

The complaint

Mr R complains that Monzo Bank Ltd hasn't refunded him after he fell victim to an investment scam.

What happened

I issued a provisional decision for Mr R's complaint on 15 March 2024. Rather than repeat the circumstances of the complaint and my provisional findings again, I've included a copy of the decision at the end of this one, *in italics*.

I've had a response from Mr R. He said he appreciated and respected the decision. He also said that he wanted to clarify, in summary, that he had absolutely no idea he was falling victim to a scam at the time.

Monzo has had an opportunity to respond but hasn't done so. I'm proceeding to issue this final decision without further comment or evidence from it.

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.

I appreciate Mr R's response to the provisional decision. I've considered what he's said but my findings remain the same.

I can completely accept what he's said about not knowing he was falling victim to a scam at the time. I've no reason to think he knew something was wrong but went ahead anyway. But that isn't the consideration I need to apply to his complaint. I set out in my provisional decision what the test is, and why I've found Mr R ought fairly and reasonably bear some responsibility for his loss. I won't repeat that detail again here, and there's nothing further for me to add to what's already been said.

Putting things right

Monzo should, at Mr R's acceptance:

- £5,750 – representing 50% of the payments made to Payee 2; *and*
- Pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement.

My final decision

I uphold this complaint against Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 May 2024.

The provisional decision issued on 15 March 2024

I've considered the relevant information about this complaint.

Having done so I intend to uphold it in part.

I'll look at any more comments and evidence that I get by 29 March 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr R complains that Monzo Bank Ltd hasn't refunded him after he fell victim to an investment scam.

What happened

The background to this complaint is well-known to both parties, so I'll be brief with the details here.

Mr R was contacted by someone claiming to work for an investment broker, having registered his details online with a website set up to provide education and advice on investing. But Mr R was contacted by a scammer, not a genuine broker.

The scammer told Mr R his business had an online trading platform and could help him get into trading and provide education. Mr R checked for reviews of the business and has said he found some positive, some negative.

Mr R was able to create an account and gain access to what appeared to be a trading platform. But this was all fake.

Mr R was told how to invest and given advice on what to invest in. But, throughout, he believed he was investing in crude oil. He started with small sums and appeared to be receiving returns. Based on that he decided to invest more.

When making payments, Mr R followed the instructions he was given. He believed he was paying the broker who would then invest on his behalf. But the payments were actually sent to cryptocurrency wallets. The payments made are set out below.

| <i>Date</i> | <i>Amount</i> | <i>Payee</i> |
|--------------------------|-------------------------|----------------|
| <i>26 August 2022</i> | <i>£1,000</i> | <i>Payee 1</i> |
| <i>3 September 2022</i> | <i>£1,000 (credit)*</i> | <i>Payee 1</i> |
| <i>7 September 2022</i> | <i>£1,000</i> | <i>Payee 1</i> |
| <i>29 September 2022</i> | <i>£10,000</i> | <i>Payee 2</i> |
| <i>30 September 2022</i> | <i>£1,500</i> | <i>Payee 2</i> |

**This was a credit back from one of the cryptocurrency wallets, rather than a payment out of Mr R's account.*

Mr R was encouraged to invest more but he declined to do so. He wanted to withdraw his investment and returns. But he was unable to do so, and the scammer cut off contact. That's when Mr R realised something was wrong and contacted Monzo to report the scam.

Monzo investigated Mr R's claim and said it wouldn't refund him. It said he'd not taken enough steps to check who he was paying or what he was paying for. Mr R was unhappy with that response and brought his complaint to this service.

What I've provisionally 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.

I'm intending to uphold Mr R's complaint in part. I'll explain the details and my reasoning.

There's no dispute that Mr R authorised the payments made toward the scam. The starting point at law (under the Payment Service Regulations (2017)) is that he is then responsible for them. That remains true even though Mr R was deceived as to the true purpose of the payments.

But that's not the end of the story. Monzo has agreed to abide by the provisions of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code, though it isn't a full signatory.

