

The complaint

Miss H complains that Monzo Bank Ltd (“Monzo”) won’t refund over £46,000 she lost to an investment scam.

What happened

Miss H fell victim to a cryptocurrency investment scam after she was cold called by a scam broker (“Z”) in March 2021. The broker showed her how to open her own account with Binance, and she paid around £46,000 to her crypto wallet from her Monzo account over the space of four weeks, where her funds were then transferred to the scammer’s wallet under the guise of placing ‘trades’.

Miss H realised she had been scammed after she made large payments to Z in order to withdraw her profits but didn’t receive anything in response. She reported the fraud to Monzo, who refused to provide her with a refund.

Our investigator upheld the complaint. She thought that Monzo ought to have questioned Miss H about the £4,900 payment she made on 31 March 2021 as it was out of character, which she thought would have revealed the scam. The investigator said that Monzo should refund the money Miss H had lost from this payment onwards, less a deduction of 50% in recognition of Miss H’s own contributory negligence. Monzo disagreed, so the matter was escalated to me to determine.

I issued my first provisional decision on this complaint in September 2023. I said I was minded to uphold it and set out the following reasons:

It isn’t in dispute that Miss H has fallen victim to a scam here, nor that she authorised the disputed payments she made to the scammer (either directly from her debit card or through the faster payment she made to Binance, where her funds were subsequently transferred on to the scammers from her crypto wallet). The payments were requested by her using her 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 Miss H 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.

I understand the investigator considered that the £4,900 payment made by Miss H on 31 March 2021 ought to have been regarded as unusual given it was much higher than any transfers she had made in the months leading up to the scam. However, I disagree. Having reviewed Miss H’s payment activity in the months prior, I can see she had made two payments towards an investment of £4,000 and £4,020 on the same day (5 January 2021). So, making two payments of £4,900 and £4,800 to Binance a few months later would not, in my judgment, have appeared particularly unusual or out of character given she had made similar payments before. So, I don’t

consider there was any cause for Monzo to have intervened at this point, or for the majority of the payments she made the following day to Binance either.

However, by the time Miss H came to make the payment of £2,500 to Binance on 1 April 2021, this then became the fourth payment to be made on the same day. Monzo would have known that multiple payments being made to the same payee in quick succession can often be an indication of fraudulent activity, so I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by Monzo.

If Monzo had carried out reasonable due diligence by contacting Miss H and asking suitably probing questions, there is no reason to suggest she wouldn't have been forthcoming about what she was doing. If it had questioned Miss H about these payments, it would have likely discovered that she had been contacted out of the blue by a merchant offering unrealistic returns in cryptocurrency, who had asked her to transfer money to a Binance wallet before moving it to a "trading account". These are all common hallmarks of a scam, so I consider there would have been reasonable grounds for suspicion here. And Monzo ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with cryptocurrency scams.

Monzo does not believe it is liable for Miss H's loss as it said it occurred from her Binance account rather than her Monzo account. However, Monzo is aware of our general position on a Payment Service Providers' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

I appreciate that Binance is a legitimate trader. But I think Monzo still should have provided a scam warning in light of all the information known to banks about the increasing number of scams associated with cryptocurrency. By the time Miss H made the payments to Binance, cryptocurrency scams had risen greatly in frequency and it's reasonable to conclude that banks, such as Monzo, had also had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

Even if an intervention by Monzo would've identified that the payment was going to the consumer's own account with Binance (which she said was set up with the help of the scammer), the conversation should not have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control.

I say this because, by the time Miss H made these payments, Monzo ought reasonably to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm from fraud. Including, that the consumer often first purchases a crypto asset or sends money to a platform where the money is subsequently moved on to or taken by the fraudster. So, it is with this in mind that I think Monzo ought to have probed further about the nature and context of the payment Miss H was making.

In light of this, I think Miss H's losses were foreseeable to Monzo despite the payment on the face of it not leaving her control. And I'm satisfied that, had the bank asked relevant questions of Miss H, it would have been apparent that she was falling victim to a scam. In other words, but for Monzo's failure to make further enquiries, it would have been on actual notice that Miss H was going to suffer financial harm from

fraud.

Had Monzo provided Miss H with a warning, it would have likely alerted her to the common issues arising in relation to cryptocurrency scams which, in turn, would have led her to second guess the broker's credentials. Further research could have also led her to find the multiple warnings posted on review websites online saying that Z was a scammer. The result of this is that it would have likely stopped Miss H from making any further payments.

As a result, I intend directing Monzo to refund the payments Miss H lost to the scam from the £2,500 payment made to Binance on 1 April 2021 onwards.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Miss H should bear some responsibility by way of contributory negligence, which I'm satisfied she should in this case.

