's account. The scammers deceived him over a messaging platform into thinking he was making a legitimate cryptocurrency investment for further trading. So, although Mr H did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr H is presumed liable for the loss in the first instance.

But, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, 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 in recent years, which banks 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.

I appreciate the loss did not occur directly from Mr H's Monzo account. And I have noted the guidance issued by a trade association to banks such as Monzo. But I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account in Mr H's name and the fraud then happened from there. As I've mentioned above, Monzo had a responsibility to be on the lookout for unusual activity and protect consumers from financial harm.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account.

Cryptocurrency scams had been increasing in frequency and both the Financial Conduct Authority (FCA) and Action Fraud had published specific warnings about these scams in 2018. In my view, by the time of these transactions, Monzo had had time to understand these warnings and be on the look at for this particular type of fraud.

I don't think the initial transfers would have caused Monzo concern – they were relatively small and not particularly unusual given the historical account activity. But I agree the £5,000 payment on 16 November 2020 was unusual for the account and out of character for Mr H. And Monzo could see it was going to A – a genuine cryptocurrency. Even though it was seemingly going to a genuine provider and one Mr H has paid to before – for the reasons explained above - the £5,000 was a payment instruction that Monzo ought to have realised warranted additional checks before it simply processed it without question. I think in a situation like this Monzo should have spoken with Mr H to check everything was in order, to protect him from the risk of financial harm. I have therefore thought about what most likely would have happened if Monzo had spoken appropriately to Mr H about his instructions for the £5,000 payment on 16 November 2020 before it executed it.

If Monzo had asked who Mr H was paying his cryptocurrency to and/or how he'd heard about the trading company, I think Mr H would have told them about C (and later B) and that he'd heard about them through social media, and that he was dealing with C (and B) on a social media messaging platform. And if Monzo had given Mr H some warnings about cryptocurrency scams including telling him they often involve setting-up a genuine third-party account for payments to pass through and providing consumers with fake websites and platforms giving the appearance of investment returns, I think he likely would have been concerned.

With further questioning, I think Monzo would have been concerned about what was happening and it would have been put on notice that Mr H was falling victim to a scam. I think this would have caused sufficient doubt in Mr H's mind not to proceed with the £5,000 payment and those payments that followed. In other words, if Monzo had carried out further or better questioning in line with the bank's duty of care, it seems probable that Mr H would have become credulous about the scam in time and stopped the £5,000 payment on 16 November 2020 in its tracks. The fraud would have failed; and Mr H would not have lost the £5,000 payment or the payments that followed.

Could Mr H have done more to mitigate his losses?

I've thought carefully about what Monzo's obligations were, as set out above. But another key issue is whether Mr H acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Mr H should bear some responsibility by way of contributory negligence.

From the outset I think there were a number of concerns with the situation Mr H was getting involved with. Had he carried out any basic checks or tried to verify what he was being told by scammers; I'm satisfied he would've recognised he was the victim of a scam from the outset. So, I think he shares responsibility for his loss. I say this because:

- The scammer told Mr H on 17 November 2020 "if you have some bitcoins there's an 100% guarantee that it can be doubled through mining". I think it's unlikely any legitimate opportunity like this would be able to offer a guaranteed return and I think the offer was too good to be true and should have aroused suspicion. Various returns are quoted throughout the communications and on 21 November 2020 Mr H acknowledges the return 'sounds crazy'.
- Mr H is initially persuaded to transfer \$300 to buy himself a slot on the premium plan only to be told those slots are full and that he needs to pay another \$700 to upgrade to a bronze plan. From the correspondence Mr H has provided with the scammer, I think it's clear over the following days that the scammer was applying significant and unprofessional pressure to Mr H to send more and more money, despite Mr H saying he didn't have any. I think he ought to have been concerned by this as I don't think it's how a reasonable person would expect a legitimate trader to act.
- Communications were largely through social media messaging platforms. Social media isn't a normal platform for legitimate investments. I think the method of communication ought to have caused concern.

I think these things ought reasonably to have raised significant concern about the legitimacy of the opportunity. That, in turn, ought to have led to a greater degree of checking on Mr H's part. I appreciate Mr H did so some research on C and B and they appeared to have a legitimate website. But overall, I don't think this was enough to disregard some of the clearer warning signs here.

Overall, I'm not satisfied that a reasonable person would've believed this was a genuine situation or would've proceeded without doing substantive investigation and checks to verify all the information they were given – which I think would've shown inconsistencies and issues in the information provided. On that basis, I think it's reasonable for Mr H to share the responsibility with Monzo and reduce the refund on all of the payments by 50%. Therefore, Monzo should refund 50% of all the payments Mr H made from the payment of £5,000 on 16 November 2020 onwards.

I don't say any of this to diminish the fact that Mr H has been the victim of a cruel scam. I sympathise with him for that and I know he will be hugely disappointed by this decision. Despite my sympathy for Mr H, and what he has been through and still going through, I must reach a decision that is fair and reasonable based on all the evidence.

Putting things right

To put things right for Mr H Monzo Bank Ltd must:

- Refund 50% of transfers Mr H made to A (greyed out transactions on 17 December 2020 do not need to be refunded as transfers back in were made to the same value at the same time).

- Pay interest on the above refund at the originating accounts rate (as indicated in the table above) from the date the payments debited the account, until the date of settlement.¹.

My final decision

My final decision is I uphold this complaint in part and require Monzo Bank Ltd to put things right for Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 January 2023.

Kathryn Milne
Ombudsman

¹ If Monzo is legally required to deduct tax from the interest should send Mr H a tax deduction certificate so he can claim it back from HMRC if appropriate.