

The complaint

Mrs S complains that Monzo Bank Ltd (Monzo) is refusing to refund her the amount she lost as the result of a scam.

Mrs S is being represented by a third party. To keep things simple, I will refer to Mrs S throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs S tells us she found an article on Instagram that appeared to have been written by a well-known trusted newspaper. The article mentioned Cryptocurrency investment which was of interest to Mrs S so she provided her contact information to receive more details.

Mrs S then received an email from the business Conostock (X) followed by a phone call. X appeared experienced and explained that it would trade on Mrs S's behalf. X also said that an initial investment of £1,250.00 would increase to £3,000 within three months.

Mrs S says she did some online research into X and found a convincing professional looking website that built her confidence that the investment opportunity was a genuine one. Mrs S therefore decided to start investing.

As part of the process Mrs S tells us she recalls X asking for access to her device and downloading Metatrader 4 where she was able to see live trading information. Mrs S started to invest making small payments and could see she was making a small profit.

X then persuaded Mrs S to make further and further payments increasing in value as trust was being built between them.

When X asked Mrs S to make even further payments, she explained the only other funds she had were already in fixed investments. X tried to persuade Mrs S that she should withdraw from her other investments and invest with X instead. Mrs S says this caused her concerns and when she questioned X in more detail it ceased all communication with her, and she realised she had fallen victim to a scam.

Mrs S made the following payments in relation to the scam:

<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
30 March 2023	Kraken	Debit Card	£40
30 March 2023	Kraken	Debit Card	£20
31 March 2023	Kraken	Debit Card	£20
31 March 2023	Kraken	Debit Card	£10
31 March 2023	Kraken	Debit Card	£20
4 April 2023	Kraken	Debit Card	£1,200

5 April 2023	Kraken	Debit Card	£1,200
9 April 2023	Kraken	Debit Card	£20
9 April 2023	Kraken	Debit Card	£1,200
13 April 2023	Kraken	Debit Card	£3,000
13 April 2023	Kraken	Debit Card	£980
18 April 2023	Kraken	Debit Card	£20
4 May 2023	Payward	Debit Card	£42.62cr
4 May 2023	Kraken	Debit Card	£1,000
4 May 2023	Payward	Debit Card	£3,000
4 May 2023	Payward	Debit Card	£6,000
4 May 2023	Payward	Transfer	£1,040
9 May 2023	Payward	Transfer	£100
11 May 2023	Kraken	Debit Card	£7,500
11 May 2023	Kraken	Debit Card	£100
15 May 2023	Payward	Debit Card	£233.72cr
15 May 2023	Payward	Debit Card	£382.74cr

Our Investigator considered Mrs S's complaint and thought it should be upheld in part. Monzo didn't agree, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mrs S has fallen victim to a cruel scam. The evidence provided by both Mrs S and Monzo sets out what happened. What is in dispute is whether Monzo should refund the money Mrs S lost due to the scam.

Recovering the payments Mrs S made

Mrs S made payments into the scam via her debit card and by transfer. When payments are made by card the only recovery option Monzo has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mrs S was dealing with X, which was the business that instigated the scam. But Mrs S didn't make the debit card payments to X directly, she paid a separate cryptocurrency exchange (Kraken). This is important because Monzo would only have been able to process chargeback claims against the merchant she paid (Kraken), not another party (such as X).

The service provided by Kraken would have been to convert or facilitate conversion of Mrs S's payments into cryptocurrency. Therefore, Kraken provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mrs S paid.

When payments are made via transfer Monzo is also limited to the options it has to seek recovery. It could ask the provider of the recipient's account to refund any funds that remain in the account the payment was made to. But Mrs S was making the payments to her own crypto account, so if any funds were to remain, they would remain within Mrs S's control.

With the above in mind, I don't think Monzo had any reasonable options available to it to recover the payments Mrs S made.

Should Monzo have reasonably prevented the payments Mrs S made?

It has been accepted that Mrs S authorised the payments that were made from her account with Monzo, albeit on X's instruction. So, the starting point here is that Mrs S is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Monzo should have been aware of the scam and intervened when the payments were made. And if it had intervened, would it have been able to prevent the scam taking place.

The first payments made in relation to the scam were for relatively low values that I would not have expected to have triggered Monzo's fraud prevention systems. But on 13 April 2023 Mrs S made a larger value payment of £3,000 to Kraken. Considering the elevated risk related to cryptocurrency payments and the value of the payment I think it would have been reasonable for Monzo to intervene at this stage.

At the time the payments were made Monzo had experience of how different crypto scams were operated and as the scam Mrs S was experiencing had hallmarks of scams Monzo would be familiar with I think it's most likely Monzo would have uncovered the scam and prevented any further loss had it intervened.

Monzo is therefore responsible for Mrs S's loss from the £3,000 payment she made in relation to the scam on 13 April 2023 onwards.

Did Mrs S contribute to her loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mrs S should share blame for what happened. I think there were red flags that Mrs S should have taken notice of and had she done so it's likely she too could have prevented her loss. For example, Mrs S was told she would receive unrealistic returns on her investment of more than 100% having found an article on social media. Mrs S was also asked to make further and further payments rather than using her already invested funds and profits.

I think the above should have caused Mrs S to pause and seek further advice before continuing to make the payments she did.

I have considered the points Monzo has raised including 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 terms and conditions gave them rights (but not obligations) to:

- Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
- 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.
- They had a contractual right not to make payments where they suspected fraud.
- They had a contractual right to delay payments to make enquiries where they suspected fraud.
- They could therefore refuse payments, or make enquiries, where it suspected fraud, but they weren't 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 having 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.

So, the additional points raised by Monzo do not change my decision.

Putting things right

To put things right Monzo Bank Ltd should refund all of the payments made in relation to the scam from those made on 13 April 2023 onwards, less a 50% deduction for contributory negligence. Monzo Bank Ltd should also deduct any credits received and add 8% simple interest to the amount it pays Mrs S from the date the payments were made to the date it makes the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Monzo Bank Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or

reject my decision before 23 August 2024.

Terry Woodham
Ombudsman