

## The complaint

Mr C is unhappy that Monzo Bank Ltd haven't refunded money he lost as a result of a scam.

Mr C is being represented by a claims management company but for ease of reading I'll only refer to Mr C in my decision.

## 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 July 2023 Mr C received a message from an unknown third party about a crypto investment opportunity. Mr C then downloaded a screen sharing app which allowed the third party to help him make the payments from his Monzo account to wallets held at genuine crypto exchanges. In total Mr C made the following payments;

Date	Type of transaction	Amount
05 August 2023	payment to crypto exchange	£100
09 August 2023	payment to crypto exchange	£250
11 August 2023	payment to crypto exchange	£5
14 August 2023	Credit from crypto exchange	£354.15
15 August 2023	payment to crypto exchange	£1,000
23 August 2023	payment to crypto exchange	£1,350
23 August 2023	payment to crypto exchange	£40
29 August 2023	payment to crypto exchange	£1,500
30 August 2023	payment to crypto exchange	£1,602
01 September 2023	payment to crypto exchange	£4,700
07 September 2023	<i>Payment returned to Mr C's account</i>	£4,700
07 September 2023	payment to crypto exchange	£1,800
07 September 2023	payment to crypto exchange	£1,800
07 September 2023	payment to crypto exchange	£1,000
	<b>Total loss</b>	<b>£10,092.85</b>

Mr C realised he had been scammed when he was asked for deposit further funds in order to make any withdrawal. So, he contacted Monzo to make a claim. Monzo considered the claim but said it wouldn't be providing a refund because it hadn't done anything wrong. So, Mr C brought his complaint to this service.

Our investigator felt the complaint should be upheld in part. He said that there was likely an intervention by payment nine (£4,700 on 01/09/23) that Monzo didn't discuss with Mr C. This payment was later returned to his account. But the investigator felt that if Monzo had provided an effective intervention at that point the scam would've likely been uncovered with no further losses suffered by Mr C. Because the £4,700 was returned to Mr C the investigator felt Monzo should return payments ten, eleven and twelve. However, Monzo could deduct 50% from that amount as Mr C had likely contributed to his own losses here.

Mr C agreed with the investigator.

But Monzo disagreed and asked for an Ombudsman's review. In summary it said;

- Mr C authorised the payments,
- The payments couldn't be recovered by chargeback and didn't fall under the Contingent Reimbursement Model (CRM code)
- The loss didn't occur from Mr C's Monzo account; rather it was from his crypto wallets. And that because crypto is unregulated consumers such as Mr C waive their right to a refund when purchasing it.
- The payments weren't suspicious and unusual for Monzo to intervene and if it had intervened and Monzo didn't have a right to intervene on legitimate payments under S.7 of the Payments Service's rules (PSRs). It also pointed to the Phillipp v Barclays case in the Supreme Court as a reason for it not intervening on these payments.

### **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 agree with the investigator that this complaint should be upheld in part and for largely the same reasons.

In deciding what's 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 time.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Firstly, I need to briefly answer some of the points Monzo raised after the investigator's opinion was issued. I'll only summarise my response here because the investigator has already provided answers to those points in great detail. But to confirm – it's not in dispute that Mr C authorised these payments. But that doesn't mean he isn't entitled to a refund. Monzo is aware of our approach to complaints such as this.

Additionally, just because Mr C sent money to a crypto exchange (which is unregulated) that too doesn't mean he has waived his right to a refund in this instance. The payment he made from his Monzo account was a regulated activity – again a point that Monzo is aware of from previous decisions from this service. And although the money was moved on from Mr C's crypto wallets that doesn't mean that Monzo couldn't have done more to stop the payments (which I'll come back to later in this decision).

It's noted and not in dispute that these payments don't fall under the CRM code because they are me2me. And that because Mr C sent money to crypto wallets in his name this stops him from being able to recover his money via chargeback.

In broad terms, the starting position at law is that Banks such as Monzo are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers 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, it 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.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. 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 legal duty to do so.

In this case, the terms of Monzo's contract with Mr C modified the starting position described in *Philipp*, by – among other things – expressly requiring Monzo to refuse or delay a payment *"if... it's outside our risk appetite...we suspect you're a victim of fraud. (When we won't make a payment section)*.

So Monzo was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Monzo should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

*Were the payments unusual and suspicious here and could Monzo have stopped the scam?*

Here Mr C said that Monzo stopped the £4,700 payment he tried to make but failed to ask him any questions about why he was making the payment. I agree with the investigator that this was a reasonable payment to stop and to ask Mr C why he was making it. It was sufficiently unusual and suspicious compared to his previous banking activity and it was a marked increase in value compared to the previous crypto payments he had made. And the cumulative value of all the payments to the same payee over a few days had reached a level which should've been concerning to Monzo.

I'm satisfied that if Monzo had stopped that payment and spoken to Mr C then the scam would've been uncovered. I haven't seen any persuasive evidence Mr C was being coached by the scammer here on what to say to Monzo. So, I think it would've been relatively easy for Monzo to ask some probing questions and be told that Mr C had been contacted out of the blue via a message on his phone, had downloaded a screen sharing app and was being instructed on where and how to send his money to a third-party merchant. The £4,700 payment was returned to Mr C's account by Monzo, so he didn't suffer a loss with that payment. However, I'm satisfied the scam would've been uncovered and that Mr C wouldn't have lost the three subsequent payments – totalling £4,600.

The investigator argued that Mr C contributed to his own losses here. Mr C has already agreed with the investigator's opinion, so I won't go into detail other than to confirm that I agree and for largely the same reasons. That Mr C was contacted out of the blue, agreed to download screen sharing software and didn't complete a reasonable amount of research into this opportunity.

Ultimately, I'm satisfied Mr C ignored red flags here, that means Monzo can reasonably reduce his refund by 50%.

Could Monzo *have done anything else to recover Mr C's money?*

I've already mentioned that Monzo couldn't have retrieved Mr C's money via a chargeback here. There was also a small £5 faster payment but we know that Mr C moved his funds on to the scammer so that wouldn't have been recoverable here.

I note the investigator didn't make any award to Mr C on the trouble and upset he says Monzo caused him after reporting this scam. Mr C accepted the investigator's opinion. But to be clear I agree with the investigator's reasoning. And I won't be making any further award to him here.

### **My final decision**

For the reasons given above, I uphold in part this complaint and direct Monzo Bank Ltd to pay Mr C:

- £2,300
- 8% simple interest per year on that amount 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 C to accept or reject my decision before 19 March 2025.

Mark Dobson  
**Ombudsman**