

## The complaint

Mr Z is unhappy that Monzo Bank Ltd ("Monzo") won't refund him a number of payments he made as the result of a romance/investment scam.

## What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail again here. However, in summary, Mr Z fell victim to a romance scam which involved him paying funds to a fake investment at the instruction of someone he believed he was in a relationship with - but who later turned out to be a scammer.

Mr Z made the following payments as a result of the scam:

Date	Time	Type of transaction / merchant	Amount
30 March 2023	12.47am	Card payment – crypto.com	£0.01
30 March 2023	12.57am	Card payment – crypto.com	£1,000 (returned straightaway)
30 March 2023	12.58am	Card payment – crypto.com	£1,000 (returned straightaway)
30 March 2023	12.59am	Card payment – crypto.com	£500 (returned straightaway)
30 March 2023	1.00am	Card payment – crypto.com	£100 (returned straightaway)
30 March 2023	1.03am	Card payment – crypto.com	£50 (returned straightaway)
30 March 2023	1.05am	Card payment – crypto.com	£37.28 (returned straightaway)
30 March 2023	2.20pm	Card payment – crypto.com	£36.99 (returned straightaway)
30 March 2023	2.21pm	Card payment – crypto.com	£37.04 (returned straightaway)
30 March 2023	2.28pm	Faster payment – Foris Dax	£100
30 March 2023	2.51pm	Faster payment – Foris Dax	£900

2 April 2023	5.42pm	Faster payment – Foris Dax	£3,000
2 April 2023	7.30pm	Faster payment – Foris Dax	£7,000
4 April 2023	8.04am	Faster payment – Foris Dax	£100
4 April 2023	8.06am	Faster payment – Foris Dax	£2,900
4 April 2023	9.49am	Faster payment – Foris Dax	£5,000
7 April 2023	12.00am	Card payment – crypto.com	£0.10
20 April 2023	2.37pm	Faster payment – Foris Dax	£2,000
24 April 2023	11.37am	Faster payment – Foris Dax	£2,000
24 April 2023	1.48pm	Faster payment – Foris Dax	£2,000
24 April 2023	6.15pm	Faster payment – Foris Dax	£4,000
3 May 2023	2.33pm	Faster payment – Foris Dax	£2,400
12 June 2023	7.57pm	Faster payment – Foris Dax	£100
12 June 2023	8.19pm	Faster payment – Foris Dax	£2,000
19 June 2023	1.33pm	Faster payment – Foris Dax	£8,000
22 June 2023	10.26am	Faster payment – Foris Dax	£5,000
5 July 2023	11.30am	Faster payment – Foris Dax	£4,900
		<b>Total</b>	<b>£51,400.20</b>

Mr Z raised a complaint with Monzo about what had happened to him. Monzo did not respond to Mr Z so he brought his complaint to this service.

One of our investigators looked into Mr Z's complaint and recommended it be partially upheld. They considered that by the time Mr Z attempted to make the 7th payment, Monzo should have been concerned about the activity on his account and it should've questioned him about the payment before it was processed on his behalf. Our investigator thought that had Monzo questioned Mr Z about this payment, the scam would've come to light and Mr Z's further loss prevented. The investigator went on to say that Mr Z should also bear some responsibility for the overall loss as he ought reasonably to have had concerns about whether this was a genuine situation from the outset. To recognise that liability for the success of the scam should be split between both parties, the investigator recommended Monzo refund 50% of Mr Z's total loss from the 7th payment onwards plus 8% simple interest.

Mr Z accepted the investigator's opinion but Monzo did not. It said:

- It agreed to refund Mr Z 50% of the £900 payment made on 30 March 2023 but it declined to refund any of the other payments.

- The payments were made to cryptocurrency accounts held in Mr Z's own name before being moved on to the scammer and therefore the scam took place when the money left the cryptocurrency accounts, not Mr Z's Monzo account.
- The payments fell outside of the scope of the Contingent Reimbursement Model (CRM) Code.
- The payments made were legitimate payments and intervening goes against the Payment Service Regulations and against the recent Philipp v Barclays ruling.
- There was no evidence to suggest Mr Z would have been honest with Monzo if it had intercepted the payments and questioned him. Mr Z was so invested in the scam he would've likely gone on to make the payments regardless. It's therefore unfair to reach the conclusion that Monzo could've somehow prevented Mr Z's loss.
- Mr Z had recently fallen victim to a similar scam and therefore should have been aware of the key characteristics of this type of scam and been more cautious when sending significant sums of money to someone he had only met online.

Monzo's additional points did not change our investigator's mind and as an agreement could not be reached, the case has been passed to me for a final 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.

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

As Monzo has pointed out, the payments in question here were made to accounts in Mr Z's own name, which he had access to and control of, so they fall outside the scope of the CRM Code.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr Z's account is that Mr Z is responsible for payments he's authorised himself. The Supreme Court has also recently reiterated in Philipp v Barclays Bank UK PLC, that banks generally have a contractual duty to make payments in compliance with their customer's instructions.

In the above 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 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 a customer's account.

It explains if it blocks a payment it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post).

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 block 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.

The detailed reasoning for this has been set out in substantial detail in recent decisions sent to Monzo, so I don't intend to repeat it again here. But in summary, overall, taking into account the law, regulatory 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, or provided additional warnings, before processing a payment – as in practice all banks 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 including the use of cryptocurrency accounts, to consumers' own accounts or "me-to-me" transactions) and the different risks these can present to consumers, when deciding whether to intervene or not.

