

The complaint

Mr M complains that Monzo Bank Ltd ("Monzo") won't refund over £6,000 he lost to a cryptocurrency investment scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Mr M fell victim to an investment scam after he was contacted by someone ("the scammer") on social media, who he eventually struck up a friendship with.

The scammer spoke to him about investing in cryptocurrency and introduced him to a fraudulent broker and trading platform ("B"). Mr M was encouraged to invest, and the scammer opened an account for him with Crypto.com, which he said he didn't have access to. He then made the following payments to the crypto wallet from his Monzo account:

Date	Amount	Payee	Payment method
30 August 2022	£100	BCB Payments	Faster Payment
30 August 2022	£1,400	BCB Payments	Faster Payment
30 September 2022	£5,291	BCB Payments	Faster Payment

Mr M realised he'd been scammed after he was asked to pay more money to withdraw his profits after already having made a large payment towards this. He reported the scam to Monzo, but it said it wouldn't refund the payments as he'd authorised them.

Our investigator upheld Mr M's complaint in part. He thought Monzo ought to have detected a heightened risk of financial harm when Mr M made the payment of £5,291 on 30 September 2022 and said that it should have made further enquiries at this point and provided a scam warning. Had it done so, he thought any further loss would have likely been prevented, so he recommended that Monzo refund any loss incurred to the scam from that point onwards, albeit with a 50% deduction in recognition of Mr M's own contribution to his loss. Monzo disagreed as it didn't think any of the payment activity would have been unusual enough to warrant any form of intervention. As it didn't agree, the matter has been escalated to me to determine.

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 conclusions reached by the investigator and have decided to uphold it in part for the following reasons:

- It isn't in dispute that Mr M has fallen victim to a scam here, not that he authorised the

disputed payments he made to the cryptocurrency platform from his Monzo account (where his funds were subsequently transferred on to the scammer from the crypto wallet). The payments were requested using his legitimate security credentials provided by Monzo, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

- However, I've considered whether Monzo should have done more to prevent Mr M from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- Monzo's December 2021 terms and conditions gave it rights (but not obligations) to block payments where it suspects criminal activity on the account. So, the starting position at law was that Monzo was under an implied duty at law to make payments promptly, but 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 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.
- Having considered the first two disputed payments Mr M made on 30 August 2022, I don't think there was anything particularly unusual or suspicious about them that ought to have concerned Monzo at that point. However, I do think it ought to have been concerned when Mr M then made the £5,291 payment on 30 September 2022. This payment marked a significant escalation in value and was objectively out of character when compared to Mr M's previous spending on the account. Such irregular and escalating payment activity can often be indicative of fraud, and I think it should've flagged to Monzo as indicating a heightened risk of financial harm, such that it should have blocked the payment until it had made further enquiries to determine whether Mr M was at risk of being scammed.
- If Monzo had questioned Mr M about the nature of the payment, I have no reason to doubt he would've been upfront about what he was doing. Monzo could have discovered that he had been contacted by a stranger on social media who had encouraged him to invest in cryptocurrency, which is a common hallmark of these sorts of investment scams. Moreover, it could have also learnt that he was transferring money to a cryptocurrency account in his own name, but which he did not have any access to. This would have been a clear red flag that Mr M was likely being scammed.
- If Monzo had given a warning, I believe that Mr M would have paused and looked more closely into the circumstances of the investment before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments. It seems more probable that he would have made further enquiries into cryptocurrency scams and whether or not the broker was regulated in the UK or abroad. Mr M could have discovered they were not and the various regulatory warnings about the risk of

cryptocurrency investment scams, particularly in the context of him not even having access to the crypto wallet to which he was sending money. In other words, I am satisfied that a warning to Mr M from Monzo would probably have exposed the scammer's false pretences, causing him to stop 'trading' and preventing any further losses from that point.

- Monzo has argued that it cannot be held liable for reimbursing the payments as they were made to a cryptocurrency account in Mr M's own name before being transferred on to the scammer. However, the potential for multi-stage scams involving cryptocurrency wallets and other bank accounts ought to have been well known to Monzo by September 2022 and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk, including those involving multi-stage scams. As a result, I'm satisfied it is fair to hold Monzo responsible for Mr M's loss in these circumstances.
- In terms of whether Mr M should bear some responsibility by way of contributory negligence, our investigator recommended that he share responsibility jointly, meaning that his compensation should be reduced by 50%. Mr M hasn't disputed this, so I don't consider it necessary to examine this point in much further detail. However, for the avoidance of doubt, I'm also satisfied that a 50% deduction is fair and reasonable in all the circumstances of this case.
- First, Mr M was told to transfer money to an account that he knew was in his own name, but which he wasn't given any access or control over. I appreciate that Mr M may have been inexperienced in cryptocurrency, but I think this still ought to have given him considerable cause for concern, as he had no oversight of what was happening with his money after it reached his account. But he doesn't appear to have questioned this. Mr M also failed to carry out sufficient due diligence and was also told he had to pay a 20% fee to the account manager for the profits he'd earned, which he paid. But he doesn't appear to have questioned why he was having to pay such a significant amount of money before he'd received anything himself. As a result, I'm satisfied there was enough going on here to alert Mr M to the risk that something wasn't right and that he was at risk of being scammed, but it doesn't appear that he acted upon any of these concerns. I'm therefore satisfied it is fair and reasonable for his compensation to be reduced by 50% in these circumstances, in recognition of his contribution towards his loss.
- I also don't think there was anything more Monzo could've done to recover the funds either. In this instance, we know the money would have been swiftly moved out of the crypto wallet after it had been transferred. And given the fraud wasn't reported until over a week after he'd made the final payment, I think it's highly unlikely any money would have remained.
- I also acknowledge that there's the potential for the disputed payments to fall within scope of the Contingent Reimbursement Model (CRM Code) in these circumstances, because although the crypto wallet was held in Mr M's name, he did not set it up or have any access or control over it. But even if I were to accept that the Code did apply to the disputed payments, it wouldn't result in any different outcome or award compared to what I'm already asking Monzo to do.
- Briefly, this is because I don't think Mr M had a reasonable basis for believing the investment to be legitimate, as he didn't carry out any research or due diligence, and there were various warning signs that something wasn't right. I also don't think Monzo would've been required to give an Effective Warning for the first two payments, given they were relatively low in value and didn't present an APP scam risk. So, Mr M wouldn't be entitled to any reimbursement of the first two payments. However, I do consider it

ought to have provided an Effective Warning for the final payment in light of the increase in value, which I can't see that it did. As a result, if the payments *were* to fall within the scope of the Code, Monzo would only be required to refund 50% of the final payment, which is what I'm already asking it to do. So, I don't consider it necessary to explore any further whether or not the Code would apply in these circumstances, as it wouldn't ultimately affect the outcome of this complaint.

My final decision

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to:

- Refund 50% of the £5,291 payment lost to the scam.
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 May 2024.

Jack Ferris
Ombudsman