

The complaint

Mr R complains that Monzo Bank Ltd (“Monzo”) won’t refund money he lost to an investment scam.

What happened

In October 2020, Mr R connected with an individual “L” on a dating app. A short while after they started communicating, L suggested they could help Mr R make money from cryptocurrency trading.

Between 30 October and 2 November, Mr R made four faster payments from his Monzo account to CoinClan – a legitimate cryptocurrency exchange platform – to purchase cryptocurrency, which was then sent on to a ‘trading platform’. Unbeknownst to Mr R at the time, the platform turned out to be a scam and his money ended up in the scammer’s account.

In addition to the faster payments, Mr R also purchased cryptocurrency from other crypto exchanges using his Monzo debit card before sending it on to the trading platform. The following transactions were made from Mr R’s Monzo account in connection with this scam –

Date	Type	Payee/ Merchant	Amount
30 October 2020	Faster payment	CoinClan OU	£20.00
31 October 2020	Faster payment	CoinClan OU	£688.50
1 November 2020	Faster payment	CoinClan OU	£79.00
2 November 2020	Faster payment	CoinClan OU	£2,550
26 November 2020	Debit card	Binance	£5,000
26 November 2020	Debit card	Binance	£4,900
8 December 2020	Debit card	Banxa Okex	£2,500
8 December 2020	Debit card	Banxa Okex	£1,700
22 December 2020	Debit card	Banxa Okex	£2,000
		Total loss	£19,437.50

In December 2020, Mr R became suspicious when he was asked to pay tax in order to make a withdrawal. He eventually realised he’d been scammed and when he confronted L, they stopped communicating with him.

Mr R reported the matter to the police and Action Fraud, but it wasn’t until the end of March 2021 that he reached out to Monzo and asked for its assistance. Monzo contacted the beneficiary bank regarding the faster payments, but no funds remained in the recipient’s account. It declined to refund any of the disputed transactions.

Our investigator didn’t think Monzo did anything wrong in relation to the recovery of funds once it became aware of the scam. They also considered whether Monzo could have done

more to prevent the funds from being sent in the first instance and concluded that it was unlikely that an intervention would have prevented or limited Mr R's loss.

I issued my provisional decision last month. I said that I intended to uphold this complaint and set out the following reasons:

Recovery

I've first considered whether Monzo could have done more with regards to the recovery of Mr R's funds once he reported the matter to it.

Thinking about the faster payments, I can see that Monzo contacted the beneficiary bank as soon as it was notified of the scam. Unfortunately, no funds remained. This isn't surprising given the transactions happened in October-November 2020, but Mr R didn't contact Monzo until nearly five months later. Fraudsters tend to move money out of the beneficiary account as quickly as possible since they know that the victim's bank will attempt to recover the funds when it's notified of a scam. I don't think Monzo could have done anything further here – it did what I'd expect it to do in this situation.

In relation to the debit card payments, the chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator – MasterCard in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the cardholder. Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed.

Our service has sought clarification from MasterCard, and it has explained that if a merchant (in this case, the crypto exchange platform) doesn't make funds transferred to it available for use in the type of transactions for which it received them (in this case, converting fiat money into cryptocurrency), then there may be a chargeback right.

But this isn't what happened here. The nature of Mr R's claim is that he'd fallen victim to a scam. Given that MasterCard has made it clear that there would be no reasonable prospect of success through its scheme for claims of this nature, I don't think Monzo acted unfairly by not pursuing a chargeback for the card transactions.

Duty of care

While I don't think that Monzo could have done more with regards to the recovery of Mr R's funds when it was made aware of the situation, I've gone on to consider whether it ought to have intervened before allowing any of the payments to be made.

The disputed payments were authorised by Mr R using his log-in and debit card security credentials. So, under the relevant regulations, he's considered liable unless there's evidence that Monzo could and should reasonably have done more to protect him against the risk of fraud and scams, and that this would have made a difference to his decision-making.

Monzo ought to have been monitoring accounts to counter various risks; having systems in place to identify unusual transactions or other indicators that its customer was at risk of fraud; and, in some situations, making additional checks before

processing payments or declining them altogether to protect its customer from possible financial harm from fraud.

I've considered that the disputed payments were sent to legitimate crypto exchanges. And I accept that buying cryptocurrency is a legitimate exercise. But both the Financial Conduct Authority (FCA) and Action Fraud had warned of crypto exchange and forex trading scams in 2018. And in May 2019, Action Fraud published further warnings that such scams had tripled in the past year. This type of insight is something that regulated businesses, including Monzo, ought to take notice of.

