

The complaint

Mr S complains that Monzo Bank Ltd refuses to refund the money he lost to an investment scammer.

What happened

In October 2022, Mr S was introduced to an investment company I'll call 'C' by an individual (the scammer) he'd met on a dating website. The scammer explained they were a successful broker who was knowledgeable about trading. After about a month of speaking to the scammer, Mr S decided to invest with C. He said C's website looked professional and so he proceeded to make an initial deposit. Mr S was instructed to first purchase crypto before sending it onto his trading platform with C. Mr S was coached by the scammer on how to invest and he watched his investment grow.

When Mr S tried to withdraw his funds, he was told to pay tax to access his funds, which he duly did. He was then instructed to make a further payment as a withdrawal fee, which he also duly paid. Mr S said the scammer asked him to make a final payment to enable the withdrawal and Mr S paid this. When no funds were received and a further payment was requested, Mr S realised he'd been scammed. He realised that C had impersonated a legitimate company.

From 15 November 2022 to 17 November 2022 Mr S sent seven payments from his Monzo account totalling £12,945.32 to a cryptocurrency exchange, purchased crypto, then sent the crypto onto his account with C. He says he used three loans to fund the payments in order to access his investment.

Mr S complained to Monzo and it declined to refund the disputed transactions. Mr S referred his complaint to this service.

One of our Investigators looked into things. She felt Monzo should have reasonably intervened based on the unusual nature of the transactions compared to Mr S' usual spend. She suggested Monzo refund the disputed transactions. Monzo didn't agree. It said in summary:

- The payments were deemed suspicious because they were paid to a legitimate cryptocurrency exchange.
- Mr S didn't have any reasonable basis to believe in the investment opportunity. For example, he didn't check that the investor was registered with the FCA.
- In line with Phillips v Barclays – the regulator and the court upheld that they expect banks to carry out customers wishes.
- The funds were moved to an account in Mr S' control and no fraud happened at that stage and it can't be responsible for what happened later.
- It doesn't believe Mr S needed to be an experienced investor to check details about a company or investor.

The complaint has therefore been passed to me for determination.

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 reviewed the complaint, I uphold it and I'll explain why.

Before I discuss my findings in further detail, I've noted that Mr S' initial payment to the crypto exchange was for £0.10p. This was made a couple of minutes before his initial disputed payment. For the avoidance of doubt, I've not considered this payment as part of Mr S' dispute as this hasn't been complained about.

It is common ground that the disputed payments were 'authorised' by Mr S for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr S using the legitimate security credentials provided to him by Monzo. These must be regarded as 'authorised payments' even though Mr S was the victim of a scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory 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 its customers were at risk of fraud (amongst 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; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made 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.

Neither party disputes that Mr S was the victim of a scam. I'm also satisfied Mr S was the victim of a scam. C, in my judgement, were scammers based on all the evidence I've seen. Based on this, I've thought about whether Monzo should have reasonably made further enquiries based on the nature of Mr S' payments.

Monzo says Mr S paid a legitimate crypto exchange, so it doesn't think the payments he made were unusual. I don't agree. Monzo, as a financial professional should reasonably be aware that payments to cryptocurrency exchanges carry a high risk of fraud against the backdrop of common investment scams that were occurring at the time. With that being said, I recognise that not all payments to cryptocurrency exchanges are made as the result of fraud or scams. So, I've considered this when reviewing Mr S' normal account spend against the disputed transactions.

I've noted Mr S commonly spent less than £100 on any one occasion. There was the very occasional one-off larger transaction but this was no more than £800. In my judgement, Mr S' initial payment of £5,149.50 was significantly unusual for him and I think it would have been reasonable for Monzo to have made further enquiries to check that all was well before processing the payment.

In reaching my decision that firms should have made further enquiries, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*. 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 23 March 2021 terms and conditions gave it rights 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)

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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

If Monzo had intervened, I think it would have been reasonable for it to ask Mr S some simple questions. There's no reason for me to doubt that Mr S wouldn't have explained what he was doing in that he was investing with C and he was making a payment for tax to release his funds. I think Monzo would have at this stage been concerned that Mr S could be falling victim to a scam and explained common cryptocurrency scams it sees, along with an explanation of how they operate – particularly around paying money to release money. I think Monzo could have reasonably sign posted Mr S to the various credible warnings about cryptocurrency scams and encouraged him to carry out further pointed checks himself.

I think Mr S would have likely gone away to carry out his own checks into the operation of cryptocurrency scams and would have likely seen that what he was involved in, had all the hallmarks of a common cryptocurrency scam. I think Mr S would have stopped in his tracks and I don't think he would have sent any further payments to C. In other words, but for a warning from Monzo, I don't think Mr S would have lost any money from his Monzo account to C.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In my judgement, this was a very sophisticated scam. I've noted Monzo's comments about Mr S carrying out additional research to check whether C was regulated with the FCA. I don't

agree that Mr S would have reasonably known to carry out the checks Monzo describes. As I've explained this was a sophisticated scam and Mr S was introduced to it by someone he thought he was in a relationship with.

I don't think Mr S could have reasonably known that C were impersonating a legitimate company. He was provided with a trading website and saw his investments growing, I don't think he could have reasonably known that the investment account he was viewing was likely fake or a simulation. Nor do I think he could have reasonably known that the request to pay money to release the investment was a common scam indicator – unless he was provided with information about the operation of these types of scams by a financial professional (like Monzo).

In this case, I don't think Mr S should share responsibility for his losses.

My final decision

My final decision is, I uphold this complaint. Monzo Bank Ltd should;

- Refund Mr S all of his disputed payments totalling £12,945.32.
- Pay 8% simple interest per year, on the above amount from the respective dates of loss to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 January 2024.

Dolores Njemanze
Ombudsman