

The complaint

Mr B complains that Monzo Bank Limited (Monzo) won't refund the money he lost as a result of a scam.

Mr B has used a professional representative to bring this complaint to our service and they have made submissions on his behalf. For consistency, I'll refer to Mr B throughout.

What happened

In February 2023, Mr B was followed on a well-known social media platform by a user (that I'll call W). W posted stories and photos on their social media profile about investment opportunities and money they'd made. Having watched these posts for a few days, Mr B messaged W directly as he was looking to supplement his income. Unbeknown to Mr B, W was actually a fraudster.

W explained she dealt with 'bank financial trading' which could generate five or ten times return on the amount deposited. The initial proposal was that Mr B was promised a £5,000 return on a £500 investment with W taking a 20% cut.

Following W's instructions, Mr B opened an account with a cryptocurrency platform (that I'll call P) and transferred £500 to this account on 27 February 2023, from his Monzo account. He then converted his funds into cryptocurrency. W then instructed Mr B to open a trading account on their website (that I'll call D). W explained how to send the cryptocurrency from P to D and provided a bitcoin wallet address. Mr B says he transferred the money and saw his balance increase by £500 on his trading account. I understand he generated a profit of £5,000 the same day.

When Mr B tried to withdraw his profits of £5,000 on 27 February 2023, he was told he had to pay £1,000 to 'boost server transfers'. On 28 February 2023, Mr B attempted to send a further £1,000 to P but it was returned. This happened six times. So, W told Mr B to open an account with another cryptocurrency platform (that I'll call C) to process the payments that way instead. And he made an initial card payment to C for £0.10 at 20:45 on 28 February 2023 (which was subsequently at a later date). In the meantime, he contacted Monzo around 22:00 to query why he was unable to make a £1,000 payment to P.

Monzo blocked Mr B's account and asked for information about the payments he was making. Mr B called Monzo twice to discuss this, but he was referred back to the chat to answer some questions about the recent activity on his account. In response, Mr B said, *"I'm setting up an account online and I'm depositing money to it...For investment purposes...Trying to send £1,000 but Monzo won't let me"*. Mr B was asked to provide some evidence to support the transactions and he sent Monzo a screenshot of an invoice. This has not been provided in evidence. However it seems this was enough to satisfy the concerns Monzo held because on 1 March 2023, Monzo unblocked Mr B's account.

Mr B then made two card payments totalling £1,039.43. But he was still unable to withdraw his profits. He then received an email which confirmed due to 'security tax, refund clearance bills and refund ownership claims' he needed to pay a further £1,000. He attempted nine

further payments to both C and P, but these continued to fail. He contacted Monzo on 2 March 2023, in the evening. Monzo asked Mr B about the payment, and Mr B said he was *“transacting £1,000 on online purchase...Investment related to bitcoin”*. Monzo confirmed it declined a transaction on 2 March 2023 as part of its anti-fraud mechanisms to stop unauthorised transactions. Monzo told him to wait some time before trying again. However the following day Mr B continued to have difficulty, so he contacted Monzo in the morning on 3 March 2023. Monzo said this was due to a network reserve issue with the merchant and referred Mr B to P.

After contacting Monzo, Mr B successfully sent the £1,000 payment for ‘tax’ to C by bank transfer. Later that day, he was told by W that due to a system issue this payment had not gone through, so he had to resend twice the amount which would then be returned. So he transferred two more payments of £1,000 on 3 March 2023 to C and saw this reflected on his trading account. In the meantime, his profit increased from £5,000 to £10,000. Mr B tried again to withdraw his profit and this time was referred to W’s manager, but Mr B had to pay W £500 to start this process. He transferred this to C on 5 March 2023. The next day Mr B transferred a further £1,000 to C which covered commission for W. Finally he was asked to send whatever he had left to test for a ‘server issue’, so he made a final transfer of £200 to C on 6 March 2023. It’s my understanding that all successful payments made to C and P as part of the scam were converted to cryptocurrency and sent on to a fraudster.

In total Mr B made 9 successful payments (this excludes attempted unsuccessful payments and reversed payments) and his total loss is £6,239.43.

