

## The complaint

Mr M complains that Monzo Bank Ltd ("Monzo") won't refund the money he lost as a result of a scam.

He's being represented by solicitors. To keep things simple, I'll refer to Mr M throughout this decision.

## What happened

The background to this complaint is known to both parties, so I won't repeat all the details here. In summary, Mr M says:

- In December 2022, he came into contact with someone called "*Chloe*" (the scammer) through an online dating platform. He was led to believe he was communicating with a genuine person with whom he shared common interests and who was looking for a relationship. As the relationship developed, he was soon persuaded to invest in cryptocurrency as a means of building funds to purchase a property and start a family.
- The money for 'investment' was sent from his Monzo account to various cryptocurrency platforms he was told to open in his name or to third-party individuals for the purchase of cryptocurrency in the peer-to-peer (P2P) market, before the funds were sent on using a link (provided by the scammer) to a fake trading platform and lost to the scam.
- A relatively small 'investment' was made to start. But he was then persuaded to 'invest' more heavily – and a series of transactions, totalling over £24,000, were made between December 2022 and July 2023. The later payments were intended for the payment of tax to withdraw profits. He realised he'd been scammed when he could make no withdrawals and the scammer continued to ask him to pay more despite him having no funds.

I've listed below the payments I've considered as part of this complaint. These were funded by savings he held with another bank, a loan he took out with another bank in early February 2023, and some credit card cash withdrawals. To note, Monzo was able to recover £2.88 after the scam and this was credited to Mr M's account in August 2023.

	Date	Method	Payee	Amount
1	26-Dec-22	Card payment	Mercuryo	£500
2	30-Dec-22	Card payment	Okcoin	£20
3	03-Jan-23	Faster payment	K Danyliuk	£4,000
4	04-Jan-23	Faster payment	G Wu	£650
5	11-Jan-23	Faster payment	CoinClan	£4,000
6	11-Feb-23	Faster payment	CoinClan	£5,000
7	14-Feb-23	Faster payment	CoinClan	£4,800
8	15-Feb-23	Faster payment	CoinClan	£3,700
9	03-Jul-23	Faster payment	E Gonenc	£900
10	08-Jul-23	Faster payment	A I Garba	£750

11	09-Jul-23	Faster payment	S Olatunji	£27
12	09-Jul-23	Faster payment	S Olatunji	£11

The scam was reported to Monzo in July 2023. A complaint was raised and later referred to our Service. Our Investigator considered it and upheld it. In summary, she thought Monzo should have identified a risk on payment 5 and provided a tailored written warning about cryptocurrency investment scams at that point – and that, if it had, then the scam would have likely been unravelled. She also thought Mr M should bear equal liability for his losses and so the refund payable by Monzo should be fairly reduced by 50%.

Mr M accepted that outcome. Monzo did not. In its submissions it said, in summary:

- It has systems in place to look out for unusual transactions that might indicate a risk of fraud and has the right balance in approach to reduce scams and not disrupt legitimate payments. Mr M was not at risk of fraud directly from Monzo. He was paying a legitimate cryptocurrency platform. It would be inappropriate for Monzo to apply friction each time a customer sends a payment to such a platform.
- It didn't have the right to intervene in line with *Philipp v Barclays Bank* and its account terms. Mr M made legitimate payments for goods/services that he received as expected. There was no suspicion of fraud occurring because all payments were legitimate. It must provide a factual reason for refusing to make a payment and this can only be for factual matters. It had no factual reason to suspect the payments or look to delay them.
- Payments were sent to legitimate crypto-platforms with robust security protocols in place and which only accept deposits from accounts in the customer's name. It was confident the funds were being deposited in an account belonging to Mr M. And these platforms provide scam warnings on their website and in-app, so Mr M would have seen friction warnings on these transactions, even if they were not directly from Monzo.
- The Financial Conduct Authority has acknowledged cryptocurrency is unprotected, regardless of the payment intention, meaning Mr M waived his rights to a refund.

