

## **The complaint**

Ms M complains that Monzo Bank Ltd didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In late 2021 Ms M decided to research cryptocurrency investments and clicked on a pop-up advert for an investment company I'll refer to as "X". She checked the website and was reassured as X was based in London and was registered with the Financial Conduct Authority ("FCA"). She read all the reviews and noted the advert had a celebrity endorsement.

Ms M completed an online form and was then contacted by someone who claimed to work for X who told her the process was very easy and low risk. They also told her she'd be able to withdraw her funds any time and there was a 'stop loss' function so she wouldn't lose anything. The broker told her it would be a good time to invest, which made sense as her friends were getting good returns and cryptocurrency was all over social media. He also told her that UK banks didn't like cryptocurrency exchange platforms.

Ms M made an initial investment of £200, after which she was given log-in details for the platform and a personal dashboard which showed her investment and profits. Her trading account was managed by a broker who asked her to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet and between 4 January 2022 and 21 February 2022, she made fifteen payments to a cryptocurrency exchange company which I'll refer to as "C". The payments totalled £53,600 and were made using a debit card connected to her Monzo account. She also made two transfers to an account with an Electronic Money Institution ("EMI") which I'll refer to as "W".

Ms had some doubts about the broker towards the end of January 2022, but he reassured her and said the account required funds to serve as liquidity, suggesting she move more funds to the platform, which she did. She eventually realised she'd been scammed when tried to withdraw her funds and was told her account had been frozen. She reported the issue to the FCA and contacted X and discovered the scam company was a clone of a genuine company.

In April 2022, Ms M was contacted by someone claiming to work for a recovery company which I'll refer to as "E". They told her she'd been dealing with a fraudulent broker, but her money was safe. Unfortunately, this was another scam, and she was told she needed make several payments to recover her lost funds. Between 21 June 2022 and 10 November 2022, Ms M made thirteen payments to a cryptocurrency exchange company I'll refer to as "L" totalling £5,650 using her Monzo debit card. She realised this was another scam when she didn't receive any funds.

Ms M contacted Monzo but it refused to refund the money she lost and so she raised a complaint. She complained it had blocked her debit card without notice and she had felt patronised when she was asked about the scam payments. She was unhappy about the time it had taken to investigate her claim and that she'd spoken to different advisors who didn't have access to a case file and arranged call-backs at inconvenient times.

Monzo said its system had flagged payments as high risk on 17 February 2022 and 8 November 2022 and it was unable to provide prior warning for account freezes. It said it had blocked her card to keep the account safe and this was done quickly to ensure the account was secure. It apologised that Ms M felt patronised when she reported the scam, and it accepted she'd dealt with multiple call handlers, explaining its chat system is designed to give fast responses. It accepted there were delays in the time it had taken to respond to her chat messages and as an apology it applied a £25 credit to her account. But it didn't accept there were failings in communication stating it had asked a number of questions about what happened, but she didn't respond so it didn't take the case further. Finally, it maintained it couldn't offer her an overdraft due to her income and outgoings.

Ms M wasn't satisfied and so she complained to this service. She said Monzo could have done more to prevent her loss and it had previously shown generic warning messages, to which she'd grown immune.

Monzo further commented that all the payments were verified using 3DS, so they were properly authorised. And it didn't have sufficient grounds to raise a successful chargeback because when payments are made to cryptocurrency exchange companies and exchanged for cryptocurrency, the service is deemed provided. It said the payments from Monzo weren't the scam payments as they were made to another account in Ms M's own name, so it can't be considered the point of loss. And the Contingent Reimbursement Model ("CRM") code didn't apply to card payments and international payments.

Our investigator felt the complaint should be upheld. She explained that a chargeback claim wouldn't have been successful because the cryptocurrency exchange companies had changed Ms M's payments into cryptocurrency before sending it to the wallet address she supplied it with. She also said there would have been no prospect of a successful recovery because Ms M paid accounts in her own name before transferring them to the scam.