Mr B thinks Monzo ought to have stopped him from making the payments and provided him with scam education. He thinks had Monzo warned him he might be falling victim to a scam, that he wouldn’t have sent further funds.

Mr B reported the scam to Monzo on 7 March 2023. Monzo contacted C and P on 7 and 8 March 2023 respectively. They both confirmed no funds remained for recovery, which Monzo informed Mr B of on 29 March 2023. Monzo declined to refund Mr B for the following reasons:

- Monzo executed Mr B’s payments in line with his instructions.
- Mr B made the payments to his own accounts with P and C, so these were not scam payments. It doesn’t agree it can be held liable for a loss incurred on another one of Mr B’s accounts.
- Mr B didn’t conduct reasonable due diligence.
- There’d be no chargeback rights for the card payments Mr B made as the funds went to his own accounts and the services would be deemed provided.

Unhappy with this outcome, Mr B referred his complaint to our service and our Investigator partially upheld it. They said Monzo should have questioned Mr B further when it spoke to him on 28 February 2023. And given the prevalence of cryptocurrency scams, it should have considered Mr B to be at a high risk of fraud. But they also said Mr B had acted with contributory negligence because the scam was implausible, and he didn’t conduct any due diligence. They recommended Monzo refund 50% of Mr B’s outstanding loss from 28 February 2023 and pay 8% simple interest per year on the refund, from the dates of debit to reimbursement.

Mr B accepted these recommendations, but Monzo didn’t. It maintained its position that the payments Mr B made from Monzo didn’t result in a loss. And further friction would have prevented him from carrying out legitimate transactions which contravenes the Payment Services Regulations 2017 (PSR 2017). Monzo also made reference to a recent

Supreme Court ruling in *Philipp v Barclays Bank UK PLC*. It said banks are expected to carry out its customers wishes and to decline to do so would not be appropriate. It said the activity was not out of character and there was nothing to lead Monzo to believe Mr B was vulnerable to scams.

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

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 agree with the outcome our Investigator reached and broadly for the same reasons. I'll explain why.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr B's account is that he is responsible for payments he's 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 the 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 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 its 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.

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 B's payments?

Like our Investigator, I'm persuaded Monzo ought to have been concerned about the payments Mr B was making on 28 February 2023. I say this because on that day, he attempted six transfers of £1,000 to P and all of these were reversed. It seems Monzo did have concerns about the activity as it blocked Mr B's account that day and asked Mr B to supply information about the recent activity, albeit it confirmed this was not linked to an intervention on a specific payment.

Mr B contacted Monzo, and he explained he was setting up an account to deposit money into for investment purposes. P is also identifiably a cryptocurrency provider so I think Monzo could have deduced from this, that Mr B was sending money to a newly opened cryptocurrency account for an investment. Mr B had also, by this point, made the initial transaction to C. So in two days he'd made payments to two cryptocurrency providers, having never paid such merchants before on his account based on his statements.

Monzo asked Mr B to provide documentation to support the transactions he was making, and Mr B supplied an invoice of the initial £500 deposit into his account with P - according to the chat log sent in evidence. A copy of the invoice has not been provided, but it was enough to relieve the concerns Monzo held, as it lifted the block on Mr B's account. I have assumed this to be because it confirmed the account Mr B was paying, was one he'd successfully paid before or perhaps was in his own name. However, I think Monzo failed to pick up on other causes for concern, when conducting the account review. Namely, that there was a significant possibility Mr B was involved in a cryptocurrency investment scam.

