

Complaint

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

Background

In late 2022, Mr R received a message from someone on a social media platform. That person offered him an investment opportunity. Mr R explained that he was interested and was told that a manager at the company would contact him shortly. Unfortunately, this wasn't a genuine investment opportunity. Mr R had been contacted by fraudsters.

He was persuaded to put his money under the control of this investment manager who would earn a return on his behalf. He was told the returns would be generous, but the company would take a 10% commission. Mr R was persuaded by stories shared on the company's social media accounts which suggested many other people had benefitted from investing their money with this company.

He began with a small initial investment from an account he holds with a different bank. This appeared to grow at an extraordinary rate. I understand he was paid a small return of £2,710 in January 2023 and this further persuaded him that he was dealing with a genuine company. However, by that point he believed that the value of his investment had grown to over £300,000. I understand he borrowed money from family members and took out loans to maximise the returns he was getting on his investment. At one point, he asked another family member to lend him money and they asked him for more details about the investment. It was this conversation that led to Mr R realising that he'd actually fallen victim to a scam.

He notified Monzo, but it didn't agree to reimburse him. Mr R was unhappy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld the complaint in part. She said that Monzo was expected to be on the lookout for account activity that was unusual to the extent that it might have indicated a fraud risk. She thought that the first payment Mr R made in connection with the scam for £8,000 was the point at which it should've intervened. However, she also considered that it was fair and reasonable for Mr R to bear some responsibility for his own losses by way of contributory negligence.

Monzo disagreed with the Investigator's view 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 said that Monzo should've intervened in connection with the first payment. I agree. The first payment was for £8,000, being sent to a new payee and, based on the evidence I've seen, out of keeping with the way Mr R typically operated his account. In my view, it shouldn't have processed that payment without first making enquiries with Mr R 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 R's account conferred on Monzo the right (but not obligation) 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. Mr R was told to that he should mislead the bank if it asked questions about the activity on his account. He was told to say that the payment was for a family emergency. However, he doesn't appear to have been given a detailed cover story. I think if he'd been asked one or two open ended questions about the nature of that emergency, it more likely than not would've become apparent that he wasn't being candid with the bank about the reasons for the payment.

I've also considered whether it would be fair and reasonable for him to bear some responsibility for his own losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. I've considered the evidence carefully and, while I accept Mr R did genuinely believe that he was making these payments in connection with a legitimate investment opportunity, I'm not persuaded that belief was a reasonable one.

I think he should've been concerned with the fact that the investment was promoted by unsolicited contact on a social media platform. Furthermore, the returns he was apparently earning on his money were extraordinary and not realistic. I think it should've occurred to him that this might be too good to be true and proceeded only with great caution. For those reasons, I'm satisfied that it's fair and reasonable for Monzo to make a 50% deduction from the compensation due.

Other issues

Monzo recognised that it had taken too long to deal with Mr R's claim. It offered £125 compensation in recognition of that, but the Investigator thought that was insufficient. She recommended Monzo pay an additional £175.

The delays here were significant. Mr R had borrowed money to fund his investment and would no doubt have been worried about how he could deal with that debt. In addition, he's told us that the scam and the way Monzo responded to it had a deleterious impact on his mental health. Overall, I agree with the Investigator that fair compensation for this would be £300 and so Monzo now needs to pay the additional £175.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mr R accepts my decision, Monzo Bank Ltd needs to:

- Refund 50% of the money he lost to the scam, less anything that was recovered from the receiving accounts.
- Add 8% simple interest per annum to that sum calculated to run from the payment date until any settlement is paid, except where the payments were funded by borrowing from Mr R's family.
- Pay him £300 in recognition of the distress and inconvenience caused, less any amount it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 August 2024.

James Kimmitt

Ombudsman