

The complaint

Miss R complains that Monzo Bank Ltd didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In November 2021, Miss R came into contact someone a social media dating site who I'll refer to as the "scammer". She had thought he was genuine because his profile contained photographs and interactions, and they shared personal details including their hobbies and background. The scammer told her he lived in London for work, and they soon began to communicate using WhatsApp. They exchanged personal information and photographs and made plans to meet up.

Eventually, the scammer suggested she should invest in cryptocurrency because it would make her life easier, and it would be a shared hobby. He explained he used cryptocurrency exchange companies to convert his money to cryptocurrency and then used a trading platform to carry out trades. He gave Miss R a link to a platform which looked extremely professional and featured a customer chat box, tutorials, investment and futures market predictions, and 'about us' and news sections. The platform claimed to have been established internationally in 2017 and to have obtained the Swiss VQF licence.

The scammer told Miss R he would place trades on her behalf so she wouldn't be burdened by the work. She opened an account on the trading platform and was told to open an account with a cryptocurrency exchange company, which would allow her to convert her money to cryptocurrency.

She paid the initial deposit from another bank account and made £50 profit within a few days. She then asked to withdraw £153.57, and the scammer explained she needed to go through the withdrawal process via the trading platform. When she received the money, she felt confident she could access her profits at any point and between 12 December 2021 and 17 January 2022, Miss R made nine payments to a cryptocurrency exchange company totalling £19,126.60.

On 12 December 2021, Miss R tried to transfer £2,987.64, but the payment was blocked, so the scammer told her to open a Monzo account and make the payment from there. On 7 January 2022, she made two payments of £4,187.25 and £778.19. The scammer then told

her she'd need to invest more to reach higher profits, so she deposited a further £3,764.11 and £294.44 into the trading account on 15 January 2022.

When she wanted to withdraw some money, she was told she'd need to pay tax, so she made further payments of £2,214.97 and £2,800 on 17 January 2022, followed by a final payment of £2,100 on 19 January 2022. She realised she'd been scammed when she continued to receive further demands for money.

Miss R contacted Monzo on 2 February 2022, but it refused to investigate the complaint or provide a written response. She said it had breached its duty of care by failing to identify the payments as unusual and suspicious and to warn her about the risks. She also said it had failed to raise a chargeback request.

Monzo said it had executed the payments in accordance with her payment instructions and that it provides education in relation to scams, including designated pages on its website. It said she had received a warning before the transfer on 17 January 2022, but she went ahead with the payment, and she didn't complete reasonable due diligence or meet the scammer or question the fees she was required to pay.

Monzo also said Miss R had gone ahead despite being provided with and having access to education relating to scams, and that an online search would have shown reviews indicating the trading platform might be part of a scam. Finally, it said it didn't raise a chargeback request as Mastercard has restrictions in place on the type of chargebacks that can be raised for investment purposes.

Miss R complained to this service with the assistance of a representative. She said Monzo should have spotted the red flags and asked probing questions about which company she was investing with and whether she had a broker. Her representative said that Miss R had a reasonable basis to believe the investment was genuine and that Monzo failed to raise a chargeback request when she reported the scam.

They said Monzo didn't do enough when Miss R made the first payment because she was only asked for the purpose of the payment and whether she'd been coerced, and it didn't give an effective scam warning. They said she wasn't asked whether she'd done any research on Companies House or the FCA website, how she found out about the investment, the returns she'd been promised, whether she'd checked the platform was regulated, whether she'd checked reviews on Trustpilot, whether there was a third party involved and if so whether she'd met the person in real life. Finally, they said Miss R wasn't given a cover story, so it's likely Monzo would have established the payments were orchestrated by someone she'd met on social media.

My provisional findings

I explained Chargeback is a voluntary scheme run by Mastercard whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Monzo) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Miss R).

Miss R's own testimony supported that she used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It was most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Miss R's

payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, I concluded any chargeback was destined fail, therefore I was satisfied that Monzo's decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

I was satisfied Ms R 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Ms K is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I carefully considered the circumstances, and I was persuaded this was a scam. But, although Miss R didn't intend her money to go to scammers, she did authorise the disputed payments. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a genuine cryptocurrency exchange company. However, Monzo had an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Miss R when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Miss R from financial harm due to fraud.

Miss R's representative had said there was a call on 12 December 2021, but the account of what was said is confused and Miss R later said she might have been mistaken. Monzo said there was no call. I considered the available evidence and on balance, in the absence of a call recording or a call log, I didn't think there was a call. So, I thought about whether Monzo ought to have blocked the payment on 12 December 2022 and I didn't think it needed to. This is because it was to a legitimate cryptocurrency exchange, and I didn't think the amount was such that it ought to have triggered an intervention.

However, I thought Monzo ought to have blocked the second payment, which was the first of two payments she made on 7 January 2022 for £4,187.25 and £778.19. This is because it was a large amount to a payee associated with cryptocurrency and as this was a new account with little spending history to compare it with, I thought it ought to have intervened to ask some questions.

I said Monzo should have contacted Miss R to ask robust questions about the purpose of the payment and whether there was a third party involved, and if so, how she'd met the third party. And as I was satisfied there was no call on 12 December 2022, there was no evidence she was told to lie, so I thought it was likely she'd have told the truth about the fact she'd met someone on social media who'd told her to invest in cryptocurrency and who'd told her he

needed access to her trading account to place trades on her behalf. I said I would then expect Monzo to have identified this was likely a scam and provided advice on how to check whether the investment was genuine and to have provided a full scam warning.

I hadn't seen any evidence that Miss R was keen to take risks and she didn't have a history of high-risk investing, so I thought it was likely she'd have followed any advice she was given and, ultimately, chosen not to go ahead with that and subsequent payments. Because of that, I thought Monzo missed an opportunity to intervene in circumstances when to do so might have prevented further loss and so it should refund the money she'd lost from that date onwards.

Contributory negligence

I considered whether the settlement should be reduced for contributory negligence, and I thought it should. Miss R had explained the scammer seemed genuine and that the investment opportunity was professional-looking, and I accepted the scam was sophisticated.

But she went ahead on the advice of someone she met on the internet who she'd never met, and I agreed with our investigator that the settlement should be reduced by 50% to reflect this.

Developments

Miss R has accepted my provisional findings.

Monzo has responded to say it maintains the payments are out of scope, and that payments are considered scam payments at the point they are transferred an account outside of the customer's control.

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.

Monzo hasn't said anything to persuade me to change my findings. I accept Miss R made payments to an account in her own name, but I remain satisfied it should have intervened on 7 January 2022 and that its failure to do so represented a missed opportunity to prevent her loss. So, it should refund the money she lost from that date onwards, with a reduction of 50% of the settlement for contributory negligence.

My final decision

My final decision is that I uphold this complaint and direct Monzo Bank Ltd to pay:

- £16,138.96 for disputed payments made between 7 January 2022 and 19 January 2022.
- this settlement should be reduced by 50% to reflect contributory negligence.

*If Monzo Bank Ltd deducts tax in relation to the interest element of this award it should provide Miss R with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 21 November 2023.

Carolyn Bonnell
Ombudsman