

The complaint

Mr T complains that Monzo Bank Ltd ('Monzo') hasn't refunded him the money he lost in a scam.

What happened

Mr T is represented in this case but for ease I'll refer to Mr T throughout my decision.

Mr T says that a colleague at work who he'd known for a few months was investing and showed him screenshots from a platform showing he was making a profit. The colleague put Mr T in touch with someone I'll refer to in this decision as C. Mr T and C started to communicate through a messaging app and C mentioned that she made money investing in cryptocurrency and could teach Mr T how to trade. C showed Mr T a screenshot which she said showed it took ten minutes to earn £120,000. She also said Mr T could expect a profit of four to ten per cent per transaction.

Mr T said he wanted to start small and see how it went so decided to invest £100. He was told that he needed to buy cryptocurrency and send it to a 'decentralised exchange' which she provided a link to. The link was to a clone of a genuine exchange with almost the same name (but the clone included an additional letter). Mr T could see his profits rising on the fake platform and agreed to invest more. He sent funds to a digital wallet provider and on to the fake platform. I have set out in the table below the scam transactions Mr T made.

| Date | Amount |
|--------------|----------------|
| 20/07/22 | £100 |
| 27/07/22 | £1,000 |
| 03/08/22 | £10,000 |
| Total | £11,100 |

It was when Mr T wanted to withdraw funds and was asked to make a further payment of £8,000 that he realised he was the victim of a scam. Mr T contacted Monzo via its chat function on 8 August 2022 to explain what had happened.

Monzo considered Mr T's complaint under the Lending Standards Boards' Contingent Reimbursement Model Code (CRM Code), which Monzo hasn't signed up to but has agreed to implement the principles of. It didn't agree to reimburse Mr T, saying that the scam payments weren't made from Mr T's Monzo account. Monzo also said it didn't consider the transactions to be suspicious.

Mr T was unhappy with Monzo's response and brought a complaint to our service. He said the transactions were out of character and Monzo should have intervened.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said that although he'd have expected Monzo to intervene when Mr T made the £10,000

payment, he didn't think it would have made a difference. This was broadly because Mr T would have said he'd been introduced to the investment by a work colleague.

Mr T didn't agree with the investigator's findings and asked for a final decision, so the complaint was passed to me to consider. In summary, he said that had Monzo asked basic questions and explained how cryptocurrency scams work when the £10,000 payment was made the scam would have been uncovered. Mr T went on to say that he hadn't seen evidence of a withdrawal; he'd simply seen a screenshot of an apparent withdrawal, and that Monzo should have recognised all the hallmarks of a cryptocurrency scam.

After reviewing the evidence, I contacted Monzo to say that I thought it should have intervened when the £10,000 payment was made and had it done so the scam would have been uncovered. This was on the basis that Monzo, as the fraud expert, ought to be aware of scams of this nature and Mr T was relying on instructions from someone he had never met after seeing a fake platform showing profits. But there was no suggestion Mr T's work colleague had been able to make a withdrawal. As Mr T relied heavily on the advice of someone he'd never met and had no reason to trust I said Mr T should share responsibility for his loss with Monzo.

Monzo didn't agree with my initial thoughts. In summary, Monzo said:

- The payment wasn't suspicious and there was no risk of a scam because Mr T was making legitimate payments to his own cryptocurrency wallet. This is outside of Monzo's remit, would be inappropriate and would contradict regulatory expectations. Monzo raised the Supreme Court judgement in the case of Philipp vs Barclays Bank Plc.
- There is no evidence intervention would have equaled prevention. Monzo referred to Mr T's friend showing him how the investment worked including how to withdraw funds.

I issued a provisional decision on 18 January 2024. I said I was minded to require Monzo to reimburse £5,000 plus interest and said the following in the "*What I provisionally think – and why*" section:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to hear about this cruel scam and the impact it has had on Mr T.

In deciding what's fair and reasonable, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

The CRM Code only applies to faster payments between UK GDP denominated accounts, so it isn't relevant here.

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, 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.*

In this case, I don't consider Monzo acted unfairly or unreasonably in allowing the first two payments to be made. They were relatively low in value and not inconsistent with Mr T's normal account activity. There's a balance to be struck; banks have obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments.

