

## The complaint

Mr C complains that Monzo Bank Ltd won't refund money he lost when he was the victim of a scam.

Mr C is represented by a firm that I'll refer to as 'S'.

## What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2022 Mr C was the victim of a crypto scam. When logging off his computer he saw an advertisement for investing in crypto and, as he'd heard it was possible to earn a lot of money from it, he filled in the enquiry form for the scam firm (which I'll refer to as 'B'). B contacted Mr C and he was assigned an account manager who told him they were a financial adviser, that they would receive commission from his profits and helped set him up with a trading account. Mr C says B sounded professional, polite and knowledgeable about trading. And that, while he can't remember the exact amount, he thought the commission payable seemed reasonable.

Mr C says he researched B online, finding positive and some negative reviews too. This didn't faze him as the positive reviews outweighed the negative ones, and every company will have some negative reviews. He also thought B's website appeared genuine, which contained multiple successful client stories which reassured him the firm was legitimate. To help Mr C learn how to trade, B instructed him to download a remote desktop application. And he started with £2,000 to "*dip his toe in*" and to test the profits.

Over the next few months, Mr C had regular conversations with his account manager about stock markets and built up a good rapport with him. And by May 2022, Mr C decided he wanted to withdraw his profits and was told there would be a withdrawal fee. Upon paying this fee, Mr C was told there were more settlement fees that required paying before funds could be released. He realised at this point he'd fallen victim to a scam.

Mr C sent the money to a legitimate crypto exchange, to buy crypto, before sending it to B's trading platform. The relevant payments are:

Date	Type	Amount
22 February 2022	Faster payment	£2,000
26 February 2022	Faster payment	£2,000
28 February 2022	Faster payment	£2,000
1 March 2022	Faster payment	£2,000
2 March 2022	Faster payment	£2,000
16 March 2022	Faster payment	£2,000
22 March 2022	Faster payment	£8,000
12 April 2022	Faster payment	£8,000
17 May 2022	Faster payment	£5,925

19 May 2022	Faster payment	£5,684
19 May 2022	Faster payment	£4,137
20 May 2022	Faster payment	£10,000
26 May 2022	Faster payment	£500
<b>Total:</b>		<b>£54,246</b>

S complained to Monzo, on behalf of Mr C, in October 2022. They said Monzo failed in their duty of care to protect Mr C from the scam as they didn't provide effective warnings to him at the time the payments were made. S considered Monzo ought to have identified the payments as unusual – based on Mr C's typical spending habits – and contacted him to enquire about them. Had they done so, it would've been apparent Mr C was falling victim to a scam and, upon appropriate warnings/advice being provided, Mr C wouldn't have gone ahead with making the payments. S said, to settle the complaint, Mr C would accept reimbursement of the monies he lost.

Monzo rejected the complaint. In short, they said:

- They executed the payments in line with Mr C's instructions. And so, they're not liable for the return of them.
- Prior to making the first payment, an online warning was provided to him. Mr C proceeded with the payments despite this warning.
- Mr C failed to carry out reasonable due diligence on the scammers. For example, he didn't check Companies House or whether B were regulated.
- S has failed to identify what duty of care was owed to Mr C and, to which, they breached.
- The Contingent Reimbursement Model (CRM) code doesn't apply to these payments.
- The payments were made to an account registered in Mr C's name. Therefore, the loss didn't occur from the Monzo bank account.

The complaint was referred to the Financial Ombudsman and our Investigator thought it should be upheld in part. He thought Monzo ought to have contacted Mr C when he made the fourth £2,000 payment on 1 March 2022. This is because, by this point, Mr C had sent £8,000 over the course of ten days and this was unusual for his account. And had this happened, Monzo should've identified Mr C was being scammed as there were red flags – such as a remote desktop application being used and the funds being sent to a trading platform via a crypto exchange.

Our Investigator said it was likely an appropriate scam warning would've been effective. And so, he recommended Monzo refund all the payments Mr C made from 1 March 2022 onwards – totalling £48,246. He didn't however think any interest should be applied as S had confirmed the money came from a non-interest-bearing account and there wasn't any alternative use planned for it.

S confirmed Mr C's acceptance.

Monzo disagreed. And, in short, they added:

- They believe Mr C didn't have reasonable belief for making the payments in question as:
  - He saw a spam advertisement and inputted his information.
  - He looked up reviews but can't recall where. And they've been unable to find any such reviews after an extensive search.
  - He trusted reviews on B's own website which isn't always the most trustworthy form of verification.
  - He talked to the scammer.
- So, they don't think Mr C did anything in particular that equates to due diligence – particularly given, as per the Investigator's opinion, the investment was 'high risk'. Thereby meaning the threshold for expected diligence should be even higher.
- This high risk is arguably too good to be true, and what returns were promised?
- They asked for confirmation of the basis for the opinion reached by our Investigator regarding potential regulation, CRM code or guidance relied upon.

Our Investigator added that the CRM code doesn't apply here and he hadn't relied upon it. He also reiterated that he thought the fourth payment ought to have triggered an intervention by Monzo which would've likely prevented the scam payments being made.

### **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 come to the same outcome as our Investigator and for similar reasons. I'll explain why.