*Should Monzo have fairly and reasonably made further enquiries before it processed Mr Z's payments?*

I've first thought about whether the initial card payments and then the later faster payments could be considered out of character and unusual when compared with Mr Z's usual account activity.

I've reviewed Mr Z's account statements for the months leading up to the scam, and whilst I agree that the £3,000 payment made on 2 April 2023 is higher than the usual transactions made from this account, I still don't think this or any of the other payments made up to this date were remarkable enough to have stood out to Monzo and prompted further discussion.

I've thought carefully about the card payments made on 30 March 2023. I accept that they were numerous and being made in quick succession. However, I also have to take into account that they were for relatively small amounts and the majority bounced back straightaway. The payments were being made via debit card and were in-line with Mr Z's usual spending on the account. And so I don't think the initial card payments should've been considered so unusual that Monzo should've intervened before they were processed. And this logic applies to the £100 and £900 bank transfers made on 30 March 2023 too.

I am also mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. The individual payments being attempted here were initially relatively low in value and they didn't obviously look like fraud or a scam.

As I've said above – there is a balance to be struck. But the second transaction made on 2 April 2023 for £7,000 was the second high value payment being made to a known cryptocurrency provider within 2 hours and it was being facilitated by loan funds that Mr Z had just applied for. When applying for this loan, Mr Z had told Monzo that it was for home renovations and so the funds being paid straight out to a cryptocurrency exchange should've caused some concern. I also have to bear in mind that Mr Z had just fallen victim to a previous scam, which Monzo were aware of. So Monzo was already on notice that Mr Z may have been susceptible to scams at this stage. And so, in my view, the activity on the account from this point onwards had started to be indicative of a potential scam and so from this point onwards, I'm satisfied Monzo should've had some concerns that Mr Z was at risk of financial harm from fraud.

Monzo should've therefore contacted Mr Z to make some enquiries about the £7,000 payment before it agreed to process it on his behalf. And I agree that had it done so, the scam could've likely been prevented.

I've taken on board that Monzo considers it isn't liable for Mr Z's loss because the payments were being used by Mr Z to buy genuine cryptocurrency (before being transferred to the scammer). I do appreciate the losses did not occur directly from Mr Z's Monzo account, but I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account before being moved on to the scammers account.

At the time these payments were made, Monzo would've been well aware of the risk of multi-stage scams involving cryptocurrency for some time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account.

So, if Monzo had intervened and questioned Mr Z more about the £7,000 payment, I think it would have been concerned about the reasons for Mr Z's cryptocurrency purchase. I accept that by this stage, Mr Z was heavily invested in the scam. However, I'm not satisfied that Mr Z would've been able to come up with a plausible explanation as to why he had taken out a loan for "home renovations" and was now using the money to facilitate high value cryptocurrency payments instead. So, I think if Monzo had probed further, he'd ultimately have been honest about the reason for the payments and explained that he was buying cryptocurrency as his partner was a cryptocurrency trader. Given the reason for the payment, with better questioning, I'm satisfied that his response is likely to have been concerning given that Mr Z was being directed to make secret cryptocurrency purchases for his partner (who he had never met in person) to trade to raise funds for their future together. This should have been especially concerning to Monzo given that Mr Z had recently fallen victim to an online romance scam.

Monzo ought reasonably to have been aware of cryptocurrency and romance scams and to have recognised the warning signs. So, I believe that if Monzo had asked the kind of questions it ought to have asked, the scam would have been uncovered and Mr Z's continued loss prevented.

*Should Mr Z share in the responsibility for his loss?*

As well as Monzo's obligations I've also thought about whether Mr Z should share in the responsibility for his loss. I won't go into detail here – as Mr Z accepted the investigator's view, but for completeness I agree with the investigator broadly for the same reasons. My intention is not to further Mr Z's distress where he's already been the victim of a cruel scam. But certainly, I think there were a number of signs that things weren't quite right from the outset and Mr Z should've scrutinised what he was being told further. Mr Z had just fallen victim to a similar scam and so should've been aware of some of the warning signs and been cautious about sending money to someone he had just met online and taken no steps to verify. Ultimately Mr Z placed a lot of trust in someone he'd not met in person.

I've considered Mr Z's representative's arguments that Mr Z was vulnerable and unable to protect himself from the scam at the time. Based on what they've told us, it's clear that Mr Z was facing a particularly difficult time in his life, and he has my sincerest sympathies. But I don't think his difficult personal circumstances rendered him unable to protect himself from the scam to the point he shouldn't bear some responsibility for his loss now. It's clear Mr Z was able to critically analyse some of what he was being told as he did question the reasoning behind some of the supposed tax payments and ultimately became aware that he had been the victim of a scam. So I don't think it would be reasonable for me now to make the finding that Mr Z was unable to question what he was being told from the outset.

## **Putting things right**

In order to put things right for Mr Z, Monzo Bank Ltd should:

- Refund 50% of Mr Z's loss from (and including) the 7th payment onwards – minus any refunds already received.
- Because Mr Z has been deprived of this money, I consider it fair that Monzo add 8% simple interest to the above from the date of each payment to the date of settlement.

If Monzo is legally required to deduct tax from the interest it should send Mr Z a tax deduction certificate so he can claim it back from HMRC if appropriate.

**My final decision**

My final decision is that I partially uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 26 November 2024.

Emly Hanley Hayes  
**Ombudsman**