

The complaint

Mr S complains Monzo Bank Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In September 2021, Mr S received a call from someone purporting to be a broker with a company that I will call B. He was given an account manager at the company, who talked him through opening an account with a cryptocurrency exchange, a cryptocurrency wallet and a trading app. And he was shown how to send money to the cryptocurrency exchange, buy cryptocurrency, and then send the cryptocurrency from his wallet to the trading platform.

Mr S then made a number of payments from his Monzo account to the cryptocurrency exchange to buy cryptocurrency, which was then sent on to the trading platform – as he was instructed to by the account manager.

I've set out the payments Mr S made from his Monzo account, below:

Transaction Number	Date	Amount	Type of payment
1	27 September 2021	£214.36	Card payment
2	29 September 2021	£2,000	Faster Payment
3	30 September 2021	£5,000	Faster Payment
4	6 October 2021	£5,000	Faster Payment
5	7 October 2021	£5,000	Faster Payment
6	13 October 2021	£5,000	Faster Payment
7	14 October 2021	£6,000	Faster Payment

Unfortunately, we now know the investment company was a scam. After the scam was uncovered, Mr S contacted Monzo and asked it to refund the money he had lost but it didn't agree to refund any of the payments. Mr S wasn't satisfied with Monzo's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Monzo should have had concerns about the payments Mr S was making and intervened before payment 3 made. But they also thought Mr S should bear some responsibility for his loss from payment 5. So, they recommended Monzo refund payments 3 -7 but deduct 50% of the money Mr S had lost, from payment 5 onwards. Monzo disagreed with our investigator, so the complaint has been passed to me.

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.

Banks are expected to make payments in line with their customers' instructions. And Mr S accepts he made the payments here. So, while I recognise he didn't intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that Monzo was obliged to follow his instructions and make the payments. So, Mr S isn't automatically entitled to a refund. 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 as not the same as being under a duty to do so.

In this case, Monzo's terms and conditions in place at the time 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.

The detailed reasoning for this has been set out in substantial detail in recent decisions to

Monzo, so I don't intend to repeat it here. But in summary, overall, taking into account the law, regulatory 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 the account 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've also considered whether Monzo should have identified that Mr S was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

Did Monzo do enough to protect Mr S?

The first few payments Mr S made from his Monzo account as part of this scam weren't for particularly large amounts. So, I wouldn't have expected Monzo to identify that Mr S could be at risk of financial harm as a result of these payments and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing them to go through.

But when Mr S tried to make payment 3, for £5,000, I think Monzo should have identified that he could be at risk of financial harm. This payment was for a significantly larger amount than the previous payments to the crypto exchange and it represented three payments to a new payee in a short amount of time.

So, I think Monzo should have intervened and carried out additional checks before allowing this payment to go through.

Monzo has argued that the payment went to an account with the crypto exchange that was in Mr S's own name and that he still had control over. It doesn't think it should be responsible for intervening at this point as Mr S didn't suffer a loss until the money left the account with the crypto exchange.

While the account was in Mr S's own name, it was with a crypto exchange rather than with a more traditional bank, and so I think this suggests Mr S's intention was to transfer the money on from there rather than just move it between accounts he held.

I also don't think Monzo's responsibilities to monitor accounts or look out for risks no longer apply when the money is going to an account in the customer's own name. And as money was being moved into the account and then immediately moved on in increasingly large amounts in a pattern often seen in scam cases, I think it's reasonable to expect Monzo to have intervened here.

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But Monzo should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the size of this payment, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then relevant follow-up questions about how Mr S found out about the investment he was making and what returns he'd been told he was making.

I've not seen anything to suggest Mr S would have lied or tried to mislead Monzo if he was asked about the payment and I say this because Mr S had told Monzo that these payments were for investments when he was asked about the payment purpose. I think it's likely he would have said the payment was for an investment he was making involving cryptocurrency, and he'd been told he was making significant returns but had not withdrawn any money yet. These are all features of common investment scams, so I think Monzo should then have had significant concerns and warned Mr S that he was likely the victim of a scam.

And as Monzo is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr S. I think if Monzo had explained that his circumstances matched common investment scams and given him some steps he could take to check whether it was legitimate, the scam would have been uncovered and Mr S wouldn't have made any further payments towards it.

So if Monzo had done more to protect Mr S before allowing payment 3, as I think it should have, I don't think Mr S would have lost the money from this payment or any of the later payments. I also think it would be reasonable for Monzo to bear some responsibility for the loss Mr S suffered from that point on.

Should Mr S bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr S to bear some responsibility for his loss. This was a sophisticated scam where he was given access to a trading platform which appeared to show profits he was making. There were no credible negative reviews about B at the time the payments were made or official warnings. I also can't see that Mr S was promised unrealistic returns so to begin with I do not think that Mr S was partially responsible for his own loss. That said I do think there was enough to have concerned Mr S around payment 5.

At this point B was heavily pressuring Mr S into taking out loans to fund his "investment" which is not something a professional investment firm would suggest. This went to the extent that B was e-mailing links to Mr S with suggested loan companies. I think that this really should have been a red flag at this point. So, I think that after this point Mr S should be equally responsible for his loss and therefore it is fair to deduct 50% for payment from this point.

Putting things right

I uphold this complaint in part, and require Monzo Bank Ltd to:

- Refund transactions 3 to 7 minus a 50% deduction for payments 5,6 and 7. Minus any funds recovered via other means if applicable.
- Pay Mr S 8% simple interest on this refund, from the date of the payments until the date of settlement.

My final decision

My final decision is that I uphold this complaint in part and require Monzo Bank Ltd to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 June 2024.

Charlie Newton
Ombudsman