

The complaint

Mrs T complains that Monzo Bank Ltd ('Monzo') won't refund the money she lost in a scam.

What happened

Mrs T is represented in this complaint but for ease I'll mainly refer to Mrs T.

Mrs T says that she saw a link on a local social media page to an article from a local newspaper about a police officer who got involved in cryptocurrency trading and made big profits monthly. Mrs T has explained that she was going through divorce proceedings and was looking for a second income to support herself. She completed an enquiry form for a different company and then started to receive calls from traders at different companies. One particular company, which I'll refer to in this decision as L, stood out to Mrs T. A representative of L told Mrs T that she could set up an account on her behalf and help her to trade. Mrs T didn't know at the time, but she was dealing with scammers.

Mrs T initially made a card payment from another account of \$250 on 30 March 2022. She was then allowed to make a withdrawal of £70 to demonstrate that funds could be withdrawn when required. After this, Mrs T was manipulated to increase the payments she made to reach different levels that brought better deals on the trades that were made on her behalf. All payments were made to a cryptocurrency exchange and then on to the scammer. The scammer discussed each new opportunity in phone calls and Mrs T was able to see how her investment was doing on a portal. Mrs T was told she was investing in some well-known companies.

Below is a table of the payments Mrs T made to her cryptocurrency account.

Date	Amount
30/03/22	£1
30/03/22	£1
06/04/22	£70 credit
11/04/22	£1,000
11/04/22	£2,000
11/04/22	£800
11/04/22	£100
11/04/22	£1
11/04/22	£100
12/04/22	£3,800
14/04/22	£150
14/04/22	£8,100
14/04/22	£100

20/04/22	£5,000
20/04/22	£4,500
20/04/22	£500
21/04/22	£4,300
21/04/22	£25
21/04/22	£750
21/04/22	£2,000
25/04/22	£25
25/04/22	£8,500
26/04/22	£70 credit
TOTAL	£41,683 (first £70 credit not deducted as it relates to the payment from another bank)

Mrs T contacted Monzo to report the scam on 28 April 2022. Monzo said that it wasn't responsible for Mrs T's loss. This was because Mrs T transferred funds from her Monzo account to an account in her own name with a cryptocurrency exchange and then on to the scammer.

Our investigation so far

The investigator who considered this complaint recommended that it be upheld in part. He noted that the Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply but that Monzo hadn't identified a pattern of unusual spending. By the time Mrs T made the payment request for £3,800 on 12 April 2022 this pattern had emerged and Monzo should have intervened. Had it done so, the scam would have been uncovered and Mrs T's future loss prevented. But Mrs T hadn't completed enough checks and should share responsibility for her loss. The investigator also said that the service received by Mrs T was reasonable.

Mrs T thought the liability split was harsh and asked that a different ratio to be considered. Her representative referred to the fact she was in vulnerable circumstances at the time of the scam and was investing to ensure she could retain her home after her divorce. Mrs T's representative also pointed out that Monzo should have been aware of the prevalence of this sort of cryptocurrency investment scam and should have done more to prevent the loss.

Monzo didn't agree with the investigator's findings either. In summary, it said:

- Whilst the payments are larger than previous payments, they are still within Mrs T's spending limit.
- The cryptocurrency exchange funds were sent to doesn't allow deposits to be made unless the name of the sender matches the name on the account meaning Monzo could be certain funds were going to an account in Mrs T's control.
- Monzo accepted that transferring funds from another account to a Monzo account and on to a cryptocurrency wallet is common in cryptocurrency scams. But Monzo also highlighted other times when Mrs T moved funds to her Monzo account and then on to another account in her name.
- Monzo has sophisticated transaction monitoring systems in place.

The complaint was passed to me to consider. I reached a different conclusion to the investigator so issued a provisional decision on 22 June 2023. In the “What I’ve provisionally decided – and why” section of my provisional decision I said:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The CRM Code doesn’t apply in this case for a number of reasons including the fact that the payment from Mrs T’s cryptocurrency account to the scammer wasn’t a faster payment between UK GBP accounts.

