

The complaint

Mr O complains that Monzo Bank Ltd (Monzo) won't refund money he lost in an investment scam.

What happened

What Mr O says:

Mr O received a message on WhatsApp from someone offering to set him up on a trading platform and provide him with a mentor who could teach him how to trade. I will refer to the investment firm as 'firm X'.

Mr O says he had little investment experience and was not familiar with crypto trading. The mentor showed a deep knowledge and appeared professional. Mr O looked online and found no negative reviews about firm X. He was told the returns would be 45%. The scammers got him to download screen sharing software and he opened a crypto wallet account. He sent a number of payments as shown, and from the crypto wallet transferred the funds to 'firm X':

| | Date | Payment | Amount |
|----|-------------------|---------------------------------|----------|
| 1 | 19 August 2023 | Faster payment to crypto wallet | £100 |
| 2 | 21 August 2023 | Faster payment to crypto wallet | £1,200 |
| | 21 August 2023 | Credit | (£139) |
| 3 | 21 August 2023 | Faster payment to crypto wallet | £50 |
| 4 | 21 August 2023 | Faster payment to crypto wallet | £50 |
| 5 | 21 August 2023 | Faster payment to crypto wallet | £20 |
| 6 | 21 August 2023 | Faster payment to crypto wallet | £100 |
| 7 | 21 August 2023 | Faster payment to crypto wallet | £500 |
| | 11 September 2023 | Credit | (£77.50) |
| 8 | 12 September 2023 | Faster payment to crypto wallet | £200 |
| 9 | 14 September 2023 | Faster payment to crypto wallet | £291.20 |
| 10 | 14 September 2023 | Faster payment to crypto wallet | £1,700 |
| 11 | 15 September 2023 | Faster payment to crypto wallet | £2,850 |

| | | | |
|-----------------------|-------------------|---------------------------------|-------------------------|
| 12 | 15 September 2023 | Faster payment to crypto wallet | £2,045.65 (refunded) |
| 13 | 16 September 2023 | Faster payment to crypto wallet | £2,050.67 |
| 14 | 17 September 2023 | Faster payment to crypto wallet | £1,565.85 |
| Total net loss | | | £10,244.72 |

At first, Mr O's investment seemed to be doing well and he made two small withdrawals.

Then, the trading platform stopped working - he was told it was undergoing maintenance. After it started working again, he sent more money to it.

But then when he wanted to withdraw funds, he was told he had to deposit more money to do that. At the end of the scam (after payment 13), Monzo blocked a further payment (for £1,892) and after speaking to the bank, he realised he had been scammed.

Mr O says Monzo should've intervened on 15 September 2023 – as that payment (for £2,045.65) was out of character. Had the bank done so, the rest of the scam would have been stopped. He says the payments after then should be refunded, plus interest at 8% per annum.

What Monzo said:

Monzo didn't refund any money. the bank said their fraud systems didn't flag the payments as being unusual. Monzo says they'd contacted the recipient bank/crypto wallet provider and no funds remained to be returned.

Our investigation so far:

Mr O brought his complaint to us. Our investigator upheld it. He said that by the time of the 13th payment for £2,050.67, a pattern had been established and the payments were, by then, out of character. And so Monzo should then have intervened but didn't.

He said Monzo should be liable for the last two payments – numbers 13 and 14. But Mr O should be responsible for 50% of the losses as he didn't do enough to protect himself:

- He didn't get any contracts or paperwork or any information about expected returns.
- He was contacted via an unsolicited WhatsApp contact – this wasn't how genuine investment firms act.
- The firm X had no online presence – genuine investment firms would have reviews and an online presence.

Mr O agreed with this outcome, but Monzo didn't. The bank asked for an ombudsman to review the case and said:

- it wasn't practical to intervene as suggested – as the bank would have to intervene in thousands of payments each day.

- Monzo quoted the appeal court decision in Phillip v Barclays; the bank could refuse payments where it suspected fraud, but it was not under a contractual duty to do this. And in this case, the bank couldn't have been expected to suspect a fraud was going on.
- Monzo further said that they couldn't be liable for payments which were properly sent to a crypto wallet for the purchase of crypto currency.

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.

I'm sorry to hear that Mr O has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr O didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, 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. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 make 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.

I need to decide whether Monzo acted fairly and reasonably in its dealings with Mr O when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. Monzo hasn't signed up to the Code, but they follow its principles. That said, it applies to faster payments made to another UK beneficiary – and in this case, the payments were made by Mr O to his own crypto wallet. So it doesn't apply in this case. I have therefore looked at this complaint using general Authorised Push Payment considerations.

I looked at Mr O's account – it was used for daily expenditure: in the six months leading up to the scam, there were a small number of payments up to £1,000. And therefore, I consider that – up to payment 13 the payments weren't sufficiently out of character (or of a higher enough value) to have expected Monzo to be concerned.

There was also nothing else about the first 12 payments that ought reasonably to have concerned Monzo. There's a balance to be struck: Monzo has certain duties 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. In this case, I think Monzo acted reasonably in processing the payments up to that moment.

But – after that time, I consider Monzo should've intervened. By the payment number 13 (for £2,050.67), Mr O had made five payments for over £7,000 in three days – and to a known crypto exchange. This was out of character for Mr O. And therefore I think it is reasonable to have expected Monzo to intervene at that point. But the bank didn't.

Monzo was the expert in such matters and if they'd intervened, held the payments and contacted Mr O, we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- Where is the money going to from your crypto wallet?
- What do you know about crypto investing?
- Have you made crypto investments before?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

I'm satisfied that the scam would then have been prevented from that point.

I'm also not persuaded that the fact the payments were going to Mr O'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, firms like Monzo 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.

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 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 Authorised Push Payment 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 23 April 2023 terms and conditions 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 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 Authorised Push Payment (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 am satisfied it should have intervened.

Therefore, I consider that Monzo should be liable to refund the last two payments – for £3,616.52.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Mr O could've done more to protect himself and whether he should therefore reasonably share some of his losses.

In thinking about this - we apply a test of what we would expect a reasonable person to do in the circumstances. We don't (for example) apply a test of what we would expect a finance professional to do.

And I think he should be partly responsible. I say that as:

- He acted on the strength of an unknown WhatsApp contact – which wasn't a wise thing to do.
- He didn't get any contracts, projections, paperwork from firm X.
- He says the investment platform went down for a period at one stage – and he couldn't see his 'investments' which should've been a red flag, but he continued to send money after that.
- While he found no online reviews of firm X – this was also a red flag as any reasonable investment firm should have an online presence, contact details, website etc.
- Mr O was promised returns of 45% - which was too good to be true.

So - Mr O should've reasonably seen the warning signs, but he still went ahead.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Monzo took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. I can see that Monzo tried to get the money back but none remained.

And here, this wasn't a surprise – as the funds went from the bank account to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

My final decision

I uphold this complaint. Monzo Bank Ltd must:

- Refund half of £3,616.52 (£1,808.26) plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 12 March 2025.

Martin Lord
Ombudsman