

The complaint

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

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

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 late 2022 Mr O was the victim of a task scam after being contacted on a mobile messaging service app, in which he was told he could earn commission from completing tasks that involved rating hotels. Mr O researched the company online finding positive reviews and no scam warnings. He was then referred to an agent – that I'll refer to as the scammer - who explained the company had changed name and how the job worked. This included that he had to open a trading account, which he did, and how the commission would be earned from completing hotel reviews. Mr O was added to a chat group with others who were similarly completing the tasks.

As part of the scam, Mr O was convinced to send funds to the scammer so that the tasks could be reset, to generate premium orders and to recharge his account – which the scammer led him to believe was required so he could receive his profits (commission). Mr O sent the funds to the scammer from an account he opened with an Electronic Money Institution (EMI), which he funded by transferring money from his Monzo bank account. The relevant payments from Mr O's Monzo bank account to the EMI account are:

Date (time)	Type	Amount
22 October 2022	Faster payment	£5
22 October 2022	Faster payment	£45
22 October 2022	Faster payment	£52
23 October 2022	Faster payment	£250.75
23 October 2022	Faster payment	£514.99
23 October 2022	Faster payment	£698.21
23 October 2022	Faster payment	£2,800
24 October 2022	Faster payment	£4,670
26 November 2022	Faster payment	£500
27 November 2022	Faster payment	£500
Total:		£10,035.95

Mr O became aware he'd been scammed when he couldn't get his money back. He then stopped making payments and the scammers cut contact with him. Mr O raised a scam claim with Monzo and, shortly after this, C complained to Monzo on his behalf about it. C said Monzo failed in their duty of care to protect Mr O from the scam as they never intervened with the payments. They considered Monzo ought to have contacted Mr O and questioned him about why he was making large, frequent payments to a new payee. And

had they done so, the scam payments could've been prevented. C said, to settle the complaint, Mr O would accept reimbursement of the monies he lost.

Monzo rejected the complaint. In short, they said:

- They requested information from Mr O, when he notified them about the scam, but this wasn't received.
- Mr O authorised the payments and, when he made the first one, an online warning was provided to him. Mr O proceeded with the payments despite this warning.
- They thought Mr O failed to carry out reasonable due diligence on the scammers (or the company).
- The Contingent Reimbursement Model (CRM) code doesn't apply to these payments.
- The payments were made to an account registered in Mr O'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. She thought Monzo ought to have contacted Mr O when he made the £4,670 payment and, had this happened, she thought he would've explained the payments were relating to a job in which he rated hotels. And that he was making these payments to obtain premium orders and recharge his account. Our investigator said this ought to have raised concerns for Monzo and, with an appropriate scam conversation taking place, they could've broken the spell sooner. She did however think Mr O ought to take some responsibility as the concept of paying money to complete work isn't realistic, and he also had suspicions of it being a scam before making the final two payments (yet proceeded anyway). Because of this, she recommended Monzo refund 50% of the payments from the £4,670 payment onwards – plus 8% simple interest.

C accepted our Investigator's recommendation. Monzo did not and said:

- Mr O's losses remains out of their range of liability as the funds were sent to an account in his own name and then on to the scammer. The point of loss isn't Monzo.
- Mr O was moving funds to an account in his own name and there wasn't anything suspicious about this, as he regularly does so. And the first payment between the two accounts was a credit from the EMI account to Mr O's Monzo account.
- There's no way of knowing whether any intervention could've broken the spell sooner.

Our investigator added that while the funds were sent to an account in Mr O's name, the funds used for the scam came from Monzo and it didn't negate their responsibility to identify unusual or out of character payments. And just because payments are being sent to an account held in the customer's own name, it doesn't mean they're not at risk of being scammed. Monzo should be aware of the various types of scams that involve victims setting up new accounts to make it appear legitimate. So, she didn't think it was fair to say that as the loss didn't come directly from the Monzo account, they weren't responsible in any way for it. And she thought that Monzo could've broken the spell Mr O was under as they should've been able to identify payments being made as part of a job opportunity as a red flag.

Monzo remained in disagreement as they didn't think the activity was unusual or warranted intervention. They said it's not uncommon for customers to send funds between their own account accounts. And that the payments Mr O made were genuine and not the scam payments, so they had no reason to intervene.

The matter was referred to me to decide. I emailed both parties on 19 July 2023 to explain:

"...I'd like to clarify my understanding of the loss Mr O suffered from the point in which our Investigator considered Monzo should've taken additional steps to protect him from the scam.

Our Investigator felt Monzo should've contacted Mr O to discuss the £4,670 payment he made on 24 October 2022. Had Monzo done so, she thought they would've become aware Mr O was falling victim to a scam and would've been able to 'break the spell' – resulting in this payment and two subsequent £500 payments not being made (totalling £5,670). Our investigator however thought Mr O should bear some responsibility for his loss from the scam and so, she recommended Monzo refund 50% (£2,835) - with 8% simple interest added.

These three payments were sent to another account held in Mr O's own name before funds were forwarded to the scammer. Having reviewed Mr O's accounts, they show he transferred £1,324.27 back to his Monzo bank account the day after he made the £4,670 payment. Because of this, it appears Mr O's loss from the point of the 24 October 2022 payment is £4,345.73.

It follows that, should I otherwise agree with our Investigator's conclusions, then the amount to be refunded would be £2,172.87. The 8% simple interest, for loss of use of money, should also be calculated from the date of each payment to the date of settlement – but with the £1,324.27 deducted from the £4,670 payment when calculated. This means, interest would be applicable to 50% of £3,345.73 (the first payment less the credit received) and the two subsequent £500 payments."

Monzo didn't respond.

