

The complaint

Mr T complains that Monzo Bank Ltd didn't do enough to protect him from the financial harm caused by an investment scam company, 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.

On 5 October 2022, Mr T received a message on WhatsApp from a woman who I'll refer to as "the scammer". She appeared to have the wrong number but asked Mr T if he wanted to be friends and asked him to communicate with her via Telegram.

Mr T became friendly with the scammer, and she suggested he could make money by investing in cryptocurrency. She told him she'd made a lot of money because she knew when to buy and sell the cryptocurrency and that he could make up to 10% profit per day on his investment. She advised him to open an account with Monzo and a cryptocurrency exchange company. She also sent him a link to an investment company I'll refer to as "C" and told him to open an account, which required him to submit a copy of his ID.

The scammer advised Mr T to first purchase cryptocurrency through the cryptocurrency exchange company and then load it onto an online wallet. Between 13 October 2022 and 1 December 2022, he made multiple payments to two cryptocurrency exchange companies totalling £71,321.96 via faster payment and his Monzo debit card. During the scam period he received withdrawals totalling £791.56.

On 13 October, Mr T paid £50 from his Monzo account to the cryptocurrency exchange before transferring the funds to C. He made a profit of £15, which he thought was reasonable and over the coming weeks he made multiple payments funded by savings and four loans he took out on advice from the scammer. The scammer told him the loans could be paid off using profits from the investment and he was reassured by the fact he could see profits on the trading platform and was able to make small withdrawals.

When Mr T decided he wanted to make a withdrawal, he was told he'd need to pay 15% of his profits to release the funds. Mr T said he couldn't afford to pay this, but the scammer told him she'd pay the remaining amount and he could then pay her back. On 16 November 2022, Mr T received an email telling him further deposits were required to release funds and he realised he'd been the victim of a scam when he was unable to make any more payments and he eventually lost contact with the scammer.

Mr T reported the scam to Monzo explaining the scammer told him banks didn't like dealing with cryptocurrency, so he ignored the pop-up warnings because he could see his profits and he had no reason to believe it was a scam.

Monzo said it had tried to seek recovery of the funds, but no funds remained in the beneficiary account. And it was unable to provide a refund because the payments from Mr

T's Monzo account weren't the scam payments, so it would expect the cryptocurrency exchange to investigate. It said it had executed the payments in accordance with Mr T's instructions and he had received warnings before making the payments. Specifically, when he made the first payment, he was presented with a new payee warning screen which he confirmed he had read and wanted to continue.

It said there was no evidence Mr T had done a reasonable due diligence as he didn't meet the scammer or any representative from C. And he should have realised the investment was a scam because he was being given investment advice by someone he met through WhatsApp, the returns were unrealistic, and he was told to ignore warnings from the bank.

Mr T wasn't satisfied and so he complained to this service with the assistance of a representative. He explained he sent over 20 payments totalling £70,236 without any intervention from Monzo, except for a general pop-up warning asking if he was sure he wanted to make the payments, which wasn't effective because there was no scam warning.

He explained he wasn't an experienced investor, and he thought the investment was genuine as he was able to make small withdrawals and he trusted the scammer was acting in his best interests. He said the payments were concerning because he'd recently opened the account, and he'd made large payments to a cryptocurrency merchant, which Monzo should have identified as unusual.

The representative said Monzo should have intervened on 13 October 2022 when Mr T paid £945 to the cryptocurrency exchange. It said there were multiple red flags including the fact he was making large payments to a high-risk cryptocurrency merchant. And the activity matched known fraud trends such as making an initial small payment and loans coming into the account which were immediately dispersed.

The representative said Monzo should have contacted Mr T and asked probing questions around why he was making the payment, how he found out about the investment company, whether he'd researched the company, whether he'd checked the Financial Conduct Authority ("FCA") register, whether he'd been promised unrealistic returns, whether he'd received any withdrawals and whether he'd done any research or read any reviews. And as Mr T wasn't prompted to give false answers, Monzo would have been able to identify he was falling victim to a scam and provide a tailored warning, which would have reduced the risk of financial harm or stopped the scam entirely.

The representative explained that the account was opened for the investment, so there was no account history compare the payments with. But as soon as the account was opened, Mr T moved large sums of money in and out of the account, which should have indicated something untoward was happening.

Our investigator thought the complaint should be upheld. She said the payments followed a pattern of spending which was typical of an investment scam. She explained the first two payments were low value, but the third payment of £10,000 was paid out after Mr T paid £25,000 into the account, which was suspicious and should have triggered an intervention.

At this point she thought Monzo should have contacted Mr T and asked questions about the purpose of the payment and whether there was a 'broker' or 'account manager' helping him in the background. It should also have asked what checks he'd done, whether he had a trading account, whether he had been able to successfully withdraw funds and whether the investment opportunity was linked to a prominent individual.

