

The complaint

Mr P 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.

In July 2022, Mr P met a woman on a dating site who I'll refer to as "the scammer". They began to communicate on WhatsApp and the scammer told Mr P where she was from and that she ran a restaurant. She said she was 40 years old, divorced with no children, and looking to build a relationship.

The scammer told Mr P she invested in cryptocurrency and recommended an investment company I'll refer to as "L". Mr P had previously invested a small amount in cryptocurrency and the scammer told him the returns were higher than those offered by the bank.

The scammer sent screenshots showing profits from her investments and Mr P checked L's website, which looked very professional. He was required to send a copy of his passport to open an account, which he linked with an account he already had with a cryptocurrency exchange company I'll refer to as "C".

He was told to first purchase cryptocurrency through C and then load the cryptocurrency onto an online wallet. On 5 November 2022 made a payment of £5,500 to C using a debit card connected to his Monzo account. He was later told about an opportunity to make more money and that he'd need to have £30,000 in his account to make a withdrawal. But when the pressure to invest increased, he did some online research and realised he'd been scammed.

Mr P complained to this service with the assistance of a representative who explained he hadn't used his Monzo account to buy cryptocurrency before. They said the payment should have seemed unusual as the account had been dormant for over a year and he'd moved funds from another account in his own name before sending them straight out to a cryptocurrency merchant, which was known scam behaviour.

The representative said Monzo should have contacted Mr P and asked him why he was making the payment and what he planned to do with the funds after transferring them to C. It should have also asked him for the name of the investment company and told him to check the Financial Conduct Authority ("FCA") register. And as most scams involve transfers to cryptocurrency exchanges and Mr P was being advised to invest by someone he'd met online, it would have had enough information to identify this was a scam.

Monzo said C had provided the service it was required to provide, so there were no grounds to raise a chargeback request. And as the payment was to another account in Mr P's name,

so it wasn't the point of loss, and it wasn't covered under the Contingent Reimbursement Model ("CRM") code because the code doesn't apply to card payments.

Our investigator thought the complaint should be upheld. She was satisfied there was no prospect of a successful chargeback request, but she thought Monzo should have intervened when Mr P made the payment and that its failure to do so represented a missed opportunity to prevent his loss.

She explained that in the 12 months before the transaction, there were no transactions for a similar amount, so she thought Monzo should've intervened and asked Mr P about the payment. And had it done so, she was satisfied he'd have told it he was being advised by someone he'd met online, which would have been enough for Monzo to have identified the investment was a scam.

Our investigator accepted Mr P had trusted the scammer, but there was no evidence he'd done due diligence and she commented he shouldn't have taken investment advice from someone he'd met online. So, she recommended Monzo should refund the money Mr P had lost with a reduction of 50% for contributory negligence.

Monzo has asked for the complaint to be reviewed by an Ombudsman. It has argued the dating site had negative reviews which suggested users could be approached by scammers. And C's website featured information and warnings about a 'crypto mining pool scam'. It has also said this was a second generational movement of funds and it's only appropriate for banks to provide reimbursement where a customer has fallen victim to a scam under the CRM code, which isn't applicable because code doesn't apply to card payments

Finally, it has argued that even if it did intervene, there's no guarantee it would have prevented Mr P's loss as he already knew about the risks of cryptocurrency and had used C before.

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.

Monzo has said the Contingent Reimbursement Model ("CRM") code didn't apply in this case because the code doesn't apply to card payments, and I'm satisfied that's fair.

I've thought about whether Monzo could have done more to recover Mr P'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 P).

Mr P's own testimony supports that he used cryptocurrency exchanges to facilitate the transfer to C. 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 P'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 P '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 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 this was a scam. But, although Mr P 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 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 payment was 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 P when he tried to make the payment. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Mr P from financial harm due to fraud.

The payment didn't flag as suspicious on Monzo's systems. I've considered the nature of the payment in the context of whether it was unusual or uncharacteristic of how Mr P normally ran his account and I think it was. I accept C was a legitimate cryptocurrency exchange company, but this was a significantly large payment to a cryptocurrency merchant, which I think was unusual for the account. So, I think Monzo missed an opportunity to intervene.

Monzo should have contacted Mr P and asked him 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 promised unrealistic returns and whether he'd been advised to make an onward payment from C. And as there's no evidence Mr P was coached to lie to Monzo, I'm satisfied he'd have told it that he'd been advised to invest in cryptocurrency by someone he'd met on a dating site and that he'd been told to make an onwards payment to a wallet address provided by L.

I would then expect Monzo to have discussed with Mr P the nature of the checks he'd undertaken, to have warned him about the risks associated with the investment and to have told him there were red flags present, including the fact he'd been told to make an onwards payment from C.

There were no warnings about L on either the Financial Conduct Authority ("FCA") or International Organisation of Securities Commissions ("IOCSO") websites, and Monzo has said Mr P had invested before and that he knew about the risks. But I haven't seen any

evidence that he was keen to take risks and so I think that if he'd had a clear warning from the bank that this was probably a scam, he'd have decided not to go ahead with the payment. Because of this, I think that Monzo missed an opportunity to intervene in circumstances when to do so might have prevented Mr P's loss. Consequently, I'm minded to direct Monzo to refund the money he lost.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence and I don't think it was reasonable for Mr P to have taken investment advice from someone he met on a dating site. Monzo has said he should have researched the dating site because he would have found negative reviews, but I don't think it's unreasonable that he didn't.

However, while I accept this was a sophisticated scam, Mr P had invested before and would have known there were risks. So, in the circumstances, I think he should have done more checks before going ahead with the investment. Therefore, I think the settlement should be reduced by 50% for contributory negligence.

My final decision

My final decision is that Monzo Bank Ltd should:

- refund £5,500
- 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 P with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 November 2023.

Carolyn Bonnell
Ombudsman