

The complaint

Miss S complains that Monzo Bank Ltd (“Monzo”) won’t refund the money she lost as a result of two investment scams.

She’s being supported by a representative. To keep things simple, I’ll refer to Miss S 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, Miss S says:

- For scam 1. In November 2022, she was looking for opportunities to invest and found someone who was advertising “*bitcoin services*” on a social media platform. They exchanged messages on this platform before exchanging phone numbers.
- She was promised significant returns and made an initial ‘investment’ of £800 which was paid to an individual’s personal account. But, on the same day she’d made this payment, the scammer started to ask for more money. And she realised she’d been scammed when she refused to do so and the messages from the scammer became aggressive.
- For scam 2. This started straight after scam 1. She was still looking to invest and came into contact with this scammer after seeing a post on social media from someone she believed was a family friend. This post showed the friend had been making money from trades by working with a “*trading coach*” (which turned out to be a scammer).
- She was guided by this scammer on what she needed to do to start investing using their platform (FlexTradingFx) and opened an account with Elastum-Simplex – a legitimate crypto-platform. An initial deposit of £500 was paid on 20 November 2022 and more funds were sent on 22 November and 22 December 2022 after she was led to believe successful ‘trades’ had been made. These disputed payments were all sent from her Monzo account to her account with Elastum-Simplex and then on to the scammer.
- By December 2022, the scammer’s platform showed she’d made a profit of £5,000. But when she asked for a withdrawal, she was told she needed to pay additional fees to receive her money. She suspected she’d been scammed when, having paid those fees, no funds were received and the scammer asked her to pay more. It was also at this point that she found out her family friend’s social media account had been hacked.

I’ve listed below the transactions I’ve considered as part of this complaint. The first payment in *italics* relates to scam 1. All subsequent payments were made to scam 2.

	Date	Time	Payment type	Payee	Amount
1	<i>19-Nov-22</i>	<i>16:21</i>	<i>Transfer</i>	<i>A Gbadamosi</i>	<i>£800</i>
1	20-Nov-22	22:57	Card	Elastum-Simplex	£500
2	22-Nov-22	10:56	Card	Elastum-Simplex	£1,182
3	22-Dec-22	17:38	Card	Elastum-Simplex	£844.40
4	22-Dec-22	17:42	Card	Elastum-Simplex	£844.65

5	22-Dec-22	17:45	Card	Elastum-Simplex	£845.36
6	22-Dec-22	17:47	Card	Elastum-Simplex	£524.07
7	22-Dec-22	23:27	Card	Elastum-Simplex	£270.10
8	23-Dec-22	14:20	Card	Elastum-Simplex	£712.31
9	31-Dec-22	13:03	Card	Elastum-Simplex	£503.93

The scams were reported to Monzo in February 2023. A complaint was later raised and declined by Monzo in April 2023. The matter was then referred to our Service in May 2023 and considered by two Investigators. The second Investigator upheld it. In summary, she concluded that:

- The first payment that was lost to scam 1 should be refunded under the Contingent Reimbursement Model (“CRM Code”), with interest from the date that the claim was declined to the date of settlement. She didn’t think Monzo had shown that any of the exceptions to reimbursement applied.
- Monzo should have intervened on payment 6 to scam 2 (as listed above). If it had, the scam would have likely been unravelled. She also thought Miss S should bear equal liability for her losses on the basis that she’d missed the red flags and that, as a result, Monzo should refund 50% of payments 6 to 9, plus interest.

Miss S accepted that outcome. Monzo did not. In summary, it has said:

For scam 1

- Miss S received a warning when the payment was made and didn’t have a reasonable basis for belief. She was promised profits straight away and the deal was too good to be true. She also didn’t carry out any due diligence. If she had, she’d have found that she wasn’t dealing with a legitimate company; that investors don’t make money for people for free; and that legitimate investors don’t operate out of new social media accounts.

