

Complaint

Mr C is unhappy that Monzo Bank Ltd ("Monzo") did not reimburse him after he told it he had fallen victim to a scam.

Background

The background to this case is well known to the parties, so I will only summarise it briefly here.

In late 2022, Mr C fell victim to an investment scam. A friend had recommended an investment opportunity with a company I will refer to as "S." The friend had invested and earned returns successfully. Subsequently, Mr C was contacted on WhatsApp by someone claiming to be an employee of S. Mr C didn't know it at the time, but this individual was a fraudster. Under the fraudster's guidance, Mr C opened an account with a third-party cryptocurrency exchange. He was told he could expect annual returns of around 30%. Using his Monzo account, Mr C made the following payments to the cryptocurrency exchange:

5 December 2022	£5,000
9 December 2022	£10,000
29 December 2022	£10,000
30 December 2022	£9,000
20 February 2023	£10,000

Those funds were then converted into cryptocurrency and transferred into the control of the fraudsters. Mr C did this in the belief that S would manage his investments on his behalf. The final payment was made because the scammers convinced him that it was necessary to gain access to the proceeds of his investment. By this point, the scammers told him his investment had grown to £120,000.

When his earnings didn't materialise, Mr C realised he must have fallen victim to a scam. He notified Monzo. It didn't agree to refund him, but it did pay him £75 in recognition of some of the customer service issues he'd experienced. Mr C wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. 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 (in this case, the 2017 regulations) 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 account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to warn its customer about the risk of proceeding.

I think Monzo ought to have identified that Mr C was at risk of financial harm when he made his first payment on 5 December 2022, and this recognition should have informed their subsequent actions to prevent further losses. I accept that it may have been more difficult for Monzo to identify this risk as the account was new. It didn't, therefore, have any data on Mr C's typical spending patterns. However, a payment of £5,000 to a cryptocurrency exchange should have raised red flags, particularly in light of the growing risk of cryptocurrency scams by late 2022. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018, highlighting the escalating risks. Figures from Action Fraud demonstrate that losses to cryptocurrency scams have consistently risen, reaching record levels in 2022 by the point Mr C was making this payment. Monzo shouldn't have processed that first payment without taking some steps to protect Mr C from the risk of 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 C's Monzo account conferred on it rights (but not obligations) to block payments where it suspects criminal activity on the account, or to protect the customer from fraud.

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 conduct fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded it from carrying out 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 authorised push payment (“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. Monzo did provide a warning. However, it was written in general terms. I do not think this was a proportionate response given the circumstances. Monzo should have asked Mr C about the purpose of the payment and provided a tailored warning. Such a warning should've set out the key features of cryptocurrency investment scams, such as the presence of a 'broker' or 'account manager' who is to manage the customer's investment on their behalf, the promise of unrealistic returns and the use of remote access software. If Monzo had provided such a warning, I believe it would have resonated with Mr C. Several typical features of cryptocurrency scams were present here, and a tailored warning would likely have prompted Mr C to pause, carry out further checks, and ultimately not proceed with the payment.

I have taken into account that Mr C purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Monzo account, and it took further steps before the money was lost. But as I've set out in some detail above, I think that Monzo still should have recognised that Mr C might have been at risk of financial harm from fraud when he made the first payment, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses Mr C suffered.

However, I've also considered whether it would be fair and reasonable for Mr C 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 resolve this complaint based on what I consider to be fair and reasonable in all the circumstances. The promised returns of 30% per year were unrealistically high, and the alleged growth of his investment during the scam was even more so. These should have prompted Mr C to question the legitimacy of the opportunity. Additionally, the evidence shows he began investing very promptly after initial contact from the fraudster, which suggests he acted hastily. I think he should only have proceeded with great caution, and for that reason, I think it's fair and reasonable for Monzo to make a deduction of 50% from the redress it pays.

Finally, I have considered whether Monzo should pay additional compensation for distress and inconvenience. The delays in handling Mr C's claim were significant. He was repeatedly reassured that his case was being reviewed or transferred to specialists. However, it took around three months before Monzo informed him whether his claim would be reimbursed. The Investigator recommended Monzo pay an additional £200 in compensation for the distress and inconvenience caused. I find this recommendation to be fair and reasonable.

Final decision

For the reasons I've explained, I uphold this complaint in part. If Mr C accepts my final

decision, Monzo Bank Ltd should:

- Refund 50% of the payments he transferred in connection with the scam.
- Add 8% simple interest per annum to those payments calculated to run from the date the payments left his account until the date any settlement is paid.
- Pay Mr C £200 in recognition of the distress and inconvenience caused by the way it responded to his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 January 2025.

James Kimmitt
Ombudsman