

The complaint

Mrs A complains that Monzo Bank Ltd won't refund the money she lost when she was the victim of a scam.

What happened

In June 2022, Mrs A saw an account she followed on a social media platform advertising that they had made money investing in cryptocurrency. She contacted the cryptocurrency investment company the account mentioned and was shown how to register on the company's trading platform. She was also shown how to purchase cryptocurrency through a cryptocurrency exchange, and then send this cryptocurrency on to the trading platform.

Mrs A then made a number of payments from her Monzo account to purchase cryptocurrency, which was then sent on to the wallet details she was given for the investment company. I've set out the payments Mrs A made from her Monzo account below:

Date	Amount
21 June 2022	£2,000
23 June 2022	£2,000
23 June 2022	£3,950
24 June 2022	£1,000

Unfortunately, we now know the social media account she followed had been hacked and the cryptocurrency investment company was a scam. The scam was uncovered after the investment company told Mrs A she had to pay a significant amount more to the platform before she could withdraw the profits it said she had made, and Mrs A became suspicious. She then reported the payments she had made to Monzo as a scam and asked it to refund the money she had lost.

Monzo investigated but said it was unable to refund Mrs A because the money had gone to a genuine cryptocurrency exchange, who had done what they were supposed to and provided the cryptocurrency. Mrs A 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 intervened before the third payment Mrs A made and that, if it had done, the scam would have been uncovered. But they also thought it would be fair for Mrs A to bear some responsibility for her loss. So they recommended Monzo refund 50% of the third and fourth payments Mrs A had made. 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.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs A's account is that customers are responsible for payments they authorised themselves. And, as the Supreme Court has recently reiterated in the case of *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with their 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 customer'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 December 2021 terms and conditions gave it rights (but not obligations) to:

- Block payments if it suspects criminal activity on the customer's account.

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 refuse 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.

So overall, taking into account relevant law and regulations, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that in June 2022 Monzo should:

- 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 firms 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 firms 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 customers, when deciding whether to intervene.

And so I've considered whether Monzo should have identified that Mrs A was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect her.

Should Monzo have made further enquiries before it processed any of Mrs A's payments?

The first two payments Mrs A made from her Monzo account as part of this scam weren't for what I'd consider to be particularly large amounts. And they didn't leave the balance of her account at particularly unusual levels. So I wouldn't have expected Monzo to identify that Mrs A 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 Mrs A tried to make the third payment here, for £3,950 on 23 June 2022, I think Monzo should have identified that she could be at risk of financial harm. This payment was for a significantly larger amount than the previous payments. And at this point, Mrs A had attempted to make three payments in three days to an account she had never sent money to before, including two on this same day. The payments were starting to increase in size, which is a pattern often seen with scams. And the payments totalled nearly £8,000, which is significantly more than had moved through her account over such a short period in the previous year. So I think Monzo should have intervened here and carried out additional checks before allowing this payment to go through.

Monzo has argued that the payment went to an account with the cryptocurrency exchange that was in Mrs A's own name and that she still had control over. So it doesn't think it should be responsible for intervening at this point as Mrs A didn't suffer a loss until the money left the account with the cryptocurrency exchange. But I 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 or that is still under their control.

As the account the payments were made to was with a cryptocurrency exchange, rather than with another bank, I think this suggests Mrs A's intentions were to transfer the money on from there, rather than just move it between accounts she held. And because of the amounts involved and the pattern in which the money was being moved, I still think it's fair and reasonable to expect Monzo to have intervened here.

Did Monzo do enough to protect Mrs A?

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks 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 Mrs A found out about the investment she was making and what returns she'd been told she was making.

I've not seen anything to suggest Mrs A would have lied or tried to mislead Monzo if she was asked about the payment. So I think it's likely she would have said the payment was for an investment she was making involving cryptocurrency, she'd found the investment company after seeing it recommended online, and she'd been told he was making significant returns. And as these are all features of common investment scams, I think Monzo should then have had significant concerns and warned Mrs A that she 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 Mrs A. I think if Monzo had explained that her circumstances matched common investment scams and given her some steps she could take to check whether it was legitimate, such as trying to withdraw all the money she had invested so far, the scam would have been uncovered and Mrs A wouldn't have made any further payments towards it.

So if Monzo had done more to protect Mrs A before allowing the third payment, as I think it should have, I don't think Mrs A would have lost the money from this payment or the fourth payment. And so I think it would be reasonable for Monzo to bear some responsibility for the loss Mrs A suffered from this point on.

Should Mrs A bear some responsibility for her loss?

I've also thought about whether it would be fair for Mrs A to bear some responsibility for her loss. And while I appreciate that this was a sophisticated scam where she was given access to a trading platform which appeared to show profits she was making, I do think there were a number of things about what was happening that should have caused her significant concern.

After seeing the social media account advertising the investment company, she doesn't appear to have done significant checks into who the investment company were or seen any independent evidence of the returns they had been able to get for other investors. And given the amount of money she was sending them, I don't think it was reasonable for her to rely solely on the advert or her trust in the social media account and I think it's reasonable to expect her to have done more checks than she did.

All of the communication Mrs A had with the investment company appears to have been through either the social media platform or an instant messaging service. She also doesn't appear to have been sent any documents or paperwork relating to the investments she was making. But this isn't how I would expect a professional company to communicate. And given that she thought he was investing through a professional company and the amount of money she was investing, I think it would be reasonable to expect at least some documents confirming all this. And so I think this method of communication and lack of documents should have caused Mrs A some concern.

Mrs A also appears to have been told she had made very significant returns on the money she had invested. From what she's told us, she was told she had more than doubled her investment in just a few days. And I think these very high returns achieved in such a short period of time should have caused her significant concern that what she was being told was too good to be true.

I sympathise with the position Mrs A has found herself in. She has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused her significant concern. And I don't think she did enough, or that the seemingly genuine information she received from the company should have been enough, to overcome those concerns. So I think it would be fair for her to bear some responsibility for the loss she suffered.

As I think both Mrs A and Monzo should bear some responsibility for the loss she suffered, I think it would be fair for Monzo to refund 50% of the money Mrs A lost – from the third payment onwards.

My final decision

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

- Refund Mrs A 50% of the money she lost, from the third payment onwards – for a total of £2,475
- Pay Mrs A 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 24 April 2024.

Alan Millward
Ombudsman