

The complaint

Mr and Mrs S complain that Monzo Bank Ltd (Monzo) won't refund all the money they lost when they fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. But briefly: a colleague of Mr S had been trading with a merchant I'll refer to as D. Thinking they were making good profits, they recommended D to Mr and Mrs S.

Between October 2021 and February 2022, Mr and Mrs S made seven payments, totalling £37,200, from their joint Monzo account to a cryptocurrency wallet in Mr S's name. They then converted the funds to cryptocurrency and sent them on to D.

Unfortunately, D was acting fraudulently. When Mr and Mrs S tried to withdraw their funds, they were told they had to pay a high level of tax. D ultimately didn't allow them to access any of the money showing in their account – and also deleted its communication with them from the messaging platform they had predominantly been using.

After raising the matter with Monzo, who wouldn't refund them, Mr and Mrs S referred the matter to our service. Our investigator thought Monzo ought to have intervened when they made the third payment to the cryptocurrency wallet. If it had done so appropriately, he thought it would have uncovered the scam.

The investigator recommended that Monzo should refund 75% of Mr and Mrs S's loss from the third payment onwards. Monzo didn't agree. It said the payments didn't look suspicious, so it had no reason to intervene; the money wasn't transferred to D directly, so the loss happened at a later point; and Mr and Mrs S acted negligently, as recognised by the investigator's 25% deduction from the compensation.

I then issued my provisional decision, which explained why I was minded to direct Monzo to refund 50% of Mr and Mrs S's loss from the third payment onwards:

- *In line with the Payment Services Regulations and general banking terms, Monzo has a duty to execute authorised payment instructions without undue delay. So although it's not disputed that a scammer duped Mr and Mrs S into making these payments, the starting position is that they are liable.*
- *That said, there are some situations where we believe that banks—taking into account relevant rules, codes, and best practice— ought to have identified a potential fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If they failed to do so, and that failure led to a fraudulent loss for their customer, it may be fair to hold them liable.*
- *Initially, I don't think Monzo had cause for concern. Although the first two scam payments were higher than Mr and Mrs S's usual level of spending, I don't think they appeared so suspicious that Monzo ought to have realised they were at risk from fraud.*

- *But when Mr and Mrs S made the third payment, for £6,200, I think Monzo ought to have identified a fraud risk. Although they had paid the recipient previously, this payment was over three times more than those earlier payments – which were already a significant increase from how they generally used their account. A pattern of escalating, high value payments, to a relatively new payee, was emerging.*
- *I therefore think Monzo ought to have completed further checks on this payment to satisfy itself on whether all was well. If it had appropriately questioned Mr and Mrs S about the circumstances of the payment, I think it would have uncovered the scam.*
- *I appreciate the funds didn't go directly to D. But that's common in scams like this. As Mr S did here, victims often need to transfer funds through another account to purchase cryptocurrency for their 'investment'. Given that the Financial Conduct Authority (FCA) and Action Fraud published warnings about cryptocurrency scams in mid-2018, this is something which Monzo ought to have been aware of by the time of these payments.*
- *If Monzo had appropriately questioned Mr and Mrs S, I think they would have explained they were acting on the instructions of D – who they were ultimately transferring the funds on to. Monzo queries whether they would have revealed this, but I've seen nothing to suggest they were told not to mention D's involvement – who they ultimately believed were legitimate, so I don't think they would have been wary about mentioning.*
- *The pattern of transferring funds onto a trader from their own cryptocurrency wallet is in itself a hallmark of a scam which I would have expected Monzo to have been aware of. I also think, had Monzo questioned Mr and Mrs S about what they were expecting, it would have had further concerns. For example, they were told only 15% of their funds would be invested – meaning that's the most they could lose. I would have expected Monzo to have warned Mr and Mrs S that sounded like a scam.*
- *Mr and Mrs S were reassured by a recommendation from their friend, who had been able to withdraw some funds. But as Monzo would have been aware, allowing low-level withdrawals is a tactic used by scammers to appear legitimate, to persuade victims to 'invest' more.*
- *Similarly, we know these types of scams often involve manipulated software appearing to show how the funds have been invested – as appears to have been the case here. These are factors which Monzo could have explained to Mr and Mrs S, to help them understand why it sounded like a scam.*
- *I think Mr and Mrs S would have relied on a firm warning from their bank, speaking from a position of knowledge about these scams. If Monzo intervened appropriately, it would likely have been on actual notice that they would suffer financial harm from fraud. As this loss ought to have been in the contemplation of and foreseeable to Monzo, I consider it fair and reasonable to hold it liable for the loss.*
- *I've also considered if Mr and Mrs S should bear some responsibility for their loss by way of contributory negligence. I appreciate that they relied on a personal recommendation as well as reviews and a website (which, as referenced above, likely employed fake software to appear to show that the funds were being invested). But I also think there were warnings signs they ought to have picked up on.*
- *Mr and Mrs S were told D had previously been another company, which was regulated by the FCA, and was changing names due to a new partner joining. They say D's website looked similar to the other name they were given, who they checked was regulated.*

