DRN-4379328

## The complaint

Mr W is unhappy Monzo Bank Ltd won't reimburse him for the money he lost when he fell victim to a scam.

## What happened

Mr W was contacted unexpectedly by someone on a messaging app and struck up a friendship with them. They discussed cryptocurrency investments – which Mr W says he had dabbled in previously – and this person told Mr W about a trading platform they used which was making them significant profits. Mr W did an internet search and the platform appeared to be legitimate – although there was no information available about the particular investment scheme he would be using – so Mr W was reassured that this was a good investment opportunity and agreed to invest himself. He says he was put in touch with someone who would help him with his trading account and in November 2022 he began to invest. Unfortunately, and unknown to Mr W at the time, the people he was dealing with were scammers. So the payments he was making from his Monzo account to a cryptocurrency account he held were then being sent on to the scammers, and not to a legitimate investment.

In total, Mr W made payments of over £27,000 to the scammers from his Monzo account. £15,000 of this was funded by a loan that Mr W took out with Monzo. However, when he was told he'd need to pay more fees – which he could not afford – before he could make any withdrawal from his investment he did some further searching online and discovered other people who had fallen victim to the same scam. It's at this stage that Mr W realised he had not been dealing with a legitimate investment firm.

Mr W contacted Monzo to tell it what had happened. Monzo wrote off the loan that Mr W had taken out as a gesture of goodwill, but ultimately it told him it would not be able to refund the rest of the money he had lost as it felt that the loss had been incurred from Mr W's cryptocurrency account, not from his Monzo account, and so it felt it was not responsible for the loss. It did though pay him £150 to recognise that it could have handled his concerns better as there were delays in Mr W being provided with a response to his claim.

Mr W was unhappy with Monzo's response and so he referred his complaint to our service.

One of our Investigators looked into what had happened, and ultimately they felt that Monzo should have stepped in to question Mr W about the second payment he made – which was for £7,500. They felt that, if Monzo had done so, then the scam would have been uncovered and the majority of Mr W's loss could have been prevented. However, the Investigator also felt that Mr W should bear some responsibility for what had happened. They did not consider he had done enough to ensure the people he was dealing with were legitimate, and felt there were some red flags which should have indicated to him that something may be amiss.

So our Investigator recommended that Monzo refund 50% of the payments made from the second payment onwards, plus some interest.

Mr W accepted the Investigator's findings, Monzo did not. It maintains that it is not responsible for the loss given that the payments from Mr W's Monzo account were made to a cryptocurrency account in his own name.

As no agreement could be reached, this case has been passed to me for a decision.

**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 the same reasons.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr W's account is that Mr W is responsible for payments he has authorised himself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with their customer's instructions.

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 December 2021 terms and conditions (which applied at the time of the payments in dispute here) gave it rights (but not obligations) 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 it's app, email, phone or by post)

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected criminal activity
- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, 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 APP fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6)[1].
- Banks have a longstanding regulatory duty *"to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime"* (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the *"Financial crime: a guide for firms".*[2].
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could

[1] Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

[2] For example, both the FSA's Financial Crime Guide at 4.2.5G and the FCA's 2015 "Financial crime: a guide for firms" gave examples of good practice in relation to investment fraud saying:

*"A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.*

*A bank contacts customers if it suspects a payment is being made to an investment fraudster.*

*A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules."*

involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.

- Monzo has agreed to abide by the principles CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of the payments this complaint is about), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

Overall, 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 made additional checks, or provided additional warnings, before processing a payment – as in practice all banks do.

- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Monzo have fairly and reasonably made further enquiries before it processed Mr W's payments?*

Mr W's Monzo account had been open for some time and was used regularly for day-to-day expenditure, so Monzo had a fairly significant background against which to compare any payments.

I acknowledge that the payments in dispute here were to an account Mr W had paid before, and to an account in Mr W's own name, and so would have seemed less risky to Monzo. But just because a payment is to an account in the consumer's own name or to an account they have paid before, that does not mean it bears no risk at all, and I would still expect Monzo to keep an eye out for particularly high payments or those that bore other hallmarks of potential fraud, even if those payments were made to another account belonging to their customer or one that their customer had paid previously.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks, e-money

providers or cryptocurrency wallets, and then on to the scammer – is increasingly a feature of this kind of investment scam. And I would expect Monzo to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

The first payment made by Mr W was for only £10, a low amount considering how the Monzo account usually operated, and so I don't think there was anything about that payment that ought to have suggested to Monzo that Mr W was at risk of financial harm. But I agree with our Investigator that the next payment, which was for £7,500, should have flagged as potentially suspicious to Monzo, despite the fact that it was a payment to an existing payee, and the account it was being paid into was Mr W's own cryptocurrency account. I say this because £7,500 was significantly higher than any other payment made from the account in the previous six months, and this payment was being made to a cryptocurrency provider, which – given the prevalence of cryptocurrency scams – would have been another indicator that something untoward could have been going on. So, with this in mind, I think Monzo should have contacted Mr W directly to ask him some questions before allowing this payment to go through.

Had Monzo done this, then I think it is more likely than not that the scam would have been uncovered. Mr W doesn't appear to have been given a cover story to use by the scammer, so I think that if Monzo had asked what the payments were for then he would have been open and honest. And what Mr W would likely have told Monzo about what he was doing should have rung alarm bells for Monzo, given that these types of investment scam are becoming increasingly common. Monzo could then have explained the risks Mr W was exposing himself to, and I consider it likely that the spell of the scam would have been broken and Mr W wouldn't have proceeded with the payments. So I think Monzo could have prevented the losses Mr W incurred from the second payment onwards.

I do, however, agree with our Investigator's finding that Mr W should share some responsibility for what has happened here. The manner in which he was initially contacted by the scammer was unorthodox, and I'm not satisfied that Mr W took reasonable steps to ensure that the money he was investing was going to a legitimate investment platform. So with this in mind, I think it's fair and reasonable for Mr W to bear responsibility for 50% of the loss.

I've also thought about whether Monzo could have done more to recover the funds after Mr W reported the fraud, but given that the money was paid to Mr W's own cryptocurrency account and was then immediately moved on to the scammers, I don't think it could have done more.

Monzo, by its own admission, did not handle Mr W's complaint as well as it could have. And as a result, it paid him £150 to recognise any distress and inconvenience caused. I consider this to be fair and reasonable compensation in the circumstances of this complaint.

**Putting things right**

To resolve this complaint Monzo should:

- Refund 50% of the outstanding loss of £12,585 – representing a refund of £6,292.50
- Pay 8% simple interest per annum on that amount calculated from the date of each transaction until this complaint is settled.

## My final decision

I uphold this complaint. Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 January 2024.

Sophie Mitchell
**Ombudsman**