

The complaint

Mr C complains that Monzo Bank Ltd hasn't protected him from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mr C has explained that in April 2023 he made three debit card payments from his Monzo account to Moonpay as a result of what he thought was a legitimate cryptocurrency investment. The payments totalled £3,200.81 as follows:

21 April 2023	£40.12
26 April 2023	£40.01
26 April 2023	£3,120.68

Mr C subsequently realised he'd been scammed and got in touch with Monzo. Ultimately, Monzo didn't reimburse Mr C's lost funds, and Mr C referred his complaint about Monzo to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

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 materially the same conclusions as our Investigator and for the same reasons.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with The Payment Services Regulations and the terms and conditions of the account. And in this case, I accept these were authorised transactions even though Mr C was tricked. So, although Mr C didn't intend the payments to ultimately go to scammers, Mr C is presumed liable for the loss in the first instance. However, this isn't the end of the story. Good industry practice was that Monzo ought reasonably to have been on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment instruction, I'd expect it to intervene in a manner proportionate to the risk identified.

Our Investigator said that Monzo should've recognised the risk when Mr C made his third payment, and I agree with this conclusion. By processing this payment, this meant Mr C had moved over £3,200 to a cryptocurrency platform in a period of less than one week. And this third payment of £3,120.68 was significantly out of keeping with the way Mr C operated his account. It was for a much larger amount that was typical for the account: in the year leading up to the scam, the highest-value payment Mr C had made was for £550; and the highest-value card payment he'd made was £400. And I agree with what the Investigator said: by the time Mr C made these payments, cryptocurrency scams had risen greatly in frequency; it's reasonable to conclude Monzo had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. And I'm satisfied Monzo ought

reasonably to have recognised, when Mr C instructed the £3,120.68 payment to Moonpay, that there was a fraud risk.

In reaching my decision, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.

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 23 April 2023 terms and conditions gave it rights to:

1. Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
2. Refuse to make a payment if it suspects the customer is a victim of fraud. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

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 to block or not make payments where it suspected fraud.

It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things. 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.

In this case for the reasons I have explained, I am satisfied Monzo should have intervened.

As I've said, on identifying such a risk, I'd expect Monzo to intervene in a manner proportionate to the risk identified. And I don't think what the Investigator said about this was unreasonable and I agree with it: on seeing Mr C's unusual payment instruction for £3,120.68 to Moonpay, I'd reasonably expect Monzo, at the least, to have displayed to Mr C an in-app tailored scam warning explaining some of the common features of cryptocurrency investment scams.

Where I can't be sure about something, I need to make up my mind based on the balance of probabilities – in other words, based on what I think most likely would have happened taking

into account all the available information. And here, I do think that if Monzo had done this, as I think it reasonably ought to have done, this most likely would have made a difference. I say this because when Mr C was asked by the scammers after this third payment to deposit yet further funds in order to make a withdrawal, he realised he was being scammed. And I think Mr C's recognition of this indicates he wasn't so convinced by the scam such that appropriate intervention from Monzo wouldn't have made him think carefully. At the least, I think it's most likely Monzo's appropriate warnings would have caused Mr C to look into things further before making the payment. This third payment appears to have been made to release Mr C's 'reward' for his earlier payments, so Mr C would probably have been concerned. This doesn't strike me as a case where Mr C would have then just taken the scammers' word for things. And whilst there doesn't appear to have been much information about the scammers available on the internet at the time, this in itself might have concerned Mr C sufficiently, taken in conjunction with Monzo's warnings. And it does appear that at least one person had already reported on the scammers on the internet in a way that would most likely have been considerably concerning to Mr C. So, I think that if Monzo had intervened appropriately, Mr C most likely wouldn't have gone ahead with his third payment of £3,120.68, and the loss of this payment would have been prevented.

I understand Monzo doesn't think it should be held responsible because, it says, the payment was made to Mr C's own account (with Moonpay). But it's unclear whether this is the case. But even if it is – even if the Moonpay account was in Mr C's own name – this wouldn't change my mind. I'm required to consider the complaint in front of me. I have found Monzo didn't act fairly and reasonably in the circumstances of this case. And I think if it had done, the loss of this payment would've been prevented.

Recovery

After the payments were made, I don't think Monzo could reasonably have recovered them. This is because, as these were debit card payments, the only potential avenue for recovery of the payments would have been via the chargeback scheme. However, Mr C made the payments from his Monzo debit card to the crypto exchange (and not directly to the scammers). This means the merchant here, for chargeback purposes, would be the crypto exchange (and not the scammers). I understand Mr C would've received the service from the crypto exchange intended, which was the transfer of his funds to cryptocurrency. The transfer of the cryptocurrency to the scammers would not give rise to a valid chargeback claim through Monzo. So, I can't say Monzo unreasonably hindered recovery of the funds.

Putting things right

I've explained why I'm satisfied that had Monzo done what it should have, the loss of the third payment (£3,120.68) would most likely have been prevented.

I've thought about whether Mr C should bear some responsibility for this loss by way of contributory negligence (which might justify a reduction in compensation). In this case, I don't think it's unfair to say Mr C wasn't as careful with his money as he reasonably ought to have been. Mr C appears to have conducted some research about a legitimate platform before making his payments, but crucially not about the actual scammers. And, as I've said, I think researching the scammers at the time would most likely have led him to be concerned. I'm satisfied in these circumstances that Mr C should share equal responsibility for the loss of the third payment, and that fair compensation would therefore be for Monzo to pay Mr C £1,560.34 (which is 50% of £3,120.68). Monzo should also pay Mr C interest on this amount calculated at 8% simple per year from the date of loss to the date of settlement, to compensate him for having been deprived of the use of this money during the appropriate period.

Our Investigator also recommended that Monzo pay Mr C £75 for distress and inconvenience. And again, I agree with this. It was the scammers who were the root cause of things here and I've also said Mr C should share responsibility for the loss of his third payment, so it wouldn't be fair to hold Monzo responsible for the bulk of distress and inconvenience Mr C has suffered as a result of things. But I do think, if Monzo had done what it should have, it could've lessened the impact, and £75 is an appropriate award for this in this case.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Monzo Bank Ltd to pay Mr C:

- £1,560.34; plus
- interest on that amount calculated at 8% simple per year from 26 April 2023 to the date of settlement (if Monzo deducts tax from this interest, it should send Mr C the appropriate tax deduction certificate); plus
- £75 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 March 2024.

Neil Bridge
Ombudsman