

The complaint

Ms P is unhappy as Monzo Bank Ltd have declined to reimburse her for transactions she made as a result of a third-party scam.

What happened

The circumstances to this complaint are well known to both parties, but briefly:

Ms P came across a cryptocurrency trader - I will refer to as J – around August 2021 when she searched online. She made a number of payments from her other bank accounts into her account with Monzo. From her Monzo account she transferred the money into cryptocurrency wallets and from there onto J for what she thought was further trading. The evidence suggests Ms P started messaging someone from J on 16 August 2021. Between 20 August 2021 and 5 October 2021, Ms P made a total of 16 transfers totalling £86,729 to different cryptocurrency wallets. Two of these were in her own name.

In October 2021, Ms P asked for her money to be returned and was told she needed to pay £15,000 to access her money. It was at this point she realised it was a scam.

Our investigator upheld the complaint in part. He considered that Monzo didn't go far enough and missed an opportunity to discuss the payments with Ms P from the second transaction on 2 September 2021 onwards. But he felt Ms P should share in the responsibility for her losses and recommended a 50% deduction from the refund.

Monzo didn't agree. It said the loss had occurred from the cryptocurrency providers and not from Ms P's Monzo account. Ms P was not completely happy but accepted the investigator's conclusions.

As the case couldn't be resolved informally, it's been passed to me for a decision.

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.

regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

It is not in dispute that Ms P has fallen victim to a cruel scam. I understand this has been an extremely difficult time for Ms P and I am sorry to hear she has been unwell.

Did Ms P authorise the transactions?

Although it's not in dispute that Ms P didn't set out to be scammed, under the Payment Services Regulations 2017 (PSRs), and general banking terms and conditions, she is presumed liable in the first instance if she authorised the transactions.

When Ms P first reported the scam to Monzo, she did tell the bank she had shared her computer with the scammer through a remote access application. She shared her information with the fraudsters under the guise of them facilitating the payments for her.

Although Ms P was tricked into doing so, by providing the information needed to execute the transactions to the scammer, Ms P provided apparent authority for the disputed transactions to be carried out. The payments were therefore authorised, even though Ms P was the victim of a scam.

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 Ms P was duped by the scammers into instructing (or allowing them to instruct) the bank to transfer money to cryptocurrency accounts and on from there into the scammer's account. The scammers deceived her over a messaging platform into thinking she was making a legitimate cryptocurrency investment for further trading. So, although Ms P did not intend the money to go to the scammers, under the Payment Services Regulations 2017, and the terms and conditions of her account, Ms P 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 Ms P's Monzo account. But I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account in Ms P'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 out for this particular type of fraud.

Indeed, Monzo stopped the payment on 9 November 2021, acknowledging it had concerns Ms P was the victim of a scam. And when Ms P revealed she was buying cryptocurrency – it asked her further questions around this. For example, it asked her to show the evidence that the account was hers and enquired as to whether anyone had approached her to buy cryptocurrency. So, I think Monzo did have systems in place for this exact scenario. And, it did expose the scam (although I accept at this point Ms P likely realised it was a scam).

I do accept there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments and it will be impossible to prevent all fraud without a significant number of genuine payments being delayed considerably and inconveniently.

I don't think the initial transfer would have caused Monzo concern – it was a small payment. But I agree the £9,300 payment on 20 August 2021 was large enough that it ought to have caused concern. Even though it was seemingly going to a genuine provider and one Ms P had paid to before – for the reasons explained above - the £9,300 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 Ms P to check everything was in order, to protect her from the risk of financial harm. I have therefore thought about what most likely would have happened if Monzo had spoken appropriately to Ms P about her instructions on 20 August 2021 before it executed it.

If Monzo had asked who Ms P was paying her cryptocurrency to and/or how she'd heard about the trading company, I think Ms P would have told them about J and that she was dealing with J on a social media messaging platform. With further questioning, I think Monzo would have been concerned about what was happening and it would have been put on notice that Ms P was falling victim to a scam.

And if Monzo had given Ms P some warnings about cryptocurrency scams including telling her 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 this would have caused sufficient doubt in Ms P's mind not to proceed with the £9,300 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 Ms P would have become credulous about the scam in time and stopped the payment on 20 August 2021 in its tracks. The fraud would have failed; and Ms P would not have lost the £9,300 payment or the payments that followed.

Could Ms P have done more to mitigate her losses?

I've thought carefully about what Monzo's obligations were, as set out above. But another key issue is whether Ms P acted reasonably taking into account all the circumstances of the scam. From the outset I think there were a number of concerns with the situation Ms P was getting involved with. So I think it's fair that she shares responsibility for her losses. I say this because:

- The method of communication was primarily over social media messaging forums. Also Ms P shared her computer screens with the scammer. I appreciate she understood this to be so J could show her how the investment worked, but the scammer made some of the transfers for her. I don't think a legitimate business would operate like this. I think all of this ought to have caused Ms P concern.
- Some of the communications with the scammer appear unprofessional and not how I would expect a legitimate business to interact with its clients. For example on 16 August 2021, the scammer commented on Ms P's profile picture "*you look very gorgeous*" and used terms like "*dear*" when communicating with her.
- On 18 August 2021 at 13:48 – when referring to the bank, the scammer said the scammer "*if they ask how you found out about [one of the cryptocurrency providers], you can tell them you searched online and saw it is one of the best crypto wallets.. you searched that yourself if you remember*". A genuine organisation wouldn't encourage an investor to lie to their bank and I think this ought reasonably to have caused Ms P concern.
- It seems on 23 August 2021 Ms P did have some concerns and explained to the scammer that she had kept getting blocked and needed to verify things. Her email to support had been blocked by the server and calls went to a private branch exchange. When she called the support number she was cut off.

I appreciate Ms P did seek reassurances, but it was from the organisation she had concerns about. Overall, I think there were enough red flags that 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 Ms P's part. I appreciate Ms P did do some research online and found positive reviews and J appeared to have a legitimate website. But overall, I don't think this was enough to disregard some of the clearer warning signs here.

On that basis, I think it's reasonable for Ms P to share the responsibility with Monzo and reduce the refund on all of the payments by 50%.

Putting things right

In order to put things right for Ms P, Monzo Bank Ltd should refund all the payments Ms P made from the payment of £9,300 on 20 August 2021 onwards.

It should deduct any returns Ms P received from the investment (£812.95) before reducing the loss by 50%.

Interest¹ at the originating account rates should be added to the reduced amount above from the date of transaction to the date of settlement.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 1 May 2023.

Kathryn Milne
Ombudsman