The CRM Code is in place to see the victims of scams reimbursed by their account provider in most circumstances. It doesn't apply to all payments made by a customer. And there are exceptions to reimbursement set out in the Code that a firm may rely on in choosing not to provide a refund.

The possible exceptions to reimbursement can be set out as follows:

- *Did Mr R ignore an effective warning presented by Monzo at the time he was making the payments?*
- *Did Mr R hold a reasonable basis for believing he was dealing with legitimate parties for legitimate purposes?*

Does the CRM Code apply in Mr R's case?

I'm satisfied the payments made by Mr R ought to benefit from the protection of the CRM Code. There has been an argument from Monzo against this on the basis Mr R sent money to accounts (the cryptocurrency wallets) in his own name, and it was from there the money was lost.

However, having reviewed the evidence and questioned Mr R on how the scam unfolded, I'm persuaded Mr R didn't know that money was going to cryptocurrency wallets in his own name. I don't believe he even knew the wallets existed and I consider it more likely than not they were set up and controlled by the scammer.

Mr R has said he always believed he was paying the broker direct and that it was then investing his funds. He followed the instructions he was given. But it appears he had no idea his money was going to the wallets it did, or that the scammer was moving it on from there.

If Mr R had known about the wallets and/or had control of them, then I'd agree with Monzo that the CRM Code wouldn't apply. But as that wasn't the case, Mr R believed he was paying one party but was actually being deceived into paying another. And so the definition of an APP scam is met, and the Code applies.

I'll note at this stage that there are two payments I'm making findings on that haven't previously been included. These are the transactions to Payee 1, set out in the table above. Having questioned Mr R further about these, he has explained these were made as part of the scam. He'd not included them before having raised the scam claim whilst in a panic and, understandably, mostly being concerned for the £10,000 loss.

I'll now turn to the possible exceptions to reimbursement.

Did Mr R ignore an effective warning presented by Monzo at the time he was making the payments?

Monzo doesn't need to give an effective warning for every payment a customer makes. But it should do so when it identifies a scam risk. If it doesn't give such a warning when it fairly and

reasonably ought to, or if the warning doesn't meet the requirements set out in the CRM Code, then it will have failed to meet the standards for firms and it will be required to pay at least a partial refund.

The first payments made by Mr R are of low value, generally speaking. And although at the time they were made they were the highest value payments out of the account I can see over a six-month period, I don't find they clearly represented a scam risk that Monzo ought to have identified.

The same can't be said of the first payment to Payee 2 for £10,000. That is a significant sum of money by any standard and is clearly out of character for Mr R's account. Those factors alone are enough to persuade me that Monzo ought to have delivered an effective warning. Other contributory factors would include that the payment was going to a cryptocurrency platform which Monzo ought to have recognised as bearing a significant scam risk. And, whilst I haven't had the purpose of the account confirmed by Monzo, it seems unlikely to me Mr R had told the bank he was going to use the account for cryptocurrency investment. So the payment purpose would be very much against the intended purpose of the account, another identifiable risk factor.

Monzo did deliver a warning, but I'm satisfied it didn't meet the standards set out in the Code. It wasn't specific to investment scams, there was no mention of them at all. Nor was there mention of cryptocurrency scams and there were no common features identified that Mr R – or any other customer – might have recognised as relating to their circumstances. There was no clear information about what could be done to avoid such scams; only generic information was provided.

Given the value of the payment, and how unusual the activity was, Monzo ought to have delivered a greater level of intervention. It should have stopped the payment and contacted Mr R to discuss it. So even if the written warning had been better, it's still unlikely Monzo would have done enough in terms of a proportional response to the scam risk.

The conversation ought fairly and reasonably to have involved a discussion about the payment purpose, how he'd come across the opportunity, and what steps had been taken to ensure the legitimacy of the arrangement. Such a conversation, conducted properly, would more likely than not have revealed the scam. Mr R doesn't appear to have been coached or told to lie. And so he would more likely than not have given an honest account of what he was doing. Monzo ought fairly and reasonably to have been able to recognise and identify the common features and hallmarks of an investment scam and stopped it in its tracks.