First, I don't consider Miss H carried out sufficient due diligence to ensure that the broker was genuine. Miss H says she checked Trustpilot to verify the broker and saw positive reviews, which led her to believe they were legitimate. However, at the time she was scammed, there was also a significant number of sources claiming the broker was operating a scam, including negative reviews on Trustpilot. So, there's seemingly little to suggest that she wouldn't have been able to see or understand the negative reviews online at the time.

Miss H said she was also told she could either double or triple her money, and was led to believe that her initial investment had doubled in profit in order to encourage her to invest further sums. Such returns ought to have appeared far too good to be true, as rarely will any legitimate investment platform be able to achieve this in such a short space of time.

Therefore, I'm satisfied that Miss H's lack of due diligence and failure to question what she was being promised contributed to her loss, such that she should share responsibility with Monzo, and I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether Monzo could have done more to attempt to recover the faster payments after Miss H reported the fraud. However, we know that the money was quickly moved out of her Binance account to the scammer after it had been transferred, so I'm not persuaded there was anything further Monzo could have done to recover the funds in these circumstances.

In terms of the debit card payment made directly to the scammer, I also don't consider Monzo ought to have attempted a chargeback claim in this instance given the payment was disputed outside the 120-day timeframe allowed.

I invited further comments and evidence from both parties. Miss H accepted my provisional findings, but Monzo disagreed. In summary, it said:

- It wants to know the basis of which it is expected to reimburse Miss H, as it doesn't consider it's responsible for payments made to another account that Miss H had

control of.

- The Supreme Court judgment in *Phillips V Barclays* upheld that a bank should carry out its customer's payment instructions promptly and it would be inappropriate for it to decline to do so.

In response to Monzo's further submissions, I issued a second provisional decision explaining why my conclusions remained unchanged:

Monzo has said that it is required to carry out its customers payment instructions promptly and that it therefore wouldn't be able to decline a valid payment instruction. I asked Monzo to provide me with a copy of its terms and conditions so I could consider its contractual obligations in this regard, but it failed to respond.

I have, however, seen a copy of Monzo's terms and conditions applicable to current accounts dated 23 March 2021. Given the point at which I think Monzo should've intervened was 1 April 2021, I will be proceeding on the basis that these were the terms applicable to Miss H's account at the time.

*The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss H's account is that she is responsible for payments she's authorised herself. 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 was not the same as being under a duty to do so.*

In this case, Monzo's March 2021 terms and conditions gave it rights (but not obligations) to:

- *Block payments where it suspects criminal activity on the account. It explains that if it blocks a payment, it will let its customer know as soon as possible, using one of its 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- *FCA regulated banks are required to conduct their “business with due skill, care and diligence” (FCA Principle for Businesses 2) and to “pay due regard to the interests of its customers” (Principle 6)¹.*
- *Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).*
- *Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.²*
- *Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those*

¹ Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

² For example, both the FSA's Financial Crime Guide at 4.2.5G and the FCA's 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.*
- Monzo has agreed to abide by the principles CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of these payments), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.*

Overall, taking into account the law, regulators 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 accounts 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, or provided additional warnings, before processing a payment – as in practice all banks do.*
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.*

I've already set out the reasons why I consider Monzo should have fairly and reasonably made further enquiries before it processed the £2,500 payment made to Binance on 1 April 2021, as well as why I consider such an intervention would have likely prevented any further loss. Monzo hasn't provided any further evidence that would alter my conclusions in this regard, so my reasons still stand, and I intend finding that Monzo should refund the disputed payments from this point onwards,

albeit with a 50% deduction in recognition of Miss H's contribution towards her loss.

Monzo has continued to argue that it cannot be held liable for reimbursing the payments as they were made to Miss H's own crypto account before being transferred on to the scammer. As I set out in my provisional decision, the potential for multi-stage scams involving cryptocurrency wallets ought to have been well known to Monzo 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.

I'm satisfied Monzo should fairly and reasonably have made further enquiries before the £2,500 payment and, if it had, it is more likely than not that the scam would have been exposed and Miss H would not have lost any more money. In those circumstances I am satisfied it is fair to hold Monzo responsible for Miss H's loss, and it has not provided anything in response to my provisional decision that would change my opinion in this regard.

I invited further comments and evidence in response to my recent provisional decision. Miss H accepted the decision and Monzo didn't respond with any further comments.

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.

Given that neither party had any further comments or evidence to provide, I see no reason to depart from the provisional conclusions I've set out above.

My final decision

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

- Refund the payments Miss H lost to the scam from the £2,500 payment made on 1 April 2021 onwards, less a deduction of 50% in recognition of Miss H's own contributory negligence towards her loss.
- 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 Miss H to accept or reject my decision before 16 February 2024.

Jack Ferris
Ombudsman