### Provisional decision

I issued my provisional decision to both parties on 3 September 2024. The background was set out as above and I said I intended to uphold this complaint. I gave the following reasons:

*In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. Having done so, I've reached the same conclusions as the Investigator but for different reasons.*

*The starting point under the relevant regulations (the Payment Services Regulations 2017) and the terms of Mr M's account is that he's liable for payments he's authorised. And as the Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.*

*But that's not the end of the matter. Our service has issued many final decisions setting out the considerations we take into account in deciding what's fair and reasonable in the context of investment fraud cases. I don't consider it necessary to repeat them all again here, though Monzo is able to review these through past decisions on our website if it wishes to do so.*

*To summarise, however, 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 that 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) and the different risks these can present to consumers, when deciding whether to intervene.*

### *Prevention and Causation*

*I've looked carefully at Mr M's account activity in the months leading up to the scam and I don't think there was enough about the first four disputed transactions that ought to have reasonably triggered Monzo's fraud detection systems, considering their values and the information Monzo had available at the time.*

*I note payment 3 was higher than payments Mr M had made. But I don't think the activity was suspicious to the extent that Monzo should have intervened on a heightened risk of fraud. It's not unusual for someone to make a one-off larger payment and, whilst the money was used to buy cryptocurrency, that's not something it would have known because of the method used. I also note that Monzo did provide 'low friction' warnings and 'confirmation of payee' at that point. And I think these actions were proportionate in these circumstances.*

*In any event, even if I did find Monzo should have done more, I'm not convinced a written scam warning would have made a difference. This is partly because the chat between Mr M and the scammer shows just how quickly the relationship developed and that the messages soon became affectionate in nature. I also can't overlook the messages show Mr M followed the scammer's instructions despite his reservations about 'investing' without having met 'in person' and after receiving a notice from the dating site that the individual had been reported for potentially fraudulent behaviour. I think it's unlikely, against this backdrop and on balance, that a written scam warning would have been enough to break the spell here.*

*I do, however, think that the position changed by the time payment 5 was made. This was now the second payment for £4,000, to a new payee, and Monzo ought to have known it was to a cryptocurrency provider. I consider this was a factor which added to the risk level of that transaction. The payment itself also brought the combined spending in just over a week to a significantly high level on an account that had typically been used for much lower value spending. The quick movement of funds through the account, as happened here, can also be an indicator of fraud. Taking all this into account, I think there was enough going on at this time for Monzo to have stepped in and questioned Mr M about what was happening.*

*In reaching this view, I've considered Monzo's comments that, in line with *Philipp v Barclays*, and its account terms, it was expected to carry out its customer's instructions; that it didn't suspect fraud at any time; and that under the regulations it would have been required to give a factual reason for stopping a payment. But I don't consider any of these things (including*

*the implied basic legal duty to make payments promptly and its account terms) precluded it from making fraud checks before making a payment. And, whilst Monzo wasn't required under the contract to make checks, I'm again satisfied it ought to have been on the lookout for unusual and out of character transactions which might indicate a customer is at risk of financial harm. In practice, this is something that all banks, including Monzo, do.*

*I also recognise there's a balance to be struck and Monzo can't reasonably be expected to intervene on every payment that may be the result of a scam. But I don't think it got that balance right here. For the reasons I've given, I'm satisfied it ought to have intervened on payment 5 and questioned Mr M about what was going on. And although Monzo has said it had no reason to suspect payments to Mr M's own account, I'm satisfied that by that time it ought to have had a good understanding of how these scams take place, including the use of cryptocurrency and the potential of 'multi-stage' fraud where funds are moved through accounts in the customer's name before being lost to a scammer.*

### **Causation**

*I've thought carefully about how things would have likely played out if Monzo had intervened and spoken to Mr M directly about the nature of payment 5 – and, on balance, I think he'd have been upfront about what he was doing and the scam would have been unravelled.*