Our investigator thought Monzo had missed several opportunities to expose the scam throughout January and February 2022. She didn't think the first payment on 4 January 2022 was unusual for the account, but she noted the second payment (also on 4 January 2022) was blocked and when Ms M contacted it to discuss the payment, she was told the payment was declined because it was high risk, and there was no further discussion. She thought that if Monzo had asked relevant questions it would have been apparent that she was falling victim to a scam, that it would have been reasonable for Monzo to require Ms M to attend the branch to discuss the payments and had it done so the scam would've been exposed. She was satisfied this represented a missed opportunity to have prevented Ms M's loss sooner so she recommended it should refund the money she lost from the second payment onwards.

However, she felt Ms M should share responsibility for her loss because the rate of return was too good to be true and she should have been concerned that she was asked to make overseas payments when X was based in London. She also noted that when Ms M suspected she was being scammed, she contacted C who confirmed it had no relationship with X. She felt Ms M should have listened to what Monzo said during the calls and done more checks before agreeing to invest further funds.

She accepted Ms M was desperate to get her money back when the secondary scam took place but as she'd already been the victim of a scam, she should have done further due diligence. And if she'd checked E on the FCA register it would show as a company linked to boiler services. There was also a warning about it on the Financial Conduct Authority ("FCA") website dated 11 August 2022. Because of this, she recommended the settlement should be reduced by 50% for contributory negligence (and a further £3,021.76 which remained in her cryptocurrency account).

Finally, she considered the impact of Monzo's failings when Ms M reported the scam to it and recommended it should pay a total of £200 compensation.

Both parties indicated they were unhappy with the outcome and so the complaint was passed to me to consider. Ms M argued that her actions in respect of the recovery scam should be disregarded. And Monzo argued that it tried several times to dissuade Ms M from making the payments and she either refused to engage or was hostile to its attempts to assist her. It asked her how long she'd been investing, whether anyone had given her advice and whether she'd done any research to which she'd replied 'I have been investing for about 30 years and in cryptocurrency for about one year. I have opened [accounts] and this is a risk I'm willing to take.' It gave an extensive warning about investment scams and asked for evidence the account was hers, but Ms M was untruthful, so it didn't detect the scam.

### **My provisional findings**

I thought about whether Monzo could have done more to recover Ms M's debit card payments when she reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Monzo) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Ms M).

Ms M's own testimony supports that she used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Ms M's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I was satisfied that Monzo's decision not to raise a chargeback request against either of the cryptocurrency exchange companies was fair.

I was also satisfied Ms M 'authorised' the payments for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Ms M is presumed liable for the loss in the first instance.

There's no dispute that this was a scam but although Ms M didn't intend her money to go to scammers, she did authorise the disputed payments. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### ***Prevention***

I thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to genuine cryptocurrency exchange companies. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have done more to warn Ms M when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Ms M from financial harm due to fraud.

The payments did flag as suspicious on Monzo's systems. I agreed with our investigator that the first payment wasn't concerning because even though it was to a cryptocurrency merchant, and it was low value. Monzo did block the second payment, but when Ms M contacted it, she was told the payment was high-risk, but she wasn't asked any probing questions or given any warnings.

Based on the fact this was a high-value payment to a cryptocurrency merchant, I thought Monzo ought to have done more during this interaction. It should have asked Ms M why she was making the payment, whether there was a third party involved and if so, how she met them, whether she'd used remote access software, whether she'd been promised unrealistic returns and whether she'd made any withdrawals. And had it done so, as I hadn't seen any evidence that she was coached to lie, I was satisfied she'd have told it she was investing in cryptocurrency with the assistance of a broker she'd found online who worked for a company which was endorsed by a well-known celebrity. With probing questions, I thought she would have also disclosed that she'd been advised by the broker to make an onwards payment from the cryptocurrency exchange.

Had this happened, I thought there were enough red flags present for Monzo to have identified that Ms M was being scammed. It could then have given her a tailored warning about scams involving cryptocurrency and provided advice on additional due diligence, including how to check for clone companies. There's no evidence Ms M was keen to take risks or that she wouldn't have listened to some robust advice at the beginning of the scam period and had she done further checks I thought this would likely have uncovered the scam.