In deciding what’s fair and reasonable in all the circumstances of a complaint, I’m required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Mrs T when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

Did Monzo act fairly and reasonably when it made the payments?

As I’ve explained above, I consider that as a matter of good practice Monzo should have been on the lookout for unusual or uncharacteristic transactions. So I’ve first considered whether the payment requests Mrs T made were unusual or uncharacteristic.

I’ve reviewed Mrs T’s bank statements from August 2021. These show low value transactions of up to £750 to a third party who was an established payee and transfers of up to £1,200 to Mrs T’s own account (not cryptocurrency).

I don’t consider the first payment requests were so unusual and out of character that Monzo ought to have had any concerns. And there’s a balance that must be struck – banks have obligations to be alert to fraud and scams, but they can’t reasonably be involved in every

transaction as this would cause huge disruption to legitimate payments. So I don't think Monzo needed to do anything when Mrs T made the early payments.

I think the position changed on 12 April 2022 when Mrs T made the £3,800 transfer though. Mrs T had never made multiple transfers to third parties on the same day. The previous day she'd transferred just over £4,000 to a cryptocurrency exchange and was making a further request to transfer £3,800. This meant Mrs T was asking to transfer a total of £7,800 to a cryptocurrency exchange across two days. This was out of character in terms of amount and recipient and there was a pattern of payments emerging that were consistent with cryptocurrency scams of this nature. In the circumstances, I consider Monzo ought reasonably to have intervened when the payment request was made.

I'm not persuaded that the fact the payments were going to Mrs T's own account and so appeared to be going somewhere safe and within her control should have satisfied Monzo that she wasn't at risk of harm. This is because by January 2019, banks had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

Monzo has provided examples of credits to Mrs T's Monzo accounts from other banks followed by payments out. But I think the point here is that Mrs T was transferring funds to a cryptocurrency exchange. And I don't think it's fair to say that because the payment requests were within Monzo's daily limits they weren't unusual.

I've thought about what would have happened if Monzo had intervened and asked proportionate questions when Mrs T made the £3,800 payment request. I see no reason why Mrs T wouldn't have told the truth. I think Monzo should have asked Mrs T questions around how she found out about the investment, what she understood about the investment and the return, why she was paying a cryptocurrency exchange and what she understood about regulation. And I think Monzo should have warned Mrs T about the risks involved in trading in cryptocurrency and the prevalence of scams in this area.

If Monzo had done so I think it's more likely than not Mrs T's loss would have been avoided. Mrs T was cold called by L (after expressing an interest in a different company), didn't have a good understanding of why she needed to buy and send cryptocurrency and L was never registered with the FCA. Mrs T was also told trades would be low risk so she wouldn't lose her money. Monzo, as an expert would have known that this type of trading involves risk.

Should Mrs T bear some responsibility for her loss?

I've thought carefully about whether Mrs T should share responsibility for her loss. On balance, I don't think she should. I say this because:

- Mrs T was an inexperienced investor and didn't know what kind of checks she needed to complete to protect herself from cruel scammers. She completed the checks she thought were appropriate by looking at L's website which appeared genuine and professional, and checking reviews.*
- Mrs T was also going through a difficult time and was perhaps more easily manipulated because of this.*
- Mrs T says she went through a verification process and had to provide documents, which made L seem legitimate. I've seen an email in which she was asked to send such documents. Mrs T has also explained that L provided her with a security code to give when she received calls from them to ensure L was speaking to the right person.*
- Mrs T has provided evidence to show she had to complete a trading disclaimer form. The email says that once the form has been signed, she would receive a signed copy. I consider documentation like this made L seem like a legitimate company.*
- Mrs T started by making small payments. After making an initial payment from*

another account Mrs T was able to withdraw £70. She has been clear that this wasn't profit, but the scammer showing her that funds could be withdrawn easily. Mrs T was required to complete an official looking withdrawal form which would have given her reassurance that she was investing in a genuine scheme. I appreciate allowing a small withdrawal to be made is a cruel trick played by scammers to entice a victim to part with further funds, but Mrs T wasn't aware of this.