I think the position changed when Mr T made a payment request for £10,000 on 3 August 2022. This transaction was significantly out of character given the normal operation of Mr T's account. Mr T hadn't made any payment of over £1,000 (even taking into account the second scam payment) and he was paying a digital wallet provider often associated with cryptocurrency. In the circumstances, I consider Monzo ought reasonably to have intervened and asked Mr T some questions about the transaction to satisfy itself he wasn't falling victim to a scam and to have provided appropriate scam warnings. But Monzo's records show that no warning was provided to Mr T.

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

I asked Monzo to provide the relevant terms and conditions that applied when Mr T made the transactions listed in the table above. Monzo referred me to its April 2023 terms and conditions (and I assume previous versions also did so, but Monzo can let me know in its response to this provisional decision if this isn't correct), which 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 not to make payments where it suspected fraud.*
- It had a contractual right to delay payments to make enquiries 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 Monzo's current account terms don't oblige it 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.

In this case for the reasons I have explained, I'm satisfied Monzo should have intervened. Whilst it's not for me to provide a list of questions Monzo should have asked, I consider Monzo ought reasonably to have established how Mr T found out about the investment opportunity, whether anyone was helping him, what he understood about the investment and the rate of return he expected.

I've considered what would most likely have happened if Monzo had intervened as I think it should. I see no reason why Mr T wouldn't have told the truth about the reason for the payment and how he found out about the investment, in which case I think the scam would quickly have been uncovered. Mr T wasn't given a cover story. He would have explained that a colleague at work had referred him to someone he'd never met who was teaching him how to trade through messages and screen shots. These are common features of this type of scam and ought reasonably to have concerned Monzo, and led it to set out how scams of this nature work and to explain that fraudsters can create fake platforms to make it appear that victims are earning profits.

I'm satisfied Mr T would have heeded any warnings he was given about cryptocurrency scams as it's clear he was cautious about the investment. C initially suggested Mr T invest £300 but he decided to start with £100. Mr T was also referred to C by a work colleague rather than a close friend he'd have good reason to trust. His representative has referred to Mr T seeing a screenshot of a withdrawal but hasn't suggested that Mr T witnessed him making a withdrawal. So I'm persuaded that if Monzo brought to life this type of scam Mr T wouldn't have proceeded with the transaction.

I'm not persuaded that the fact the payments were going to Mr T's own account and so appeared to be going somewhere safe and within his control should have satisfied Monzo that he wasn't at risk of harm. This is because by January 2019, banks had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I've gone on to consider whether Mr T should share responsibility for his loss. On balance, I think he should. In reaching this conclusion I've taken into account the fact that Mr T placed a lot of trust in someone he didn't know and had only communicated with via a messaging app. C claimed to have a lot of knowledge she was willing to share but there was no evidence that this was the case. And Mr T didn't receive a contract, or any other form of paperwork as would be expected when a genuine investment is made. Mr T has said that he researched the 'decentralised exchange' his funds went to, but the link provided by C showed a different name and I consider if Mr T had completed some research, he'd have noticed this.

Overall, I'm sorry Mr T has lost money to a cruel scammer and think he should be refunded £5,000 plus interest as set out below.

Mr T agreed with my provisional findings, but Monzo did not. It said it had nothing further to add as it had already provided robust arguments and its position remained the same. Monzo summarised its main points as follows:

- It has no legal or regulatory obligation to reimburse.
- Scam payments weren't made from Mr T's Monzo account.
- It didn't have the right to intervene in legitimate payments.
- The payments weren't considered to be suspicious.
- Any loss Mr T suffered was outside of its remit so it shouldn't be held liable.

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.

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Having carefully considered Monzo's response I see no reason to change my decision (which I have set out in full above and incorporate into this section). Monzo has reiterated points I have covered in my provisional decision so I will not repeat what I said.

My final decision

I require Monzo Bank Ltd to:

- Reimburse Mr T £5,000; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of loss to the date of settlement.

If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it has taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 February 2024.

Jay Hadfield
Ombudsman