What this means is that even if Mr R had been sending money to a legitimate crypto exchange, it didn't follow that his money was safe, or that he wasn't at risk of financial harm due to fraud or a scam. By the time Mr R made the payments, I think Monzo had or ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they're moving it into their own wallet or account. I've kept this in mind when considering Mr R's case.

I've considered the operation of Mr R's account in the months leading up to the disputed transactions. Like the investigator, I don't consider the faster payments (first four transactions) as particularly unusual or suspicious such that I think Monzo ought to have intervened. Mr R frequently made payments for amounts similar to the first three transactions. The fourth transaction was slightly higher in value than the regular spending on the account, but I don't consider it was that unusual or uncharacteristic such that I think Monzo ought to have paused it and made enquiries.

The fifth transaction – £5,000 on 26 November 2020 to Binance – was substantially higher than the other transactions on Mr R's account. I find that this was so unusual that Monzo's systems ought to have triggered an alert and the payment paused, pending further enquiries. Given the amount involved, and the fact that the payment was to a crypto exchange, I consider that it would have been reasonable for Monzo to have properly questioned Mr R before executing his authorised instruction.

Our investigator thought that an intervention from Monzo wouldn't have made a difference to Mr R's decision-making. But I disagree with their conclusion. Had Monzo carried out its due diligence and duties and asked Mr R about the payment, I've no reason to doubt that he would have explained what he was doing, the true purpose of his payment, as well as how he came to know about the investment opportunity. I've read the chat messages between Mr R and L – which is how he says they communicated with each other. I can't see that he'd been given a reason to think he had to hide this information from his bank. Neither had he been coached to tell them something different.

While it's true that Mr R seemed hesitant in investing more money but subsequently went ahead, I don't think this means that he was so 'under the spell' that he wouldn't have paid attention to a warning from his trusted bank after it asked him sufficiently probing questions. After all, the situation Mr R had found himself in had the hallmarks of a typical scam.

At the time of the payment, there wasn't adverse information about the trading platform Mr R was using. So, Monzo couldn't have known that it was involved in a scam. I accept that it had no duty to protect Mr R from a poor investment choice or give investment advice. But Monzo could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, that they are dealing

with a legitimate person or firm – such as checking that the firm was authorised by the FCA or a regulator in another jurisdiction.

Monzo could have also drawn on its own knowledge and information that was in the public domain – mentioned above – about the high risk associated with crypto trading and the potential for fraud. In other words, it could have provided Mr R with a potential scam warning.

Had Monzo done more, I think it is more likely than not that Mr R would have looked further into the investment opportunity in general, including whether the trading platform L had recommended was regulated here in the UK or abroad. He could have discovered that it wasn't. Indeed, it is likely that Mr R would have come across the various scam warnings involving crypto exchanges as well as romance and investment scams.

I'm persuaded that a meaningful intervention from Monzo would likely have exposed the scam. And I think it is more likely than not that the intervention would have caused Mr R to stop from going ahead with the £5,000 payment to Binance on 26 November 2020 as well as the subsequent payments, thereby preventing further losses. I therefore intend to hold Monzo liable for Mr R's losses from that point.

I note that the investigator said in their view that Mr R had borrowed money from friends and family to fund the payments. In response to the view, Mr R said that he only mentioned this in his subsequent messages to L to continue engaging with them in the hope that it would buy time for the police to trace them. I find Mr R's explanation plausible, and it ties up with his account activity; I can't see that he received credits from other sources to fund the disputed payments.

Contributory negligence

I've also carefully thought about whether Mr R is partly to blame for what happened. And having done so, I think that he is. Mr R doesn't appear to have carried out any independent research into the investment, the trading platform, or the investment type to reassure himself that the opportunity as presented to him in October 2020 was genuine.

I think Mr R ought to bear some responsibility for his losses and that compensation should be reduced accordingly. Having thought about this carefully, I intend to conclude that it would be fair to reduce compensation by 20%.

I invited further comments and evidence from both parties.

Mr R didn't provide any further comments for me to consider and said he believed the decision was fair.

