

The complaint

Mr R complains that Monzo Bank Ltd hasn't refunded him after he fell victim to a cryptocurrency investment scam.

What happened

The background to this complaint is well-known to both parties. I've discussed the merits of the complaint and the outcome with Mr R and Monzo. Because of that I will summarise the circumstances of the case in brief.

Mr R found an advert for cryptocurrency investment on social media. He responded and was soon contacted by someone posing as an investment adviser but who was in fact a scammer.

Mr R was persuaded to invest and made multiple payments from a newly created Monzo account to a cryptocurrency wallet in his name. He sent the money from the wallet on to the scammer. The payments were sent from the end of June until the end of July 2022.

Most payments went through without issue. There was an attempted payment of £12,000 on 8 July 2022. It didn't go through as it was above the agreed payment limits on the account. This prompted contact between Mr R and Monzo. Mr R was told he'd have to provide a selfie along with evidence of his intended investment if he wished to proceed with the payment. He didn't do so, instead reducing the payment amount to £10,000, which went through without further questioning.

When Mr R opened the account, he told Monzo he intended to use it for cryptocurrency trading.

Mr R realised he'd been scammed when the people he was in contact with kept demanding more and more money. They said it was required to release the substantial returns that Mr R had achieved.

Monzo hasn't refunded Mr R as it believes it did enough to warn him about scams. And it's said all the payments matched the intended purpose of the account, so there was nothing for it to be concerned about. It also feels Mr R didn't do enough due diligence to confirm the investment opportunity, and the parties involved, as legitimate.

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.

As I said in the background section of this decision, I've already discussed the circumstances and outcome of the complaint with both Mr R and Monzo. I'm proceeding to issue this decision as an agreement still hasn't been reached. Some aspects of the case are no longer in dispute and so I won't comment on them in detail.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr R's account is that Mr R is responsible for payments he authorised himself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Monzo's December 2021 terms and conditions (applicable at the time of the payments) gave it rights (but not obligations) to:

- Block payments if it suspects criminal activity on a customer's account. It explains if it blocks a payment it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post)

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected criminal activity
- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, whilst the current account terms did not oblige Monzo to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And, whilst Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the look-out for the possibility of APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of

its customers” (Principle 6)¹.

- Banks have a longstanding regulatory duty *“to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime”* (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the *“Financial crime: a guide for firms”*.²
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.
- Monzo has agreed to abide by the principles CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

¹ Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

² For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

Overall, taking into account the law, regulators 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 scams 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, or provided additional warnings, before processing a payment – as in practice all banks do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

Should Monzo have fairly and reasonably made further enquiries before it processed Mr R's payments?

I'm satisfied Monzo should have intervened and asked Mr R about the payments he was making. This should have happened on 8 July 2022. I've explained my reasons to both parties already. They can be summarised as:

- The payment of £10,000 marked a significant increase in spending on the account;
- The sum is of such a large value that it inherently carries a high degree of risk in many circumstances;
- Mr R had made no payments of a similar size previously;
- Mr R had tried and failed to make a larger payment of £12,000 shortly before. Monzo knew he intended to make such a payment for investment purposes. It asked him to provide evidence of the intended investment and it received nothing from him. Monzo didn't consider that the payment was intended for a cryptocurrency platform when it spoke to Mr R and nor did it think about the associated risks;
- Monzo ought to have been aware of the significant risks of cryptocurrency investment. Not just from a perspective of the unpredictability or volatility of such markets, but from the prevalence of cryptocurrency investment scams, which it ought to have been aware of at the time; *and*
- the nature of the transactions made by Mr R – in terms of increasing value and frequency – bore the hallmarks of a cryptocurrency investment scam.

In making these findings I have considered that Mr R's account was fairly new at the point he made the £10,000 payment. That means there was limited account history for Monzo to assess. I've also considered that the only activity on the account was incoming payments from Mr R and his wife, and outgoing payments to his cryptocurrency wallet. And I've noted that Mr R told Monzo he was going to use the account for cryptocurrency trading. But with all of that in mind I'm still persuaded there was enough going on to say Monzo ought fairly and reasonably to have identified the £10,000 as bearing a significant risk of financial harm and so intervened and questioned it.

Had it done so I'm satisfied the scam would have been revealed. Mr R had no cover story to give Monzo if challenged about the purpose of the payments. Some straightforward probing questions would more likely than not have revealed the detail about what Mr R was doing with the money and how he came by the investment advice. That detail ought then to have given Monzo significant cause for concern and to have led to strong warnings against proceeding, if not an outright refusal to process the payments (given it ought to have fairly and reasonably suspected the money was going to a fraudster). There's nothing within the evidence that suggests to me Mr R would have ignored targeted and detailed warnings. It's then fair and reasonable to find any further loss could have been prevented.

Monzo has said it gave Mr R scam warnings when he created the new payee instructions on 31 May 2022. But the content of these warnings was limited and there was no reference to the type of scam Mr R was falling victim to. The details of cryptocurrency investment scams weren't brought to life at all. And, importantly, there were no such warnings presented at the point the £10,000 payment was made. In any case, my findings are that a much greater degree of intervention than a generic written warning was needed here. The payment ought to have been paused or blocked, followed by some direct questioning of Mr R through one of Monzo's agreed channels.

My findings here mean that Monzo can fairly and reasonably be held responsible for at least a portion of Mr R's loss from 8 July 2022 onwards. But Mr R's own actions must also be considered.

Monzo has said that it doesn't think Mr R did enough to check the investment opportunity was legitimate and that he was dealing with genuine parties. I agree with what it's said here, and Mr R has also accepted that position. That being the case I don't intend to go into further detail here. What it does mean is that it's fair and reasonable that responsibility for the loss be shared between the two parties.

Putting things right

Upon Mr R's acceptance Monzo should:

- Refund 50% of Mr R's loss from 8 July 2022 onwards, totaling £18,000.
- Pay interest on that amount at 8% simple per year, calculated from the date of each transaction to the date of settlement. In making this interest award I have considered the source of the funds lost. Those sources included Mr R's other accounts and those held by his wife. There has been credit card borrowing and the cashing in of Mr R's pension. Money was also borrowed from friends, which has been repaid. With all these different sources in mind, and the varied impact on Mr R's finances more broadly, I'm satisfied the pragmatic, fair and reasonable approach is to award the 8% simple interest on the total refund

My final decision

I uphold this complaint against Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 January 2024.

Ben Murray
Ombudsman