Monzo will then bear some responsibility for the loss of the last two payments made by Mr R toward the scam.

Did Mr R hold a reasonable basis for believing he was dealing with legitimate parties for legitimate purposes?

In considering this question, it's important to think about the circumstances Mr R was in at the time, what actions he might have taken, and what he ought fairly and reasonably, to have been aware of.

Whilst Mr R had registered his details with a website, it seems he was contacted by a different business entirely. But there seems to have been little questioning of this by Mr R and what the scammer's connection was to the website.

My understanding is that Mr R was told what he could invest in (crude oil) and that suited his intentions. He was also told what returns he could expect to make. Mr R's accounts vary a little here, I'm not sure if that's because of him being told different things by the scammer at different points in time. But it seems he was told he could expect to make at least £50,000 on his investment. I'm satisfied this ought to have been viewed with a great deal of scepticism, even suspicion. It seems too good to be true, and to such an extent that I find it's

fair and reasonable to say Mr R ought to have been very cautious about proceeding and prompted to investigate the parties he was involved with as much as possible.

Mr R has said he checked for reviews online and found a mixed bag. It's difficult to find positive reviews now, Mr R thinks they may have been removed as likely fakes. But it isn't really in dispute there were negative reviews. And some of those clearly pointed to the investment broker as being a scam. This ought to have caused a significant degree of concern.

When it came to making the payments, Mr R was told to pay businesses in a different name to the one he was dealing with. He was told he was paying the parent company. But he doesn't appear to have taken any steps to confirm that was true. And given the other concerning factors that had already presented by this stage, I find it would have been fair and reasonable for him to have done so.

I know there were some convincing elements to this scam. And I'm not at all suggesting Mr R knew this was a scam at the time. I can see from the evidence he's provided that there was a genuine looking website, complete with a trading platform. And he seems to have been able to contact the scammers with ease, with them acting in a professional manner throughout. But, overall, I'm persuaded there was enough going on to show all was not as it was being presented at face value. And so I can't say Mr R held a reasonable basis for believing he was engaged with legitimate parties for legitimate purposes. And so Mr R will share some responsibility for his losses.

Other considerations

I've considered whether there are any other reasons Monzo ought to refund Mr R. That includes account monitoring and scam prevention considerations which sit outside of the Code. And it also includes thinking about the possibility of recovering Mr R's funds from the accounts they were sent to. Having done so I'm not persuaded there are any other reasons to uphold Mr R's complaint, or at least not beyond the findings I've already made.

What I will say here is that I would still be upholding Mr R's complaint to the same degree even were the CRM Code not to apply. It doesn't represent the only form of customer protection, or the only scam prevention measure Monzo ought fairly and reasonably employ. Even for payments not covered by the Code, there will be times when a firm like Monzo ought fairly and reasonably step in to question payments being made by customers, with a view to preventing financial harm through fraud. And that includes multi-stage scams, where funds might first go to another account (such as a cryptocurrency wallet) in the customer's name.

Putting things right

There are some transactions Mr R will bear sole responsibility for and others where it will be shared between him and Monzo.

Because Monzo wasn't required to deliver an effective warning for the payments to Payee 1, and because Mr R lacked a reasonable basis for belief, he will be solely responsible for that loss.

Monzo ought to have delivered an effective warning for the payments to Payee 2. And it ought to have done so by way of proactive intervention, having stopped the first payment, with a conversation with Mr R to follow. Had that happened the money wouldn't have been lost. But Mr R's own actions, and his lack of reasonable basis for belief, also factor in and so responsibility will be shared at 50% each.

Monzo should, at Mr R's acceptance and further to the consideration of any new evidence and arguments, pay him:

- £5,750 – representing 50% of the payments made to Payee 2; and

- *Pay interest on that sum at 8% simple per year, calculated from the date of loss to the date of settlement.*

My provisional decision

I intend to uphold this complaint against Monzo Bank Ltd.

Ben Murray
Ombudsman