For scam 2

- It has systems to monitor transactions and pick up on financial crime and scams. It’s not fair and reasonable to hold Monzo liable for payments that weren’t fraudulent and where Monzo wasn’t the point of loss. It can’t intervene in every transaction, as doing so would require it to intervene in thousands of payments daily.
- Interrupting a legitimate payment journey would have been inappropriate and directly contradicted the regulator’s rules and the Supreme Court judgment in *Philipp v Barclays*. As there was no suspicion of fraud, because all payments were legitimate, Monzo didn’t have the right to intervene in line with *Philipp v Barclays* and its account terms. And, as the payments to Miss S’s own account were legitimate, there was no factual reasons it could have given under the regulator’s rules, for refusing to follow the instructions.
- Legitimate crypto-currency platforms have robust security protocols in place and only accept deposits from accounts that match their account holder. It was confident the payments were not fraudulent and that funds were being deposit in an account that belonged to the customer. These platforms also provide scam warnings on their apps and websites. Miss S would have seen these warnings even if they didn’t come from Monzo and she’d have seen scam information online if she’d carried out due diligence.
- The Financial Conduct Authority (FCA) has acknowledged crypto-currency is mostly unregulated – meaning that Miss S waived her rights to a refund.

As the matter couldn't be resolved informally, it was passed to me to decide.

Provisional Decision

I issued my provisional decision to both parties on 4 July 2024. The background was set out as above and I said I intended to uphold this complaint. I provided the following reasons:

In deciding what's fair and reasonable in the circumstances of a complaint, 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 intend to uphold this complaint – but I've reached different provisional conclusions as to what Monzo needs to do to put things right.

In broad terms, the starting position is that a bank is expected to process payments that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

But that's not the end of the matter. Monzo (although not a signatory) has agreed to consider eligible claims in line with the CRM Code. And 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 also been on the look-out for the possibility of fraud and made additional checks, before processing payments in some circumstances.

Our service has issued previous final decisions setting out the relevant considerations we take into account when 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 will be able to review these through past decisions on our website if it wishes to do so.

Scam 1

The relevant part of the CRM Code's definition of an Authorised Push Payment (APP) scam requires the payment to have been made to "another person for what they believed were legitimate purposes but which were in fact fraudulent". The CRM Code requires firms to reimburse victims of APP scams (like this one) unless it can establish that it can rely on one of the listed exceptions. A bank may choose not to reimburse a customer under the code if it can establish that:

- *The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.*
- *The customer made payments without having a reasonable basis for believing that: the payee was the person they were expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*

There are other exceptions listed in the CRM Code that aren't relevant here.

From what's been provided, I note that the scam doesn't appear to have had a high degree of sophistication and Miss S acknowledges she carried out no checks to verify its legitimacy before making her payment. Instead, it seems Miss S simply paid the scammer soon after finding them on social media and messaging them to say she was interested in their work.

The scammer replied that they worked as a "fund manager" for a company called "Master Traders". I'm mindful their messages don't look professional – they contain several errors and don't address Miss S as would be normally expected from a professional business or individual. In particular, I can't overlook the scammer told Miss S that "they do trades on the

client's behalf ensuring same day profits"; "the small amounts we invest daily guarantees a pay out"; "all our trades guarantee a return of profits within two hours or client receives initial investment back"; "Let's say you invest £1,000, normal returns would be £6,860 upwards".

In my view, promises of such large, quick, and 'no risk to capital' returns, ought to have raised concerns, even for an inexperienced investor, as 'too good to be true' particularly in the context of crypto-currency investment. I also note Miss S was asked to pay an individual who she was told was the scammer's "boss" as opposed to, for example, an investment platform or company. I think that too ought to have been concerning and I've seen nothing to suggest Miss S was provided with a plausible explanation as to why that was needed.

Taking all the above into account, including the lack of complexity of the scam, what Miss S was promised, and what she was asked to do, I think the points Monzo has raised about the legitimacy of the payment are enough for it to rely on an exception to full reimbursement. I don't think Miss S had a reasonable basis for believing the person she was dealing with was genuine or that it was reasonable for her to make the payment in the circumstances. I don't therefore think Monzo needs to refund this disputed payment in full.