Monzo said it didn't agree that the outcome was fair. In summary, it has said –

- Monzo has robust transaction monitoring systems, created by experts in the field, which comply with all of *its* regulations [sic]. It says it respectfully doesn't believe that our service is qualified to determine what makes a payment unusual for a customer, and says it is being held to a standard by a service which isn't an expert in the field of transaction monitoring.
- Although the first transaction on 26 November 2020 was larger than most payments from Mr R's account, it isn't significant in the wider scheme of payments Monzo sees

on a regular basis. Therefore, this payment wasn't flagged. To suggest that this payment should have been stopped is to suggest that its transaction monitoring systems should have also flagged thousands of other legitimate transactions, which isn't logistically possible.

- Mr R had full control of his money when it went to the crypto wallets in his own name. It was the onward payments that were the scam payments, and these were beyond Monzo's control.
- There's no evidence that any contact with Mr R would have impacted his decision making, only speculations and assumptions.
- Mr R had no reasonable basis of belief in this scam and didn't conduct any due diligence.
- Monzo disagrees that it should be held responsible for any of the losses. But if it is held liable, Monzo argues that shared liability is most often at 50%. It feels that sharing 80% of the responsibility is far too high a percentage.

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 thank both parties for their responses. I've carefully considered Monzo's comments and respond as follows.

Monzo is aware of our general approach to its safeguarding and due-diligence duties to protect customers. As well as decisions being published on our website setting out these principles and which quote the relevant rules and regulations, Monzo itself has also had a number of decisions setting out our position.

We are required, and as provided for in the DISP Rules, to take into account rules and guidance, relevant codes of practice and what I consider to be good industry practice, as well as the law, when reaching a decision. And we're tasked with reaching a fair and reasonable outcome in all of the circumstances of the complaint.

I fully acknowledge that Monzo has employed the services of experts in creating its transaction monitoring systems and I've taken this into account in reaching my decision. When considering what's fair and reasonable in the circumstances of this case, I still consider that the payment in question should have triggered an alert on the bank's systems. Not just because the amount was significantly higher than any previous spending activity on Mr R's account – a fact Monzo has acknowledged in its response.

At the time, there was information in the public domain – which a bank ought to have known even if a lay consumer ought not – about the very high risks associated with crypto trading, including many warnings of potential fraud. As I mentioned in my provisional decision, the FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And in May 2019, Action Fraud published further warnings that such scams had tripled in the past year. Regulated businesses ought reasonably to take notice of such insight. By the time Mr R made these payments, cryptocurrency scams had risen greatly in frequency and it is reasonable to conclude that banks, such as Monzo, had also had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

Monzo has argued that Mr R had full control of the money he sent to the crypto wallets in his name. But I've already explained why, even if an intervention by the bank would have identified that the payment was going to the consumer's own account with a crypto exchange, the conversation shouldn't have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control. I think Mr R's losses were foreseeable to Monzo, despite the payment on the face of it not leaving his control. And I'm satisfied that, had the bank, having identified the payment as unusual and suspicious, asked relevant questions of Mr R, it would have been apparent that he was falling victim to a cryptocurrency scam. In other words, but for Monzo's failure to make further enquiries, it would have been on actual notice that Mr R was going to suffer financial harm from fraud.

On the point of evidence, speculations, and assumptions, we decide cases *on the balance of probabilities*, i.e., what's more likely than not. In my provisional decision, I explained why I considered it more likely than not that Mr R would have stopped in his tracks and not proceeded with the payment in question (and subsequent payments) if Monzo had properly questioned him and given a scam warning before processing the payment. Monzo's comments haven't changed my position on what I consider to be more likely than not to have happened.

I've also thought about Monzo's comments about shared liability. It's mentioned *reasonable basis for belief* in justifying a 50% deduction. But the disputed transactions were debit card payments. The Contingent Reimbursement Mode (the CRM Code), where the concept of reasonable basis for belief is a consideration, doesn't apply to card payments. So, it's not relevant here. I've already explained why I find that it would be fair and reasonable to reduce compensation by 20%. Given the imbalance of knowledge between the parties, I still consider 20% deduction to be fair.

All in all, having considered Monzo's response to my provisional decision, my outcome remains unchanged.

Putting things right

To put matters right, Monzo Bank Ltd needs to reimburse Mr R all the disputed payments from 26 November 2020 onwards (five debit card transactions), making a 20% deduction for contributory negligence.

As the payments came from a current account, I consider that it would be fair and reasonable for Monzo to also add simple interest at 8% per year, calculated from the date of loss to the date of settlement (less any tax properly deductible).

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Monzo Bank Ltd to put matters right as set out above.

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

Gagandeep Singh
Ombudsman