I've thought about the CRM code which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams like this one. But the CRM code only applies to payments made to an account held by another person. As the payments Mr C made were sent to an account he held in his own name, they're not covered under the CRM code. I've therefore considered whether Monzo should reimburse Mr C under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments their customer authorises them to make. Here, it isn't disputed that Mr C knowingly made the payments from his Monzo account. I appreciate Mr C was tricked by the scammer as he thought it was a genuine investment opportunity. Nevertheless, I'm satisfied the payments were authorised by Mr C. So, under the Payment Services Regulations 2017 and the terms of his account, Monzo are expected to process the payments and Mr C is presumed liable for the loss in the first instance.

I have however taken into account regulatory rules and guidance, relevant codes of practice and good industry practice. This includes, but isn't limited to:

- The British Standards Institute code of practice PAS 17271.
- FCA Principles for Businesses 2 and 6, and SYSC 3.2.6R.

- The FSA's (the predecessor to the FCA) thematic review paper of 2012, 'Bank's defences against investment fraud – Detecting perpetrators and protecting victims'.

From this, there are circumstances where it might be appropriate for Monzo to take additional steps, or make additional checks, before processing a payment to help protect customers from the possibility of financial harm from fraud. So, the starting point here is whether the instructions given by Mr C to Monzo were unusual enough - in relation to his typical account activity – to have expected Monzo to have identified Mr C was at risk of financial harm from fraud.

Having looked at Mr C's account usage in the twelve months prior to the scam occurring, it was used for infrequent small value transactions – with the highest being for £59. Because of this, I think payments of £2,000 were out of character for Mr C. Banks however must strike a balance between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate. And so, I don't think a single payment of £2,000 was suspicious enough for Monzo to have had cause for concern that Mr C was at risk of financial harm from fraud. But by the point of the fourth £2,000 payment, made within 10 days of the first payment and to a new payee (which can be indicators of a scam), I think there would've been sufficient reason for Monzo to have had cause for concern. I therefore think they ought to have held the fourth payment and contacted Mr C before processing it.

Had Monzo done so, I think it's likely Mr C would've been honest in explaining the purpose of the payments – that being for crypto investment purposes. And given Monzo are aware of the prevalence of crypto scams, it would've been reasonable for them to have questioned Mr C about it further – including how he came across the opportunity, whether there was a third party involved and what checks he'd carried out to ensure the investment was legitimate.

I've no reason to think Mr C wouldn't have answered honestly. So, I think he would've told Monzo that he'd submitted his personal details on an online pop-up advertisement advertising crypto. And that B assisted him in setting up a trading account, by way of a remote desktop application, and he was sending the money to the trading platform via a legitimate crypto exchange. He'd also likely explained that he'd searched B online, finding mixed reviews, and reviewed their website which appeared genuine and included positive client stories.

As our Investigator explained, I think this would've been a red flag to Monzo as they should be familiar with the methods used by crypto scammers. And so, at this point, I think Monzo ought to have highlighted to Mr C that there was a significant risk of it being a scam and encouraged him to not make any further payments. I haven't seen anything to suggest Mr C wouldn't have acted on such advice. I therefore think it's reasonable to assume, had he been given a clear warning that it was very likely he was being scammed, Mr C would've most likely stopped making payments to the scammer. It follows that I think Monzo could've prevented Mr C's loss from this point onwards.

Monzo have said they're not responsible for the loss Mr C suffered as the funds were sent to an account in his own name, before being sent to B. Although I've considered this, as I've explained, Monzo should take additional steps before processing a payment – where it's identified as unusual or suspicious - to help protect customers from the possibility of financial harm from fraud. And I consider this obligation exists when payments are made to accounts in the customer's own name (or control).

Here, for the reasons I've set out, I'm satisfied that the fourth payment of £2,000 was sufficiently unusual and out of character for Mr C, based on his typical account activity, to

have warranted intervention. It follows that I think Monzo's lack of intervention led to Mr C suffering the loss he did from 1 March 2022 onwards – totalling £48,246.

I've also thought about whether Mr C did enough to protect himself from the scam. Monzo has argued Mr C didn't carry out sufficient due diligence on B before proceeding. Nor did Mr C have a reasonable belief for making the payments in question given he responded to a 'spam' advertisement, they've been unable to find the online reviews on B he would've seen and that he trusted information from B's own website.

I've carefully considered this but, given Mr C was unfamiliar with crypto investing, I wouldn't necessarily have expected him to have known what checks to carry out - such as whether B was a registered company or authorised by a financial regulator - without, say, the direction of Monzo. I've likewise been unable to find much information about B online, such as reviews. I've not been able to find any reviews of B online but even if I agreed with Monzo that there weren't reviews, I'm still satisfied that Mr C fell for a sophisticated scam where he was provided access to – what he thought was - a professional account manager, a trading account and professional looking website. And while I agree with Monzo that relying on a firm's website isn't the most reliable method of verification, I don't think it was wholly unreasonable for Mr C to do so. So, while Mr C may have been overly trusting of B, likely because of the regular conversations and their professional manner, I don't think it would be fair and reasonable to reduce the award based on contributory negligence in the circumstances of this complaint.

I therefore think, to put things right, Monzo should refund £48,246 to Mr C. And given S has confirmed the funds Mr C sent to the scammer came from a non-interest-bearing account, I don't think it would be appropriate to award additional interest here. S has confirmed Mr C's acceptance of this and so, I think the refund of the scam payments from 1 March 2022 alone brings a fair outcome to this complaint.

### **My final decision**

My final decision is that I uphold this complaint in part. I direct Monzo Bank Ltd to refund £48,246 to Mr C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 October 2023.

Daniel O'Dell  
**Ombudsman**