

The complaint

Miss B complains that Monzo Bank Ltd will not refund the money she lost after falling victim to a cryptocurrency investment scam.

What happened

This complaint is about five payments totalling £9,910 that Miss B made from her Monzo account on 23 July 2021. I've summarised the key facts and wider circumstances below.

Miss B was contacted on Instagram by a person she didn't know. They told her about an investment opportunity and said they could guarantee profits of between £500 to £2,000 a week without Miss B needing to do anything or spend any of her own money. Miss B said she did not mind taking part if it was a no risk profit. Unfortunately, the situation was not what it seemed. Miss B was really interacting with a fraudster.

The fraudster sent Miss B money into her account held with another bank and told her they would use it to place trades together. Miss B sent the money that she'd received to a cryptocurrency exchange. She also sent money of her own. The other bank blocked Miss B's account and asked her about the recent incoming payments. Miss B explains that the fraudster told her to tell her other bank that the money credited was from a work friend. The other bank did not unblock Miss B's account at that time.

Miss B was uneasy about the situation. She's described feeling anxious and nervous as it did not seem right. She'd blocked the fraudster's phone number so they couldn't send her any more messages. But the fraudster contacted Miss B from a different number. Miss B has provided a copy of a text message that she was sent on 22 July 2021 at 16:47 saying that a debt collector would come to her property to recover money.

Miss B has explained that she wanted to get her own money back. She told the fraudster they should wait until her other bank account was unblocked but the fraudster was persistent. Miss B has explained she felt threatened by what the fraudster was saying.

The fraudster told Miss B that the balance in her Monzo account was too high for her to receive her profits and that she needed to reduce it by sending money to her cryptocurrency account. Miss B made a payment of £10 at 12:51. She followed it with a payment of £2,995 at 16:32, a payment of £2,005 at 18:26, a payment of £2,800 at 18:53 and a payment of £2,100 at 19:48. Miss B then followed the fraudster's instructions to send the funds to another account. She says that she thought the funds were still in a holding account with the cryptocurrency exchange. Miss B says the scam came to light when the fraudster blocked her phone number.

Miss B reported the scam to Monzo, but it turned down her claim for a refund. Unhappy with the bank's position, Miss B made a complaint. In its final response letter, Monzo said it had complied with its regulatory obligations. It said it was unable to reimburse her under the Contingent Reimbursement Model (CRM) Code.

Miss B referred her complaint to this service. Our Investigator looked into the matter and recommended that it should be partially upheld. She thought Miss B's pattern of spending was unusual and suggested that if the bank had intervened before Miss B made the third payment, it would have uncovered the scam and stopped her from sending any more money. But she also considered there were significant signs that this wasn't a legitimate opportunity and noted that Miss B showed clear signs that she wasn't comfortable with what she was being asked to do. She concluded that Monzo and Miss B should share responsibility and recommended that the bank refunded half of the money Miss B had sent from payment three onwards, along with interest.

Monzo didn't agree. It said the bank had not made any mistake that had contributed to Miss B suffering a loss. It didn't think Miss B's account activity was unusual, so it had no reason to query the payments at the time they were made. It added that it wasn't the point of loss for the funds because the funds went into another account that she owned and had full control of. As no agreement could be reached, the complaint was referred to me to consider.

I issued my provisional decision on 2 December 2022. In it, I explained why I didn't intend to uphold Miss B's complaint. An extract of that decision is set out below and forms part of this final decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's not in debate that Miss B has fallen victim to a scam. But I am only able to consider whether Monzo has any responsibility to refund the money that she sent from her Monzo account. I can only compel Monzo to refund some or all of Miss B's money if it is responsible for the loss incurred. Having carefully considered the circumstances of this complaint, I can see no basis on which I can fairly say that Monzo should be held liable for some or all of Miss B's loss. I can appreciate this will be a very disappointing outcome for Miss B, especially as it is less favourable than the position our Investigator proposed, so I will explain why I am minded to reach this conclusion.

The starting position at law is that banks and building societies are expected to process payments and withdrawals that their customers authorise them to make. Miss B made these payments herself. This means that the payments are authorised, even though Miss B did not intend for this money to go to fraudsters.

But, taking into account the law, regulator's 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks and building societies 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.*

This means that Monzo should be on the lookout for unusual and out of character situations which can indicate that a transaction could involve fraud or be the result of a scam. This duty applies whether the loss occurred from the Monzo account, or at some later point in the payment journey. So, while I understand that Monzo has suggested it is not responsible for Miss B's loss as the funds were transferred to an account in her own name, this does not absolve Monzo of its responsibility to intervene if it had grounds to believe its customer was at risk of financial harm from fraud. Miss B's losses, though not arising from the initial transfer, ought to have been within the contemplation of, and reasonably foreseeable to, Monzo.

So I've considered whether Monzo should have identified that Miss B was potentially at risk of falling victim to fraud as a result of the payments, or otherwise done more to protect her. Monzo did not identify the payments Miss B made as being out of character or suspicious at the time. When considering what payments should be considered significantly out of character, it's often a finely balanced matter – and firms have a difficult balance to strike between identifying transactions where there are indications of higher fraud risks, and allowing customers to utilise their accounts as they want to with minimal unnecessary disruptions.