She noted Mr T wasn't given a cover story, so she was satisfied he'd have said he was being advised by someone he'd met via WhatsApp, which would have indicated to Monzo

the investment was probably a scam. Monzo could then have explained how investment scams work, which could have prevented the scam. So, she thought it should refund the money Mr T had lost from the third payment onwards, less the withdrawals he'd received.

Following further comments from Monzo, our investigator explained she was satisfied Mr T should have done some basic checks on C as he was investing such large sums of money, and had he done so, he'd have found negative reviews which pre-dated the payments. She noted the scammer had contacted Mr T out of the blue and he that should have performed some simple due diligence which could have minimised his loss. So, she recommended the settlement should be reduced by 50% for contributory negligence.

Mr T has indicated that he would be happy with a refund of £34,767.70 plus interest, but Monzo maintains it isn't liable to refund any money because he didn't do reasonable due diligence and there is nothing in the CRM code that states it should share liability.

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.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr T says he's fallen victim to, in all but a limited number of circumstances, but the CRM code didn't apply in this case because the payments were to an account in Mr T's own name.

I'm satisfied Mr T 'authorised' the payments for the purposes of the 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 T 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 satisfied this was a scam. But, although Mr T 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

I've also 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've 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 need to consider whether it ought to have intervened to warn Mr T 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 T 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 T normally ran his account and I think they were. This was a newly opened account so there was no account history to compare the payments with. And Mr T was paying a legitimate cryptocurrency exchange, so the nature of the merchant wasn't concerning. But, while the first two payments were low value, the third payment which took place on 15 October 2022 was for £10,000 and followed a payment into the account of £25,000. So, this was a high value payment to a cryptocurrency merchant following a large payment into the account, which is a known indicator for fraud, so I'm satisfied it should have triggered an intervention from Monzo.

At this point Monzo should have contacted Mr T and asked him some questions around the purpose of the payment including how he learned about the investment opportunity, whether there was a third party involved, whether he'd been told to download AnyDesk software, whether he'd been promised unrealistic returns, whether he'd been allowed to make small withdrawals and whether he'd been told to make an onwards payment from the cryptocurrency exchange.

There is no evidence Mr T had been told to lie to the bank and so I think he'd have told it about C and that he'd been told he could make 10% profit per day on the investment. And he'd probably have told it he'd started with an initial investment of £50 and that he'd been told to transfer the cryptocurrency to C from the cryptocurrency exchange, which would have been enough information for Monzo to have identified this was probably a scam.

Monzo should then discussed with Mr T the nature of the checks he'd undertaken and given some advice on additional due diligence. It should also have warned him about the risks associated with the investment and explained that scammers often tell their victims to make onwards payments from cryptocurrency exchanges and that there were red flags present which indicated the investment was a scam.

There were no warnings about C on either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites which would have alerted Mr T to the fact this was a scam. But I haven't seen any evidence that Mr T was keen to take risks and he didn't have a history of high-risk investing. So, even though he ignored a warning from Monzo on the scammer's advice when he set up the new payee, I don't consider that warning would have been sufficient on 15 October 2022 and I think that if he'd had a tailored, robust, clear warning from Monzo that the investment was probably a scam, it's likely he'd have chosen not to go ahead with the investment.

Because of this, I think Monzo missed an opportunity to intervene in circumstances which might have prevented Mr T's loss. Consequently, I'm satisfied it should refund the money he lost from the third payment onwards.

Contributory negligence

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 T did enough to check the investment was genuine before making the payments.

Mr T was acting on advice from someone he'd never met who had contacted him via WhatsApp in suspicious circumstances. And even though in recent years instances of

individuals making large amounts of money by trading in cryptocurrency have been highly publicised, he was promised unrealistic returns, which should reasonably have caused him to stop and think about what he was doing.

I accept Mr T hadn't invested in cryptocurrency before and so this was an area with which he was unfamiliar. But he took out four loans on the advice of someone he'd never met and who told him she had put £10,000 into his trading account, which was implausible. So, even though I accept this was a sophisticated scam and that Mr T had trusted the scammer, I think he went ahead with the investment despite some very clear warning signs and that he should have done more checks before deciding to go ahead with the investment. Consequently, I think the settlement should be reduced by 50% for contributory negligence.

Compensation

In the circumstances, I don't think Mr T is entitled to any compensation from Monzo.

My final decision

My final decision is that Monzo Bank Ltd should:

- refund £69,535.40.
- this settlement should be reduced by 50% to reflect contributory negligence.
- pay simple interest at the rate from the originating loan accounts on the loan amounts per year, from the respective dates of loss to the date of settlement.
- pay 8% simple interest*, per year, on the remaining funds 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 T with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 November 2023.

Carolyn Bonnell
Ombudsman