

The complaint

Mr M 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 M has explained that in December 2021 and January 2022 he made 14 payments from his Monzo account for what he thought was a legitimate investment. Mr M made the payments from his Monzo account first to crypto exchanges, before I understand they were then moved on from there to the scammers. The payments have been detailed elsewhere, prior to this decision. They totalled £27,685.01, but Mr M received credits from one of the crypto exchanges totalling £7,481.09, making his net loss £20,203.92.

Mr M subsequently realised he had been scammed and got in touch with Monzo. Ultimately, Monzo didn't reimburse Mr M's lost funds, and Mr M 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. That is, I've decided to uphold this complaint in part. I'll explain why.

Prevention

In broad terms, the starting position at law is that a firm is expected to process payments 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 M was tricked. So, although Mr M didn't intend the payments to be ultimately lost to scammers, Mr M is presumed liable 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 would expect it to intervene in a manner proportionate to the risk identified.

Our Investigator said that Monzo should have recognised the risk when Mr M made his fifth payment, and I agree with this conclusion. I think it's fair to say that the first four payments (the largest of which was £754.43) reasonably wouldn't have concerned or stood out to Monzo. But I think the fifth payment, which was for £8,179.89, reasonably should have: this was for a substantial amount, and sufficiently unusual and uncharacteristic for Mr M's account in my view, such that Monzo reasonably ought to have paused the payment, pending enquiries with Mr M, before it followed his instructions to execute the payment.

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 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 that, where a customer has authorised and instructed the 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 thing as being under a duty to do so.

In this case, Monzo's 6 December 2021 terms and conditions gave it rights to block payments where it suspected criminal activity on the account.

So, the starting position at law was that:

- Monzo was under an implied duty to make payments promptly.
- It had a contractual right to block payments where it suspected criminal activity (which would include fraud).

It could therefore block 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 industry practice at the time, it should *fairly and reasonably* have been on the lookout for the possibility of fraud and have taken additional steps, or make 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 when Mr M instructed the fifth payment. Like our Investigator, I haven't seen anything that persuades me Mr M wouldn't have fully explained what he was doing, if Monzo had asked him what the payment was for and for the basic surrounding context, as I think it reasonably should have (for example, there's nothing about the communications I've seen between Mr M and the scammers that indicates Mr M had been coached or provided with a cover story to give Monzo, nor does there appear to have been any intervention from Barclays (Mr M's other bank) with regards to payments Mr M made *into* his Monzo account from his Barclays account, that helped fund the scam payments). At this point, Mr M thought, because of what the scammers had told him, that he was paying 'tax' for a 'withdrawal'. Even though the conversation would have identified the payment was going to Mr M's own crypto account, the conversation shouldn't have stopped there on the basis that the money appeared to be going somewhere safe and within Mr M's control. This is because at the time, Monzo reasonably ought to have had a good understanding of how scams like this work – including that the customer often moves money to an account in their own name

before moving it on again to the scammers. And if Mr M had explained he thought he was paying 'tax' for a 'withdrawal', bearing in mind the level of understanding I would expect Monzo to have had about scams like this at the time, this ought to have been a red flag – such that I would reasonably have expected Monzo to give Mr M a meaningful warning that what he'd described had the hallmarks of a scam, and that there was a real risk he was being scammed.

There isn't much information I can see in the public domain about the scammers Mr M was dealing with, and I acknowledge it's possible that he may have, nonetheless, been taken in by what the scammers had already told him and instructed Monzo to proceed with the payment regardless. But Mr M had, by this point, 'invested' just £1,000 (approximately), yet he was being asked by the scammers to pay 'tax' of over £8,000, presumably because he'd been led to believe his initial investments had grown so much. But this shouldn't reasonably have fooled Monzo. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018, which a regulated business like Monzo ought reasonably to take notice of. By the time of Mr M's payment in December 2021, cryptocurrency scams had risen greatly in frequency and it is reasonable to conclude that firms like Monzo had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So I think Monzo ought to have been well aware of scams like this. And whilst, as I have said, there isn't much information I can see in the public domain about the scammers, I note their website did imply a link to a company which the International Organization of Securities Commissions (IOSCO) (an international body that brings together the world's securities regulators) had published a warning about in 2019. This is not to say I think Mr M would definitely have found and seen this. But what I am satisfied of is that he wouldn't have found any information to allay concerns. And I think he would have taken Monzo's tailored warning seriously. So, I think had Monzo given Mr M an appropriately tailored and meaningful warning (which I'm satisfied it should have done, but didn't), it's most likely Mr M would have thought the risk of making further payments was too high and he wouldn't have proceeded with this fifth payment or subsequent ones.

