

## **The complaint**

Mrs P complains that Monzo Bank Ltd didn't do enough to protect her from the financial harm caused by an investment scam company, 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 March 2022, Mrs P saw an advert on social media about a police officer who had made £10,000 profit from investing £250 in cryptocurrency. She clicked on a link which took her to a sign-up page, which she completed. She was then contacted by someone claiming to work for a company I'll refer to as "F", who explained the process and assured her that if the investment didn't work, she'd get her money back.

Mrs P felt the broker was charismatic, confident, and knowledgeable. She searched for reviews about F online and discussed with the broker his personal circumstances and how the opportunity had given his children the best possible life. He told her to first purchase cryptocurrency through a cryptocurrency exchange company and then load the cryptocurrency onto her online wallet. He also told her to download Anydesk so he could complete trades on her behalf by remotely accessing her device.

On 19 April 2022, Mrs P made a payment of £7,000 to an account she held with "W", followed by a further payment of £1,000 on 20 April 2022. She tried to make a further payment of £195 on 30 April 2022, but the payment was blocked.

Mrs P contacted Monzo when she realised she'd been the victim of a scam, but it refused to refund any money. It said the Contingent Reimbursement Model ("CRM") code didn't apply because it had been sent to an international account and it had executed the payments in accordance with her instructions. It also said it provides education in relation to scams and she didn't take sufficient steps to verify the investment was genuine. It said the fact she learned about the investment online should have raised concerns and she didn't search Trustpilot or check if the broker was registered with the FCA.

Mrs P wasn't satisfied and so she complained to this service. She explained she didn't think the social media platform would allow scammers to advertise and the payments were unusual so Monzo should have intervened to give her an effective warning. She said the highest transaction on her account in the three months prior to the scam was for £606.12 on 18 April 2022, and her general spending is low value, so the payments were unusual.

Her representative explained Mrs P had never invested before and had believed the story she'd read on social media. They said the payments were unusual when compared to Mrs P's general spending habits, as she uses her account for small spending and to pay bills via direct debit. These were international payments through 'W', which Mrs P had to pre-fund from an external account. They said Monzo should have contacted Mrs P and had a conversation after which it would have been apparent that she had fallen victim to a scam.

They also said she didn't receive an effective pop-up notification or scam warning when she made the payments and the messages she received were generic. They said Monzo should have asked questions around the purpose of the payment, including how she found out about the company, whether she'd done any research, whether she'd checked the FCA register, whether she'd been promised unrealistic returns, whether she'd received any withdrawals, whether there was a third party involved and whether she'd downloaded a screensharing device, and with this information it should have realised Mrs P was falling victim to an elaborate investment scam.

Our investigator felt the complaint should be upheld. She said the first payment was high when compared to Mrs P's usual account activity, using up almost her entire available balance and it was to a new, international payee. She didn't think the information on Monzo's website was sufficient and Monzo ought to have contacted Mrs P to ask probing questions and give a full scam warning.

Our investigator was satisfied that if Mrs P was asked about the payment, she would've explained the payments related to cryptocurrency and she'd downloaded Anydesk for her broker to make investment choices on her behalf. And with that information Monzo should reasonably have identified this had the hallmarks of a scam and taken steps to provide a warning, which might have prevented her loss.

Monzo has asked for the complaint to be reviewed by an Ombudsman. It's said the payments aren't covered under the Contingent Reimbursement Model ("CRM") code and it didn't need to flag the payments just because they were higher amounts to an international payee. It said it partners with "W", so it isn't unusual for customers to send money internationally.

### **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, for broadly the same reasons.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mrs P says she's fallen victim to, in all but a limited number of circumstances. Monzo has said the CRM code didn't apply in this case because the disputed payments were international payments, and I'm satisfied that's fair.

I'm also satisfied Mrs P '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, Mrs P 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've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Mrs P 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've thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity, but Monzo had an obligation to 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 Mrs P 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 Mrs P 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 Mrs P normally ran her account and think they were. The first payment was for £7,000, which is significantly higher than any of the payments she made in the months prior to the scam. And it was an international payment to a new payee. So, I think this payment was unusual and that Monzo did miss an opportunity to intervene.

I think Monzo should reasonably have blocked the payment and contacted Mrs P before releasing the payment. During the call I would expect it to have asked some probing questions around the purpose of the payment, whether there was a third party involved, how she met the third party, whether she'd done any checks and whether she'd been told to download remote access software, in response to which I think it's likely she'd have explained she found F online and the fact she'd been told to download Anydesk.

I'm satisfied that if Mrs P had been asked these questions, she'd have answered truthfully because there's no evidence of her having misled the bank before or that she was told to do so by the scammers. And so, I'm satisfied that Monzo would likely have gathered enough information to suggest the investment could be a scam. I would then expect Monzo to have warned Mrs P about the risks associated with the investment and explained that the circumstances had the hallmarks of a common investment scam. I'd also expect it to discuss with her the nature of the checks she'd undertaken and to give some advice on additional due diligence.

There were no regulatory warnings about F with either the Financial Conduct Authority ("FCA") or International Organization of Securities Commissions ("IOSCO"), but I haven't seen any evidence that Mrs P was keen to take risks and she didn't have a history of high-risk investing. So, I think that if she'd had any inkling this might be a scam, it's likely she'd have chosen not to go ahead with the payments.

Because of this, I think that Monzo missed an opportunity to intervene in circumstances when to do so might have prevented her loss. Consequently, I'm minded to direct Monzo to refund the money she lost.

### *Contributory negligence*

I've considered whether the settlement should be reduced for contributory negligence, but I don't think it does. Mrs P has explained that the scammer appeared knowledgeable and competent, and she genuinely believed this was a genuine investment opportunity.

Having considered the circumstances of this scam, I'm satisfied it was sophisticated and I don't think it was unreasonable for Mrs P to have thought it was genuine. She's said she did some basic online research, and this left her feeling confident about the investment. Consequently, whilst there may be cases where a reduction for contributory negligence is appropriate, I don't think this is one of them.

Overall, I'm satisfied Monzo missed an opportunity to intervene when Mrs P made the first payment and so it should refund the money she lost.

### **My final decision**

My final decision is that Monzo Bank Ltd should:

- refund £8,000.
- 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 Mrs P with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 23 October 2023.

Carolyn Bonnell  
**Ombudsman**