*I've not seen anything in the messages between Mr M and the scammer to suggest he was coached on what to say for his payments to go through without issue. And if Monzo had contacted him directly about what was happening, it could have asked how he'd found out about the 'investment' and if anyone else was involved. It could have discovered he'd been introduced to the opportunity by someone he'd only recently met online on a dating site (and whom he'd never met in person). If probed, I think he'd have revealed that contact with the individual had very quickly moved to messaging outside of the dating platform. It could have also discovered he'd been provided with a link to what he thought was a legitimate trading platform – and warned him that this too was a known tactic used by scammers.*

*I'm again mindful the scammer had a degree of influence over Mr M. But I'm not convinced he'd have gone ahead with more payments at that point after a discussion highlighting the red flags and a firm warning about what his particular situation looked like. On balance, I think such an intervention would have given him the perspective he needed and that Monzo missed an opportunity here to uncover the scam, break the 'spell', and stop further losses.*

*I've also considered Monzo's comments that Mr M would have received scam warnings on his payments from the crypto-platforms used. We asked Mr M about this and he's told us that didn't happen. In the circumstances, on the evidence available, I'm not persuaded Mr M received effective scam warnings from his crypto-platforms. And as for Monzo's suggestion that he waived his rights to a refund on the basis that he 'invested' in unregulated products, I'm satisfied it can fairly and reasonably be held liable for his losses in circumstances where I think it ought to have done more to prevent them.*

### **Contributory negligence**

*The concept of contributory negligence centres around whether or not a consumer should have done something to mitigate their losses or should share some responsibility for them.*

*I've thought carefully about the information Mr M has shared about his health and lack of investment experience. I'm mindful of his comments that he felt anxious and vulnerable at times. I appreciate the scammer exploited his feelings and there were sophisticated aspects to the way the scam was conducted, that may have impacted his decision-making to an extent. I also appreciate the money didn't appear to be going directly to the scammer.*

*At the same time, it's also fair to say Mr M sent a considerable amount of money on advice of someone he'd never met and after a very short time. He's told us he carried no research. This, as noted earlier, is despite a notice from the dating site that he may potentially have matched with a fraudster. In addition, as also noted, the messages show Mr M was at times apprehensive and did question the scammer about the urgency of what he was being asked to do. And I think that, given the amount of money involved; the lack of a face-to-face and of plausible explanations as to why he had to invest when instructed; the later missed 'meet-up' and the pressure to borrow, ought to have caused him to act more cautiously than he did.*

*Ultimately, I think he placed a huge amount of trust in someone he'd never met despite the red flags and I don't find there's enough for me to say he wasn't able to recognise these during all the period in question such that he shouldn't be equally liable. I'm therefore minded to agree that the refund Monzo should pay should be fairly reduced by 50%.*

### **Recovery**

*For completeness, I'm satisfied there was little Monzo could have done to recover Mr M's funds. For the card payments, a chargeback is unlikely to have been successful as the merchants would have provided the goods and services as intended. And there was little prospect of recovering the transfers as those funds had been used to buy cryptocurrency that was sent to the scammer before the scam was reported. Also, I don't think there would have been a basis for it to request a return of funds used to buy cryptocurrency from P2P sellers as there's nothing to suggest those third-parties were part of the scam itself.*

### **Putting things right**

*For the reasons given above, I intend to direct Monzo Bank Ltd to:*

- Refund 50% of the payments from (and including) payment 5, less funds recovered.*
- Pay 8% simple interest per year on each payment from the date of loss until the date of settlement, less any tax lawfully deductible. Although the payments were part funded by savings and borrowing, I consider this interest award still results in a fair outcome.*

### **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 invited further comments and evidence from both parties. Mr M said he accepted my provisional decision. Monzo also accepted my provisional decision. In the circumstances, and as neither party has provided any new information for me to consider, I see no reason to depart from the conclusions I reached.

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**My final decision**

For the reasons above, I uphold this complaint.

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

Thomas Cardia  
**Ombudsman**