

## Complaint

Mr K is unhappy that Monzo Bank Ltd didn't reimburse him after he fell victim to a scam.

## Background

In 2023, Mr K fell victim to an investment scam. He was contacted on social media by someone who offered him an investment opportunity. They put him in contact with someone who claimed to have been an experienced trader with a major investment bank. This individual told Mr K that he could manage his money on his behalf and earn him generous returns.

Unfortunately, this enquiry wasn't genuine. Mr K had been contacted by fraudsters. I understand Mr K had carried out some basic checks to satisfy himself that this was a legitimate company. The fraudsters had given their fake company the same name as that of a legitimate investment firm which is authorised and regulated by the Financial Conduct Authority.

He was asked to make payments to two e-wallets with cryptocurrency platforms. Those accounts were in Mr K's name. He then, at the request of the fraudsters, converted his cash deposits into cryptocurrency and transferred it to a blockchain address controlled by the fraudsters.

He used his Monzo account to make the following payments to those two cryptocurrency platforms:

|    | Date      | Payee   | Value  |
|----|-----------|---------|--------|
| 1  | 08-Sep-23 | Payee A | £1,000 |
| 2  | 08-Sep-23 | Payee A | £1,500 |
| 3  | 08-Sep-23 | Payee A | £1,000 |
| 4  | 08-Sep-23 | Payee A | £1,500 |
| 5  | 08-Sep-23 | Payee A | £1,440 |
| 6  | 15-Sep-23 | Payee A | £3,000 |
| 7  | 15-Sep-23 | Payee A | £3,000 |
| 8  | 18-Sep-23 | Payee A | £1,500 |
| 9  | 18-Sep-23 | Payee A | £1,500 |
| 10 | 18-Sep-23 | Payee A | £1,000 |
| 11 | 19-Sep-23 | Payee A | £2,500 |
| 12 | 19-Sep-23 | Payee A | £2,500 |
| 13 | 21-Sep-23 | Payee B | £2,500 |
| 14 | 21-Sep-23 | Payee B | £2,500 |
| 15 | 21-Sep-23 | Payee B | £1,500 |
| 16 | 21-Sep-23 | Payee B | £2,000 |
| 17 | 22-Sep-23 | Payee B | £2,500 |
| 18 | 22-Sep-23 | Payee B | £2,500 |

|           |           |         |        |
|-----------|-----------|---------|--------|
| <b>19</b> | 25-Sep-23 | Payee B | £4,000 |
| <b>20</b> | 25-Sep-23 | Payee B | £4,350 |
| <b>21</b> | 26-Sep-23 | Payee B | £4,000 |
| <b>22</b> | 26-Sep-23 | Payee B | £4,350 |
| <b>23</b> | 27-Sep-23 | Payee B | £4,000 |
| <b>24</b> | 27-Sep-23 | Payee B | £4,350 |

Once he realised that he'd fallen victim to a scam, he notified Monzo. It didn't agree to refund him. Mr K was unhappy with that response and so he referred his complaint to this service.

It was looked at by an Investigator who upheld it in part. She considered that Monzo was expected to be on the lookout for account activity that was unusual or out of character to the extent that it might indicate a fraud risk. She concluded that Monzo should've taken action in connection with payment 6 in the table above. If it had done so, she was persuaded that it would've prevented Mr K from making any further payments in connection with the scam. However, she also thought it was fair and reasonable for Mr K to bear some responsibility for his own losses by way of contributory negligence.

Monzo disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

## Findings

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

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that Monzo be 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, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator concluded that Monzo should've intervened in connection with payment 6 in the table above. I'd agree with that conclusion. While there were other significant payments made from his account in the months prior to the scam, these tended to be to well established payees, such as the account for the limited company Mr K controls.

This activity was different because it involved multiple payments in a short space of time that were increasing in value. By the point identified by the Investigator, Mr K had transferred a little under £10,000 in a week. And although I understand he already had the account with the first cryptocurrency platform, I've seen no evidence that shows he'd ever transferred funds to it in such volume or at such frequency. I think Monzo shouldn't have processed payment six without first making enquiries with Mr K to satisfy itself that he wasn't at risk of financial harm due to fraud.

I've considered Monzo's comments regarding Regulation 82 of the Payment Services Regulations 2017. This regulation sets out what steps a payment service provider (PSP) should take when it chooses not to process a customer's payment and the information it should make available to that customer. It doesn't set any limits or restrictions on how a PSP might exercise its discretion to decline to make a payment. Overall, I'm not persuaded it's

relevant to the outcome here.

I've also 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 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 as being under a duty to do so.

In this case, the terms and conditions applicable to Mr K's Monzo account conferred on it rights (but not obligations) 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.

The starting position at law, therefore, 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 it from making fraud checks before making a payment.

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 carried out 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. And if it had, I think it's more likely than not that it would've been able to prevent the subsequent losses to the scam. I say that because Mr K tells us he wasn't advised by the fraudster that he'd need to mislead the bank if it questioned this activity with him. For that reason, I think it's more likely than not that he'd have answered the bank's questions openly and honestly.

If an employee of the bank had questioned these payments with him, it would've come to light that the interaction Mr K had with his investment manager had all the hallmarks of a commonly occurring scam type. In particular, it should've been cause for concern that Mr K

was being asked to transfer cryptocurrency from his own account to one controlled by a third party. In addition, Mr K could've confirmed the name of the company that he believed was managing his investment. Monzo could've recommended that he look it up on the warnings page on the website of the regulator, the FCA. A few months prior to this scam, the FCA had published a warning that fraudsters were imitating the company Mr K believed he was dealing with. Monzo could, therefore, have warned him that the dealings he'd had with this company must be part of a scam.

I've also taken into account that the loss he suffered didn't occur from the Monzo account. He did genuinely make purchases of cryptocurrency and took ownership of the underlying assets, albeit briefly. It was only when he transferred that cryptocurrency on to the fraudster that he sustained any loss. Nonetheless, Monzo ought to have been aware of the risk of multi-stage scams involving cryptocurrency. Such scams have increased over 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 have continued to increase since. Overall, I am satisfied that it could have prevented the losses he suffered if it had as I've found it should've done.

I've also considered whether it's fair and reasonable for Mr K to bear some responsibility for his own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. I understand Mr K was told he could expect to earn a return of £4,000 per month. I think such a return is plainly too good to be true and it should've prompted Mr K to proceed only with great caution. Overall, I'm satisfied that it's fair and reasonable for Monzo to make a deduction of 50% from the redress due.

For completeness, I've also considered whether Monzo did everything it should've done once it became aware that a scam had taken place. But given that these payments were in relation to genuine purchases of cryptocurrency, any recovery of funds wouldn't have been possible.

### **Final decision**

For the reasons I've set out above, I uphold this complaint in part.

If Mr K accepts my final decision, Monzo Bank Ltd needs to refund 50% of the money he lost to the scam from payment 6 onwards. It also needs to add 8% simple interest per annum to that sum calculated to run from the date he made the payments until the date any settlement is paid to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 August 2024.

James Kimmitt  
**Ombudsman**