She had explained that she checked the company website and was reassured as X was based in London and was registered with the Financial Conduct Authority ("FCA"). She also contacted the genuine company when she had concerns. So, if she'd known about the risk of clone companies, on balance, I thought she'd have checked this wasn't the case before investing further funds.

Monzo argued that it gave scam advice on 17 February 2022 and 8 November 2022. I accepted it did give warnings and advice on additional due diligence on 17 February 2022, but Ms M wasn't warned about the risk of clone companies. And it should have stopped the payments altogether because she'd told it she'd been pressured by a broker to buy cryptocurrency. And the situation had moved on by November 2022 because she was so desperate to get back the money she'd lost to the first scam.

Because of this, I was satisfied that Monzo's failure to intervene when Ms M made the second payment represented a missed opportunity to have prevented her loss and so I said I was minded to ask it to refund the money she lost from the second payment onwards.

### *Contributory negligence*

I explained there's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence.

Our investigator had recommended that the settlement should be reduced for contributory negligence, commenting that by the time Ms M was contacted by the scam recovery agent, she'd already been the victim of an investment scam and so she should reasonably have been aware that there were real risks associated with cryptocurrency investments. She had contacted C who confirmed it had no relationship with X and our investigator noted that if she'd looked for E on the FCA register, she'd have seen there was a warning dated in August 2022, which was within the scam period. She also had several conversations with Bank H about the high-risk nature of the payments she was trying to make from that account, yet she continued to make payments to the scam.

I carefully considered the circumstances, and I didn't think Ms M failed to take reasonable care when she made the first thirteen payments. In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I didn't think it was unreasonable for Ms M to have believed what she was told by the broker in terms of the returns she was told were possible, notwithstanding the fact it was highly implausible. She also believed that several of her friends had made good returns for their investment.

Ms M hadn't invested in cryptocurrency before and so this was an area with which she was unfamiliar. She wouldn't have known how to check the information she'd been given or that a celebrity endorsement is a red flag for fraud. This unfamiliarity was compounded by the sophisticated nature of the scam, the fact she trusted the broker and the fact she believed the trading platform was genuine and was reflecting the fact her investments were doing well.

However, Ms M had begun to suspect she'd been scammed by 27 January 2022, and she received a tailored warning and advice on additional due diligence from Monzo on 17 February 2022, yet she made further payments to the first scam on 16 February 2022 and 21 February 2022. And by the time she was contacted by the recovery agent, having been scammed before, she ought reasonably have taken more care to check what she was being asked to do and had she done so she might have discovered sooner that she was being scammed. Because of this I said I was minded to direct that the part of the settlement for the payments she made from 16 February 2022 onwards should be reduced by 50% for contributory negligence.

### *Compensation*

Monzo had already offered £80 compensation issues relating to the call that happened on 26 June 2023 and £25 for delays in the time it took to respond to her chat messages. Our investigator had recommended Monzo should increase the total compensation to £200 to reflect the impact of other failings including the fact she felt patronised when she reported the scam and she had dealt with multiple call handlers, explaining its chat system is designed to give fast responses. I was satisfied that's fair.

### *Recovery*

I didn't think there was a realistic prospect of a successful recovery because Ms M paid accounts in her own name and moved the funds onwards from there.

### **Developments**

Both parties have accepted my provisional findings.

## **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.

Because both parties have accepted my provisional findings, the findings in my final decision will be the same as the findings in my provisional decision.

## **My final decision**

My final decision is that Monzo Bank Ltd should:

- refund the money Ms M lost from the second payment onwards (less £3,021.76 still in the cryptocurrency account).
- the settlement for the payments dated between 16 February 2022 and 10 November 2022 should be reduced by 50% to reflect contributory negligence.
- pay 8% simple interest\*, per year, from the respective dates of loss to the date of settlement.
- pay a total of £200 compensation.

\*If Monzo Bank Ltd deducts tax in relation to the interest element of this award it should provide Ms M with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 July 2024.

Carolyn Bonnell  
**Ombudsman**