- *They can't recall the name they were given so I haven't been able to verify this. In any event, I think it should have struck them as odd that the firm's authority wouldn't transfer over, if it was the same entity with a new name. Had they checked the FCA register, they would have seen D wasn't listed as a regulated firm.*
- *D told them it would only invest 15% of what they paid, restricting their loss. I think they should have questioned that. If D was only investing such a small proportion, why did it need them to pay more – rather than asking them to simply pay less to reflect what they were prepared to risk?*
- *I also think the offers/promotions D gave them ought to have seemed suspicious. For example, D apparently paid £5,000 as a 'bonus' for them paying in £10,000. I think that deal was too good to be true, so should have caused Mr and Mrs S to question its legitimacy.*
- *For these reasons, I'm minded to make a deduction of 50% from the amount I'm recommending Monzo should refund. Effectively, I think liability should be split between Monzo and Mr and Mrs S.*
- *For those payments which I don't think Monzo could have prevented, I have also considered if it could have done more to help recover Mr and Mrs S's loss. But as the payments were transferred on from the account they paid directly, and given the gap between the payments, I don't think Monzo would have been able to recover these.*

I invited both parties to submit any further comments or evidence. Monzo has responded to accept my findings. But Mr and Mrs S have questioned the increased deduction I've applied. The case has now been passed back to me for a final 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.

Having done so, I've decided to uphold it and award the same redress as proposed in my provisional decision. As this is largely for the same reasons I gave in my provisional decision (set out above, and which also forms part of my final decision), I'll focus here on addressing the response from Mr and Mrs S.

Mr and Mrs S say they understand why they're (partly) liable for the loss. But they feel strongly that if Monzo had stepped in at the beginning, it would have known this was a scam. And they would have lost a lot less if it had done so.

While I appreciate their point, my provisional decision sets out why I don't think Monzo was at fault for not intervening with the first two payments. The starting position of a bank's duty, when receiving an authorised payment request, is to promptly act on this. As I don't think Monzo had reasonable grounds to suspect fraud until the third payment, I can't award more because it didn't intervene with the first two payments.

I realise how disappointing it must be for Mr and Mrs S that I've increased the contributory negligence deduction. But my role as an ombudsman is to come to my own, independent conclusion on what I think is fair and reasonable in the circumstances. I do agree that Monzo should have done more here, which would likely have limited Mr and Mrs S's loss. But I also think there were risk factors they ought to have picked up on.

When considering contributory negligence, our approach is to think about what a 'reasonable person' would have done in the circumstances. My expectations about what a reasonable person ought to identify as a fraud risk are different to what I'd expect from a bank to know. But even without specialist fraud knowledge, I think there were warning signs that Mr and Mrs S should reasonably have picked up on that D might not be legitimate.

Overall, while I think Monzo ought to have done more to prevent Mr and Mrs S's loss, I also think they could have done more to mitigate this. And so for the reasons given, I'm persuaded the redress proposed in my provisional decision is a fair way to resolve this complaint.

Putting things right

Monzo Bank Ltd should refund 50% of Mr and Mrs S's loss from the third payment onwards. It should pay interest on this amount, from the dates of payment to the date of settlement.

The payments were funded by transfers into the Monzo account from a savings account and a current account. For those funds which came from a savings account, the applicable interest rate is the savings account rate, which Mr and Mrs S have confirmed to be 0.75%. For those funds which came from the current account, 8% simple interest per year should be applied to reflect the loss of use of that money.

I've included a table to give more clarity on what I'm awarding:

Date	Amount	Amount to refund	Source	Interest rate applicable
08/10/2021	£1,500	£0	-	-
14/10/2021	£2,000	£0	-	-
02/11/2021	£6,200	£3,100	Half from current account, half from savings	8% on £1,550, 0.75% on £1,550
17/11/2021	£10,000	£5,000	All from current account	8%
18/11/2021	£5,000	£2,500	Half from current account, half from savings	8% on £1,250, 0.75% on £1,250
16/12/2021	£2,500	£1,250	Half from current account, half from savings	8% on £625, 0.75% on £625
14/02/2022	£10,000	£5,000	All from current account	8%
Total	£37,200	£16,850		

My final decision

For the reasons given, I uphold this complaint and direct Monzo Bank Ltd to put in line with what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 7 April 2023.

Rachel Loughlin
Ombudsman