

The complaint and background

Mr N complains that Monzo Bank Ltd ('Monzo') will not refund payments he made to an investment scam. For the purposes of this decision, all reference to Mr N includes his representative.

In early 2021, Mr N was contacted by a representative of what he thought was a genuine investment scheme (which I'll call 'E'). After striking up a conversation with the agent of E, Mr N was persuaded to invest in cryptocurrency given the high profitability he was told it would produce. He made eight payments in February 2021 using his Monzo debit card; amounting to just over £2,600 in total. Mr N was told to make payment to two genuine cryptocurrency exchange platforms, which converted his fiat money into cryptocurrency — Mr N then sent the funds onwards to E from there.

However, it turned out that Mr N was scammed, with there being no investment venture at all. When Mr N raised a complaint about this with Monzo, citing that it ought to have done more to protect the account, the bank didn't agree. In the end, Mr N ended up referring the dispute to this office.

Monzo expressed that it hadn't had the opportunity to fully investigate the contended payments, but our investigator explained that ample time had passed for it to provide its final response to the complaint. Accordingly, the investigator began to investigate what had happened and found no fair and reasonable basis for the bank to have to reimburse Mr N.

Monzo did not dispute this. Mr N does disagree, countering that there were reasonable grounds for the bank to have stepped in and warned him of the risk of being scammed. Because Mr N is not in agreement, the case has been escalated 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.

I would like to reassure the parties that although my decision only concentrates on the key points, I have duly read and considered all that's been provided. Having done so, I agree with the conclusions reached by the investigator — I'll explain why.

It's common ground Mr N authorised the disputed payments that he made to the two cryptocurrency exchange platforms using his Monzo debit card (where his funds were subsequently transferred onwards to the scammers from there). The payments were all requested by Mr N using his legitimate security credentials provided by Monzo.

The starting position is that banks ought to follow the instructions given by consumers in order for legitimate payments to be made as instructed. However, there are some situations where banks —taking into account the relevant rules, codes and best practice— ought to have been on alert or notice that something wasn't right about the circumstances surrounding a transaction.

Accordingly, it can be a reasonable expectation for a bank to double-check payment instructions that ought reasonably to 'trigger' concerns on account of the activity representing considerably unusual or uncharacteristic conduct for a consumer.

Considering the individual circumstances of this case, I'm not satisfied it's fair to expect Monzo's systems to have been triggered by the authorised payments in question. There is a lack of persuasive evidence that these transactions were significantly abnormal or out of character compared with Mr N's typical account activity in recent times.

Monzo was not presented with E as a payee, as the payments were made to the two cryptocurrency exchanges in the first instance. This means I cannot consider whether Monzo ought to have regarded an intention to pay E as suspicious. The cryptocurrency exchanges that were paid were created as new payees — but this was not uncommon for the account. Mr N had made payments to recipients not paid before. The statements demonstrate a variety of different purchases. It also wasn't uncharacteristic for Mr N to pay out to multiple payees, or to remit money to the same payee more than once on the same day.

Mr N submits that the very fact that he paid two cryptocurrency exchange platforms gave Monzo grounds to step in and ask questions of his intentions. While I acknowledge Mr N's argument, I'm afraid I do not agree.

It's true that there's an array of scams linked to cryptocurrency — it is an area that is unfortunately connected with mendacious schemes. Still, obtaining cryptocurrency is not unlawful; Monzo will no doubt process a multitude of daily transactions for its consumers to purchase genuine cryptocurrency options that are not the proceeds of fraud. The point being, not every transaction in this market is part of illicit activity. Like fiat currency moving around the UK banking system, some payments are regrettably caused by fraudsters targeting unwitting victims, while others are not.

I recognise Mr N's assertion that Monzo is aware of the rise of fraud and scams that involve cryptocurrency and should take appropriate steps in response. But, in fairness, this line of reasoning must take into account the increase in payments that are *not* to do with fraud, i.e. there's been an exponential uptake in cryptocurrency in general.

As a member of the UK banking network, Monzo must facilitate such transactions unless it's expressly told not to by the regulator and/or the authorities. At the time of writing this decision, there's not been a strict prohibition put in place to oblige banks to refuse payment instructions based solely on them being sent to cryptocurrency organisations.

There's a balance to be struck between identifying transactions that could potentially be fraudulent and minimising disruption to legitimate payments — and delaying a payment instruction could lead Monzo to breach the relevant regulations. I'm also mindful that if payment institutions like Monzo were required to interrupt every time a consumer remitted money to do with cryptocurrency, it would risk grinding the banking system to a halt.

Ultimately, Mr N is entitled to acquire cryptocurrency (along with other investment assets). Monzo is obliged to follow the account mandate unless it has good reason to be disconcerted. So, in the individual circumstances of this case, I'm not convinced the involvement of cryptocurrency alone necessitated an intervention from the bank.

Mr N has raised that the quick disbursement of money he had just paid into the account ought to have caused alarm. I interpret this as Mr N claiming that the bank should have identified that he had only just placed money into the account —namely from a separate savings pot— and then almost immediately transmitted the same funds away again.

I have to consider that it's not unusual for consumers to make larger, planned purchases that are facilitated by crediting their account shortly beforehand. Indeed, the reason why one might have a separate savings holding is because, typically, the type of account Mr N holds with Monzo does not attract a rate of return for funds being held in situ.

Without question, it's commonplace for consumers to build balances of money in separate accounts designed to help with the growth of capital, but then occasionally move these savings to buy goods or services using a debit card on an account like the one here.

As a consequence, there's a reasonable argument that Mr N's habitude to follow money paid in with some spending actually made it more difficult for Monzo to suspect something untoward might be taking place with these particular payments. I've also borne in mind that, because of the varying incomings and outgoings, there is not necessarily a marked pattern with how Mr N ordinarily transacted on the account.

What's more, the disputed payments did hold characteristics comparable to his prior spending. For example, they were all made online, in keeping with Mr N's tendency.

I accept there were instances where the payment values may have been larger than some of Mr N's previous expenditure. I also appreciate that, in total, Mr N has lost over £2,600 — which is a significant sum of money. Even so, this was spread over eight separate increments, made on five separate days and over a period spanning several weeks.

Mr N regularly made payments out of the account in multiples of hundreds of pounds, which is what Monzo could reasonably be expected to compare against. Making a relatively more substantial payment was not a clear deviation from how the account was usually run. I must also bear in mind that the nature of this account Mr N holds with Monzo means that there will typically be larger transactions from time to time (in line with what I've set out above) and this will mean the available balance will occasionally depreciate.

To that end, Mr N making these payments would not be so unusual as to amount to a significant deviation from normal account behavior. I'm not persuaded the transactions in question represented a sudden change to the regular operation of the account. Nor, did they reflect a distinct increase in spending when balanced with what was paid in.

Taking everything into consideration, I'm not satisfied that there were sufficient grounds for Monzo to suspect fraud or a scam, and therefore justify an intervention.

Finally, I turn to whether the funds could have been recovered once paid. I do not consider that Monzo ought to have acted differently with regard to chargeback (which would be the applicable recourse method here). Based on the card scheme rules, which are the deciding factor, I'm not convinced these payments met the requisite criteria to warrant a successful pursuit.

I say so because, it's highly unlikely an effective chargeback claim would be made under the circumstances, because the service would be considered provided (i.e. the purchase of cryptocurrency from both exchange platforms). Therefore, I do not think Monzo has acted unreasonably by failing to pursue a chargeback claim further here.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 11 April 2023.

Matthew Belcher
Ombudsman