C didn't think the £1,324.27 credit should be deducted from the loss calculation as they said it cannot be known what these funds related to. They considered it entirely possible the credit formed part of one the prior scam payments, such as the £2,800 sent on 23 October 2022. And so, they requested the amount refunded remain at £2,835.

Now that both parties have had a chance to respond, I can proceed to making my 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 come to same overall conclusions as our Investigator albeit, as I set out in email of 19 July 2023, I've taken into account the £1,324.27 Mr O credited back into his bank account when determining how Monzo should put things right. 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 O 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 Lloyds should reimburse Mr O 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 O knowingly made the payments from his Monzo account. I appreciate Mr O was tricked by the scammer as he thought it was a genuine investment opportunity. Nevertheless, I'm satisfied the payments were authorised by Mr O. So, under the Payment Services Regulations 2017 and the terms of his account, Monzo are expected to process the payments and Mr O is presumed liable for the loss in the first instance.

However, taking into account regulatory rules and guidance, relevant codes of practice and good industry practice, 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 O to Monzo (either individually or collectively) were unusual in relation to his typical account activity.

Having looked at Mr O's account usage before the scam occurred, it was typically used for low value day to day spending with occasional transactions between £1,000 and £2,600. Because of this, I don't think the payments prior to the 24 October 2022 were so unusual or out of character – including the payment amounts - whereby I'd have expected Monzo to have intervened at the time.

The £4,670 payment on 24 October 2022 was however for more than Mr O typically used his account for. It also followed seven prior payments that were of an increasing value, which can be an indicator of a scam, and brought the combined amount to about £9,000 over a three-day period. The payments, albeit sent to an account in Mr O's own name, were also made to a relatively new payee. And so, while I've noted Monzo's point that a customer sending funds between their own accounts isn't uncommon, which they say Mr O himself did, I think this payment – along with those preceding it – was unusual and out of character for Mr O based on his typical account activity. I appreciate there is a balance for Monzo to find between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate, but I consider Monzo had sufficient reason to suspect Mr O was at risk of financial harm from fraud here. I therefore think they ought to have held this payment and contacted Mr O before processing it.

Had Monzo done so, I think it's likely Mr O would've been honest in explaining the purpose of the payments – that being for to a job involving completing hotel review tasks, and which he was told by the scammer required paying to generate premium orders to allow him to receive his profits. And that he came across this job opportunity after being contacted on a mobile messaging service app. Given Monzo's familiarity of scams, including those involving completing tasks such as this, I think this would've been a red flag. And so, at this point, I think Monzo ought to have highlighted to Mr O that there was a significant risk of it being a scam and encouraged him to not make any further payments.

As Monzo has pointed out, I can't know with any certainty whether such intervention would've broken the spell Mr O was under. But I see no reason to think Mr O 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 O would've most likely stopped making payments to the scammer. It follows that I think Monzo could've prevented Mr O's loss from this point onwards.

Monzo has argued they're not responsible for the loss Mr O suffered as the funds were sent to an account in his own name, before being sent to the scammer. Because of this, they don't think the point of loss was from Mr O's Monzo bank account. 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 the £4,670 payment was sufficiently unusual and out of character for Mr O, based on his typical account activity, to have warranted intervention. Monzo should also be familiar with scammers tricking victims into sending money to genuine accounts in their own name before forwarding it on to them. And, as I've concluded, had Monzo intervened and stopped Mr O from sending the funds to his own EMI account, the loss he subsequently suffered would've been prevented. I therefore think Monzo's lack of intervention led to Mr O suffering the loss he did from 24 October 2022 onwards.

I've also thought about whether Mr O did enough to protect himself from the scam, and I don't think he did. Although I appreciate Mr O was very trusting of the scammer, I think he ought reasonably to have had concerns about the legitimacy of the job offered given the requirement to send funds to acquire the profits he'd supposedly earned. Particularly as he was paying more money to the scammer than he was receiving back. I also think receiving an unsolicited job offer via a mobile messaging service app, along with swiftly being told the firm had changed name, should've been seen as unusual to Mr O - thereby warranting him to take greater caution. Furthermore, although I understand C has explained this was out of desperation to get his money back, Mr O was suspicious of it being a scam by the point of the two final £500 payments and yet still made them anyway. I don't think this was reasonable in the circumstances. Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

As I explained in my email of 19 July 2023, Mr O credited £1,324.27 back to his Monzo bank account the day after making the £4,670 payment. C don't think this should be deducted from the amount to be refunded as they suggest it could've been related to one of the earlier scam payments Mr O made. I've considered this but I don't think that would be fair here. This is because, at the point Mr O made the £4,670 payment, his EMI account had a balance of only £29.58. And so, given there weren't any other funds deposited into the EMI account from the scammer before the £1,324.27 was credited back to Mr O's Monzo bank account, I'm satisfied it came from the £4,670 payment. C hasn't provided any supporting evidence that persuades me otherwise.

I therefore remain of the view that Mr O didn't lose all the £5,670 he sent to the EMI account from 24 October 2022 onwards. And so, I consider his loss from the point of the 24 October 2022 payment is £4,345.73.

To put things right, I think Monzo should refund £2,172.87 – that being 50%. They should also apply 8% simple interest, per year, for loss of use of money during this time. This should be calculated from the date of each payment – £1,672.87 on 24 October 2022, £250 on 26 November 2022 and £250 on 27 November 2022 – to the date of settlement.

My final decision

My final decision is that I uphold this complaint in part. I direct Monzo Bank Ltd to:

- Refund £2,172.87.
- Pay 8% simple interest, per year, calculated from the date of each payment to the date of settlement - as set out above - less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 24 August 2023.

Daniel O'Dell
Ombudsman