I've looked carefully at Miss B's account statements in the lead up to the scam to get a clear understanding of how the account typically ran. There was a sudden increase in spending. It wasn't like Miss B to make a series of faster payments. She tended to use the account for low value day to day transactions in retail stores. The largest faster payment she made in the six months leading up to the scam was for just £80. I think the transactions Miss B was making represented a sudden change to the operation of the account. They drained the balance of the account which had otherwise been static for some time. By adding a new payee and making multiple transactions that were significantly higher than what she usually spent, I think the transactions were displaying risk factors that Monzo ought to have investigated further. I say this even taking into account the fast-paced cryptocurrency markets. Even if Miss B had been legitimately investing in cryptocurrency, it does not make sense why she would have made so many transactions close together rather than making one payment. Monzo is aware that making a series of smaller payments is a tactic fraudsters use to try and evade bank security systems.

Even though I think there was a pattern of spending developing that was unusual and out of character for Miss B and that Monzo should have detected this and intervened, this in and of itself isn't enough for me to say that Monzo should refund some or all of the money Miss B has lost. I also need to be persuaded that the bank's intervention would have made a significant difference and ultimately prevented the payments from being made.

When making my decision, I have to base my findings on the balance of probability – that is, what I think is more likely than not to have happened, taking into account what I know from the information that is available to me. I've thought about whether interaction with Monzo would have uncovered the underlying situation.

And, on balance, I'm not persuaded interaction with the bank would have been enough to stop Miss B from sending the money, even if the bank had been able to identify that Miss B was making payments that were most likely part of a scam.

From the outset, this situation was highly suspicious and implausible. The fraudster told Miss B that she could earn profits of up to £2,000 a week without having to invest a penny of her own money. I think this was a clear warning sign that the situation was not credible or above board.

I've considered how the situation escalated. In the messages I have seen, the fraudster is unpleasant and I can appreciate why Miss B felt the correspondence to have a menacing tone. But she continued to make these payments despite being aware that the situation was not right and having serious concerns about it. Miss B's account with her other bank had been blocked before she made any payments from her Monzo account. She had received a significant amount of money into the account with the other bank that did not belong to her. She was not truthful with her other bank when it contacted her to ask about this money.

Miss B tried to cease contact with the fraudster by blocking contact from them. But Miss B continued to engage with the fraudster when they got in touch from a different number. She'd had the opportunity to reflect on the situation she was in and understood it was not right, yet still went on to make these payments. From what Miss B has said, her decision was driven partly by fear and intimidation and partly by a desire to try and recover her own money that she'd already sent. But I think these emotions would have outweighed any warning that Monzo could have given had it intervened. I am not persuaded that Miss B would have told Monzo the full picture even if it had asked at the time she was making the payments.

I've also thought about whether Monzo ought to have refunded the loss for any other reason, and in particular, whether Monzo ought to have reimbursed Miss B under the provisions of the Lending Standards Board's voluntary Contingent Reimbursement Model Code, which Monzo has agreed to adhere to and was in force at the time Miss B sent the money. But the CRM Code is quite explicit that it doesn't apply to all push payments. The CRM Code only covers scam payments when the funds are being transferred to another person and not to a consumer's own account. In this case, Miss B sent the money to her own account held with a cryptocurrency exchange. This means I don't think Monzo is responsible for reimbursing her because of any obligation from the CRM Code.

Having carefully considered everything, I am not currently persuaded that the scam would have been stopped even if Monzo had intervened. And as the funds went to Miss B's own account with the cryptocurrency exchange and then on from there, there was little opportunity for Monzo to recover them or find out more specific details about where they are now.

Miss B has my considerable sympathy. Fraudsters are masterful at playing on a victim's emotions to obtain what they want and she's lost a lot of money as a result. But for the reasons I've explained, I'm satisfied Miss B isn't due a refund under the CRM Code. And in all the circumstances of this complaint, I don't think it would be fair and reasonable to find that Monzo could have stopped what ultimately unfolded. I think, on balance, Miss B would have made these payments regardless and against her own better judgment. It follows that I'm not currently minded to say that Monzo should bear any responsibility for the loss.

Responses to my provisional decision

Monzo responded to my provisional decision and said it agreed with my proposed findings and had nothing further to add.

Our Investigator contacted Miss B to confirm that she had received the provisional decision and enclosed a further copy of it. Miss B responded and said she would like to continue the complaint further if she could because she wanted to receive a refund of her own money that was lost.

Miss B was asked to provide any further comments by 6 January 2023. Our Investigator tried to chase her response, but no further contact has been received.

As the deadline for both parties to respond has now passed, I will review the complaint afresh.

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.

Having done so, and as neither party has sent any new evidence or arguments for me to consider, I see no reason to depart from the conclusions set out in my provisional decision and reproduced above.

I appreciate Miss B has been the victim of a scam and lost money. But in this case, in all the circumstances, I can't fairly or reasonably say that Monzo is responsible for refunding the loss.

My final decision

My final decision is that I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 February 2023.

Claire Marsh
Ombudsman