

## The complaint

Mr G complains that Monzo Bank Ltd (Monzo) is refusing to refund him the amount he lost as the result of a scam.

Mr G is being represented by a third party. To keep things simple, I will refer to Mr G throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr G was looking to invest in cryptocurrency when he was added to a Telegram group. Investments were discussed on the group and Mr G was persuaded to make payments to what he believed at the time to be an investment in cryptocurrency with a company called Bitxco (X).

Mr G communicated with X via Telegram, WhatsApp, and email. He was told he could expect profits from the investment of more than 100%.

Mr G could see his investment growing and was persuaded to make more payments by X for investment and then in relation to amounts needed to make a withdrawal. When Mr G was unable to make a withdrawal, he realised he had fallen victim to a scam.

Mr G made the following payments in relation to the scam:

Date	Payee	Payment Method	Amount
13 March 2023	Transfer	Foris Dax	£100.00
13 March 2023	Transfer	Foris Dax	£900.00
21 March 2023	Transfer	Foris Dax	£0.10
25 March 2023	Transfer	Foris Dax	£2,700.00
26 March 2023	Transfer	Foris Dax	£1,400.00
29 March 2023	Transfer	Foris Dax	£2,000.00
29 March 2023	Transfer	Foris Dax	£1,700.00
30 March 2023	Transfer	Foris Dax	£2,000.00
30 March 2023	Transfer	Foris Dax	£900.00
01 April 2023	Transfer	Foris Dax	£400.00
03 April 2023	Transfer	Foris Dax	£2,000.00
03 April 2023	Transfer	Foris Dax	£1,300.00
05 April 2023	Transfer	Foris Dax	£500.00
11 April 2023	Transfer	Foris Dax	£3,000.00
11 April 2023	Transfer	Foris Dax	£600.00
11 April 2023	Transfer	Foris Dax	£220.00
11 April 2023	Transfer	Foris Dax	£50.00
11 April 2023	Transfer	Foris Dax	£50.00
11 April 2023	Transfer	Foris Dax	£50.00

14 April 2023	Transfer	Foris Dax	£1,400.00
14 April 2023	Transfer	Foris Dax	£200.00

Monzo has requested that payments after 14 April 2023 should be excluded from the complaint as by this time Mr G knew he had fallen victim to a scam. Mr G has confirmed that payments after 14 April 2023 were not related to the scam, so this is reasonable.

Our Investigator considered Mr G's complaint and thought it should be upheld in part. Monzo disagreed, so this complaint has been passed to me to decide.

### **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.

It has not been disputed that Mr G has fallen victim to a cruel scam. The evidence provided by both Mr G and Monzo sets out what happened. What is in dispute is whether Monzo should refund the money Mr G lost due to the scam.

#### *Recovering the payments Mr G made*

Mr G made payments into the scam via transfer. When payments are made by transfer Monzo has limited options available to it to seek recovery.

Monzo could contact the operator of the payee's account to request a refund of any amounts that remain in that account. But Mr G was making payments to an account in his name so if any funds did remain, they would be within Mr G's control.

With the above in mind, I don't think Monzo had any reasonable options available to it to recover the payments Mr G made.

#### *Should Monzo have reasonably prevented the payments Mr G made?*

It has been accepted that Mr G authorised the payments that were made from his account with Monzo, albeit on X's instruction. So, the starting point here is that Mr G is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Monzo should have been aware of the scam and stepped into question Mr G about the payments he was making. And if it had questioned Mr G, would it have been able to prevent the scam taking place.

The first payments Mr G made in relation to the scam were for relatively low values to a legitimate business, so I wouldn't have expected them to trigger Monzo's fraud prevention systems prompting it to intervene.

However, on 11 April 2023 Mr G sent a singular payment of £3,000. This payment value was more substantial and given Monzo's knowledge of cryptocurrency scams at the time I would have expected this payment to have triggered Monzo's fraud prevention systems.

The scam Mr G was experiencing had common traits of scams I would have expected Monzo to be aware of at the time, including contact via social media and having to make further payments before a withdrawal could be achieved.

So, had Monzo intervened as I think it should have, I think it would have uncovered the scam that was taking place. Therefore, Monzo is responsible for the loss that Mr G incurred from this payment onwards.

*Did Mr G contribute to his loss?*

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation by 50% on the basis that Mr G should share blame for what happened. It appears that Mr G carried out minimal research on X before making payments into the investment and despite being promised returns that were clearly too good to be true continued with the investment.

Monzo has further stated that The Supreme Court judgment in Phillips V Barclays upheld that a bank should carry out its customer's payment instructions promptly and it would be inappropriate for it to decline to do so.

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 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 terms and conditions gave it rights (but not obligations) to:

- Block payments where it suspects criminal activity on the account. It explains that if it blocks a payment, it will let its customer know as soon as possible, using one of its 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

Whilst the 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. Monzo has received several decisions from this service setting out our relevant considerations in this respect, so I don't consider it necessary to repeat everything again here.

But overall, 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 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.

So, having considered what Monzo has told us I still think it should have intervened as explained above and it is still responsible for Mr G's loss.

### **Putting things right**

To put things right Monzo Bank Ltd should refund all the payments Mr G made in relation to the scam from the first payment of £3,000 on 11 April 2023 to the last payment on 14 April 2023 less 50%.

Monzo Bank Ltd should add 8% simple interest to the amount it pays Mr G from the date he made the payments to the date it refunds them (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint and require Monzo Bank Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 August 2024.

Terry Woodham  
**Ombudsman**