

The complaint

Mr B complains that Monzo Bank Ltd didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

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.

Mr B was the victim of an investment scam. In August 2021, he was researching cryptocurrency investments, when he came across a channel on social media which I'll refer to as "C". The channel was run by a scammer who posted videos giving advice on which cryptocurrencies to invest in. He also hosted private forums where he gave detailed analysis of different cryptocurrencies.

Mr B could see the scammer had 350,000 subscribers across all social media platforms and had been active on social media since 2009. He couldn't see any negative feedback so he decided to subscribe to the scammer's Telegram group, which had over 3,000 members.

After he joined the Telegram group, the scammer told Mr B he would create and manage his trading account and provide training on how to make trades. He said Mr B could make a return of 80% and that he would take 15% commission on his profit, which Mr B thought was reasonable.

Once he'd provided his personal details and proof of ID, the scammer told Mr B he'd set up a trading account for him and that he'd need to pay £1,000 to activate the account. He was also told to purchase cryptocurrency through cryptocurrency exchange companies and then load it onto an online wallet. Between 9 August 2021 and 10 September 2021, he made nine payments to two cryptocurrency exchanges totalling £13,540 using a debit card connected to his Monzo account.

He realised he'd been the victim of a scam when he asked to make a withdrawal and was told to pay various fees. He contacted Monzo but it refused to refund any of the money he'd lost.

Mr B wasn't satisfied and so he complained to this service with the assistance of a representative. He said Monzo had failed to intervene and provide an effective warning, which would have stopped him from making the payments. He said he didn't indicate the account was set up for the purpose of trading and the payments were unusual because the account was used mostly for betting. He argued that on the first day of the scam he paid out £1,070 in three payments to one merchant, which ought to have raised concerns. He accepted he'd been scammed before but he said this was due to his inexperience and he'd trusted the scammer and thought he'd finally be able to make some money.

Mr B's representative said Monzo had failed to raise a chargeback request. They also said Mr B hadn't previously made payments to cryptocurrency merchants and the high value

transactions were unusual for the account. They said the total amount debiting the account in May 2021 was £558.65 and in June 2021 and July 2021, most of the payments were to betting sites and the total spend in those months was £1284.37 and £1586.82.

They said Monzo should have contacted Mr B and asked him why he was making the payments, who he was trading with, how he found out about the company, whether he'd researched the company, whether he'd checked the Financial Conduct Authority ("FCA") website, what returns he'd been predicted, whether he'd made any withdrawals and whether anyone was pressuring him to make the payment. Had it done so, as there was no evidence that Mr B had been coached to lie, it would have been clear he was being scammed.

Monzo argued there was no reason for it to have intervened, the deal was too good to be true and Mr B had sent £12,470 in fees having done little to no due diligence, yet he went ahead with the payments having previously lost money to an investment.

It said it was unable to raise a chargeback dispute because it didn't have sufficient grounds and the Contingent Reimbursement Model ("CRM") code didn't apply to card payments. It also said the payments from Monzo weren't fraudulent as they were made by Mr B to another account in his own name and control, so it wasn't the point of loss.

Our investigator recommended the complaint should be upheld. He said Monzo ought to have intervened when Mr B made the fifth payment because the transaction was higher than the normal activity on the account which was normally used for day to day spending, and it was unusual that he was paying a cryptocurrency merchant. He thought Monzo ought to have questioned Mr B about the payment and had it done so there was no reason to doubt he would have explained what he was doing and it would have been apparent he was falling victim to a scam. So, he thought Monzo should refund the money Mr B had lost from that payment onwards.

However, our investigator explained there were clear warning signs this was a scam yet Mr B went ahead with the payments without doing proper due diligence. He was taking advice from someone he'd never met and the returns should also have been a clear warning sign. So he recommended that the settlement should be reduced by 50% for contributory negligence.

Monzo has asked for the complaint to be reviewed by an Ombudsman. It has argued that Mr B had a history of gambling, so he was used to making risk payments. It said the payments weren't made in quick succession or on the same day, cryptocurrency trading is a popular form of investing and Mr B was paying an account in his own name, so there was no reason for it to have intervened.

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 reached the same conclusion as our investigator. And for largely the same reasons.

I've thought about whether Monzo could have done more to recover Mr B's payments when he reported the scam to it. Chargeback is a voluntary scheme run by Visa 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 Visa'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 (Mr B).

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

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

There's no dispute that this was a scam but although Mr B didn't intend his money to go to scammers, he 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

Monzo is an emoney/money remittance provider and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the FCA's Principles for Businesses and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I've thought about whether Monzo could have done anything to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to genuine cryptocurrency exchange companies. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr B when he 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 Mr B from financial harm due to fraud.

The payments didn't flag as suspicious on Monzo's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr B normally ran his account and I think they were. All the payments were to legitimate cryptocurrency exchange companies and the first four payments were for small amounts, so I don't think Monzo needed to intervene. But the fifth payment was for £5,000, which was unusual when compared with the previous spending on the account. And Mr B had transferred funds into the account from another of his accounts, before payment them out again on the same day, which ought to have raised concern, notwithstanding the fact Mr B was paying an account in his name. So, I think Monzo missed an opportunity to intervene.

Monzo ought to have contacted Mr B either by phone or via its live chat facility and asked him why he was making the payments, whether there was a third party involved, whether he'd been told to download remote access software, whether he'd been promised unrealistic returns, whether he'd been allowed to make any withdrawals and whether he'd been told to make an onwards payment from the cryptocurrency exchange. And had it done so, I haven't seen any evidence that he'd been coached to lie and so I think he'd have told Monzo he was

investing in cryptocurrency and that he was taking advice from someone he'd found on social media. I think he'd have also mentioned that he'd been promised an 80% return on his investment and that he'd been advised to make an onwards payment from the cryptocurrency exchange.

I'm not aware that there was any information available online which would have confirmed that the investment was a scam, but I think he'd have listened to some very robust advice from Monzo that there were red flags present which indicated that he was being scammed and ultimately decided not to make any further payments. Because of this I'm satisfied that Monzo's failure to intervene when he made the fifth payment represented a missed opportunity to have prevented his loss and so it should refund the money he lost from that payment onwards.

Contributory negligence

Mr B has explained that the scammer had 350,000 followers across all social media platforms and that the account had been active since 2019. I accept this would have seemed impressive and that he wouldn't necessarily have understood the risks of taking advice from someone he'd found on social media. But there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence and, in the circumstances, I don't think Mr B did enough to verify the investment was genuine.

I'm satisfied this was a sophisticated scam but I don't accept the scammer would have seemed particularly professional and Mr B has explained that he'd lost money in a previous investment, so I would expect him to have been more careful before deciding to invest again. I would also expect him to have been more aware of the potential risks and to have stopped to consider whether the very high returns he was being promised might be indicative that something was amiss. This might reasonably have led him to researching the trading platform and taking independent advice before making any payments. Because there's no evidence he did what I would consider to be reasonable due diligence, I agree with our investigator that the settlement should be reduced by 50% for contributory negligence.

Compensation

Mr B isn't entitled to any compensation.

My final decision

My final decision is that Monzo Bank Ltd should:

- refund the money Mr B lost from the fifth payment onwards, less any credits or refunds received during the scam period.
- this settlement should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 April 2024.

Carolyn Bonnell
Ombudsman