Should Monzo be fairly and reasonably held responsible for Mr M's loss?

In reaching my decision about what is fair and reasonable, I've considered that Mr M paid money into his Monzo account to help fund the scam payments, and that he transferred the money out of his Monzo account to crypto accounts seemingly in his own name, rather than directly to the scammers, so he remained in control of his money after he made the payments from his Monzo account, and it took further steps before the money was lost to the scammers. But for the reasons I have set out above, I am satisfied that it would be fair to hold Monzo responsible for Mr M's losses (subject to a deduction for Mr M's own contribution). As I have explained, the potential for multi-stage scams ought to have been well known to Monzo and as a matter of good practice Monzo should fairly and reasonably have been on the lookout for payments presenting an additional scam risk including those involving multi-stage scams.

I have also taken into account that payments made into and out of Mr M's Monzo account as a result of the scam involved separate businesses. But whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against more than one financial business about connected circumstances, the only complaint Mr M has referred to us is about Monzo, and DISP does not empower me to instruct Mr M to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that Monzo did not act fairly and reasonably in the circumstances of this case. Mr M is entitled to choose to

complain only about Monzo and I am satisfied that Monzo reasonably ought to have prevented the loss he suffered if it had acted fairly and reasonably.

Should Mr M bear any responsibility for his loss?

I've thought about whether Mr M 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 M wasn't as careful as he reasonably ought to have been. As our Investigator said, no investment company can guarantee a profit, Mr M's returns appeared unrealistic which I think Mr M ought to have recognised as most likely too good to be true, and Mr M paid 'fees' of much more than would seem reasonable bearing in mind the amount he had invested. So, like our Investigator, I'm satisfied Mr M should share equal responsibility for the loss.

Could Monzo have done anything to recover Mr M's money?

As the payments were made by debit card, the only potential avenue for recovery of them, after they had been made, would have been via the chargeback scheme. But Mr M made the payments from his Monzo debit card to the crypto exchanges (and not directly to the scammers). So, the merchants here, for chargeback purposes, would be the crypto exchanges (and not the scammers). I understand Mr M would've received the services from the crypto exchanges intended, which was the transfer of his funds into cryptocurrency. The transfer of the cryptocurrency to the scammers would not give rise to a valid chargeback claim through Monzo. So, I can't reasonably 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 fifth and subsequent payments would most likely have been prevented, but that Mr M should share equal responsibility for this.

The fifth and subsequent payments totalled £26,605.25. But, as I've explained, Mr M received credits totalling £7,481.09, reducing this loss. One of those credits (the £22.41 on 27 December 2021) concerned a previous payment Mr M had made (before the fifth payment), so I think that credit wasn't to do with the payments the loss calculation is concerned with here – which is payment five onwards. But I am satisfied the rest of the credits (£7,458.68) were received in relation to payment five onwards.

So, Mr M's net loss, regarding payment five onwards, is £19,146.57 (that's £26,605.25 less £7,458.68). So, Monzo should pay Mr M £9,573.29 (which is 50% of £19,146.57). To compensate Mr M for being deprived of this money since the date he lost it, Monzo should also pay Mr M interest on this amount calculated at 8% simple per year from the date he lost it to the date of settlement.

My final decision

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

- £9,573.29; plus
- interest on this amount calculated at 8% simple per year from the date of each payment to the date of settlement (if Monzo deducts tax from this interest, it should send Mr M the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 April 2024.

Neil Bridge
Ombudsman