- Mrs T was able to log into a sophisticated online portal. The portal showed deposits, withdrawal requests, transaction history and how the investment was performing. The portal looked legitimate and made Mrs T think she was dealing with a genuine company.
- Over the course of the almost two months Mrs T made payments the scammer built a rapport with her which gave Mrs T confidence to continue to make payments. Mrs T has explained that she felt she developed a business relationship with the advisors from L. She has provided evidence which shows she had regular telephone conversations with traders who sounded professional and knowledgeable. She also received messages with links to details about the investment opportunity being discussed.
- An FCA warning about L wasn't issued until May 2022, after Mrs T had made payments. Negative reviews about L only started to appear on a well-known review site in April 2022. By this time Mrs T had been dealing with L for some time, been able to withdraw a small amount and had built a relationship of trust.

Mrs T's representative has referred to her being vulnerable. I haven't seen any evidence that Monzo was made aware of the difficulties Mrs T was experiencing before the scam took place though, so Monzo had no reason to give her any additional support. But I think the position Mrs T was in should be taken into account in deciding a fair and reasonable outcome in this case.

Did Monzo do what it could to recover Mrs T's funds?

In this case Mrs T's funds went to a genuine cryptocurrency exchange and were rapidly moved out of this account. In the circumstances, I don't consider there was any prospect of Monzo recovering Mrs T's funds.

Distress and inconvenience

I've also considered whether Monzo should pay Mrs T compensation to recognise the distress and inconvenience she's experienced as a result of its actions. I appreciate that the scammers are the ones responsible for the majority of the upset Mrs T has suffered but I believe Monzo has unnecessarily added to it. I've listened to the welfare call Monzo had with Mrs T after the scam took place and it's clear the loss of such a substantial amount of money has had a huge impact on Mrs T. I won't go into detail here as Monzo will be well aware from this call and its other interactions with Mrs T of how Mrs T feels. I'm provisionally minded to require Monzo to pay Mrs T £200 for the additional distress and inconvenience it caused.

Interest

I can see Mrs T transferred funds into her account before making the scam payments but am uncertain where these funds came from. I think the most pragmatic approach, subject to any responses I receive, is to award 8% simple interest from the date of each relevant transaction to the date of settlement.

Mrs T accepted my provisional decision, but Monzo didn't. Monzo asked me to reconsider its offer to pay 50% of Mrs T's loss from and including the payment of £3,800 on 12 April 2022 and said:

- It hasn't provided a refund as Mrs T's loss isn't covered by the CRM Code.

- Mrs T should bear some responsibility for her loss as the payments made from her Monzo account were legitimate payments to her own account.

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.

Nothing Monzo has said in response to my provisional decision (relevant parts reproduced above) persuades me to depart from it.

I haven't assessed Monzo's liability to Mrs T under the CRM Code and have already addressed Monzo's point about the payments going to a genuine account in Mrs T's name. I said the fact funds were going to an account in Mrs T's name shouldn't have been enough to satisfy Monzo Mrs T wasn't at risk. This was because by the time the transactions were made banks like Monzo ought to have had a good understanding of how scams of this nature worked, including that a customer often moves funds to an account in their own name and on to a scammer.

My final decision

For the reasons set out above, I require Monzo Bank Ltd to:

- Refund all payments from (and including) £3,800 on 12 April 2022 onwards;
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement (less tax if properly deductible);
- Pay £200 for the additional stress and inconvenience caused to Mrs T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 23 August 2023.

Jay Hadfield
Ombudsman