Cryptocurrency scams have grown in prevalence over the recent years, and often involve multi-stage payment journeys whereby the consumer sends funds to a cryptocurrency provider, before ultimately passing them to a fraudster. Such scams commonly involve the consumer being persuaded to open a cryptocurrency account to facilitate such payments. By the time of the disputed transactions, such scams had become so prevalent that there has been widespread coverage in the media about the increased losses to cryptocurrency scams, as well as publications from the FCA as early as 2018. And many leading firms have placed restrictions on such transactions. So, by the time of the scam, I'd expect Monzo to recognise that cryptocurrency related transactions carry an elevated risk of the likelihood of the transaction being related to a fraud or scam. And in turn, when Mr B told Monzo that he was sending the funds to a new account with a cryptocurrency provider, that there was an enhanced risk he was falling victim to such a scam. Monzo ought to have made further enquiries to ensure Mr B wasn't at risk of financial harm due to a fraud or scam. And as Monzo was already interacting with Mr B via the in-app chat, it would not have been onerous for it to have made further enquiries at that time. It missed an opportunity to react to the information it was being presented with.

Mr B was honest from the outset in revealing that he had opened an account and was depositing funds into it for an investment. So, I have no reason to believe he would have been dishonest with Monzo. Had Monzo made further enquiries with Mr B via the in-app chat about why he'd opened that account, it likely would have discovered he'd been instructed to by a third party who he'd come into contact with on social media. And who had proposed an investment opportunity whereby Mr B was expecting to make 10 times the returns on the investment he was making. And he was now making payments in order to release his profits. I think it likely would have been so apparent that Mr B was falling victim to a cryptocurrency investment scam, considering the well-known features of such scams which were largely applicable here, that Monzo should have given Mr B a warning tailored to cryptocurrency investment scams. And warning Mr B that he was more likely than not at risk of losing his money if he continued with the payments.

Had Mr B been warned by Monzo, I'm persuaded he wouldn't have proceeded to make further payments. Whilst Mr B says he trusted W implicitly, I don't consider this to be completely accurate. According to the messages he exchanged with the fraudster, he regularly questioned when things didn't seem quite right. This shows me he was not blind to risk, so I do think an appropriate warning from Monzo would have prevented further loss. I've also considered whether Mr B can fairly be considered partially responsible for his own losses. In doing so I've taken into consideration what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all the circumstances. It's not in dispute Mr B is the victim of a scam, and I'm very sorry this happened. But taking into account the overall scam and what was being proposed, I agree with our Investigator that Mr B hasn't acted reasonably, for broadly the same reasons.

Mr B admits he conducted no due diligence, aside from reviewing a website, despite it being quite an implausible proposition. Whilst I appreciate Mr B found the fraudster to be charismatic and kind, Mr B relied solely on the trust he held in the social media platform vetting its users. I'm sorry to say this trust was misplaced. I think he ought to have held concerns about the plausibility of the investment. And it appears he did share some concerns, with him asking the fraudster *"You probably get this a lot, but wont this get us in trouble or something?"* and *"wont i get deported for thiz[sic] lol"*, yet he simply took W's word that all was well. Furthermore, the proposed returns being offered to Mr B (10 times his investment the same day) were too good to be true, nor have I seen any plausible explanation in the evidence as to how this might be possible. However, he failed to take appropriate actions in response to the apparent red flags and concerns he held, and instead

took the fraudster at face value. Taking these things into account, I think it would be fair and reasonable for Mr B to share liability for these losses.

Recovery of funds

I'm not persuaded Monzo acted quickly enough to recover Mr B's funds once he made Monzo aware of the scam. I'd expect it to attempt recovery of funds immediately, which would generally mean within 60 minutes of the report being taken in accordance with the Best Practice Standards for recovery of funds, which Monzo failed to do.

However I don't think this made a material difference to the amount Monzo was able to recover. I say this because Mr B used the funds sent from his Monzo account to C, to purchase cryptocurrency and send it on to a third party wallet. And the evidence points towards this being the case for P also. So I think it's highly unlikely any funds remained in the accounts with C and P when Mr B reported it.

My final decision

For the reasons I've explained above, I uphold this complaint against Monzo Bank Ltd. If Mr B accepts my decision, Monzo Bank Ltd should:

- Refund 50% of the outstanding loss, from and including all payments made after 28 February 2023 (which I calculate to be £2,869.72)
- Pay Mr B 8% simple interest per year on the total refund amount, from the date the payments were made until the date the outstanding loss is refunded, less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 March 2024.

Meghan Gilligan
Ombudsman