Effective warning

The CRM Code also sets out standards that firms are required to meet. Where these aren't met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement may be fairly applied. Those requirements include the provision of what the CRM Code defines as an 'Effective Warning' when a firm identifies an APP scam risk in relation to a payment. But I wouldn't have expected Monzo to have identified such a risk here. The payment was not of significantly high value and there was nothing else about it that I think was suspicious enough for Monzo to have intervened. So, I'm not persuaded that Monzo should refund part of this disputed payment either.

Other considerations

I've considered if the payment should be refunded for any other reason outside the scope of the CRM Code. But, as noted above, I don't think there was anything about it that ought to have flagged as suspicious such that it was unreasonable for Monzo to have processed it without taking additional steps at the time. And, in terms of recovery, I've seen that Monzo contacted the receiving firm on 17 February 2023, a day after the scam had been reported. But given the scam was reported some months after the disputed payment, it's unlikely a recovery would have been successful, even if Monzo had acted more quickly than it did. So, I don't think it would be fair to require Monzo to refund the payment on this basis.

Scam 2

The payments made to scam 2 were made by card and to an account in Miss S's own name, before they were sent to the scammer, so they're not covered under the CRM Code.

As noted above, the starting point under the PSRs is that a customer is liable for payments they've authorised. But there are some situations where I consider that a business, taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment – if, for example, it's particularly out of character.

In my view, looking at the account activity, I don't think there was enough about the first five card payments, considering also their values, that should reasonably have alerted Monzo of a heightened risk that Miss S was being scammed. But I agree with the second Investigator that, by payment 6, a suspicious pattern had developed such that an intervention with probing questions as to the reasons for the payment, ought to have reasonably come about

– given this was the fourth card payment to the same payee, on the same day, and in quick succession. I also note the payment took the daily spend to a significantly high amount on an account that had typically been used for low value day-to-day transactions.

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 the time; and that under the PSRs it would have been required to provide 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 Monzo 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 accept there's a balance to be struck and Monzo can't 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 above, I'm satisfied it ought to have intervened on payment 6. And although Monzo has said it had no reason to intervene as the payments were first sent to Miss S's own account (with a legitimate company), I'm satisfied that, by the time she started her payments, it ought to have had a good understanding of how these scams take place, including the potential of 'multi-stage' fraud where funds are moved through one or more accounts in the customer's name before being sent to a scammer.

Causation

I've thought carefully about how things would have likely unfolded if Monzo had questioned Miss S directly about the nature of payment 6 – and, on balance, I think she'd have been upfront about what she was doing and the scam would have been unravelled.

There's nothing in the messages I've seen between Miss S and the scammer to suggest she was coached on what to say for her payments to go through without issue. And if Monzo had contacted her directly about what was happening, it could have asked how she'd found out about the 'investment' and if anyone else was involved. It could have discovered she'd found the opportunity on social media and that she was messaging a 'trader' through that platform – and that the 'trader' was then advising her to send money to a recently opened account to buy crypto-currency. It could also have discovered Miss S thought she was investing through 'FlexTradingFx' and it could then have alerted her to the notice that had been published by the FCA about that on 16 November 2022.

I'm not convinced Miss S would have gone ahead with further payments after a warning about what her particular situation looked like. I'm therefore satisfied Monzo missed an opportunity here to uncover the scam and prevent Miss S's further losses.

I've also considered Monzo's comments that Miss S would have received warnings on her transactions from her crypto-platform. But, despite our attempt, the platform hasn't shared information with us to show what, if any, warnings were given. And Miss S maintains that no warnings were provided. In the circumstances, and on the evidence, I'm not persuaded Miss S received effective scam warnings from her crypto-platform but decided to continue in any event. And, as for Monzo's suggestion that Miss S waived her rights to a refund on the basis that she 'invested' in unregulated products, I'm satisfied it can reasonably be held liable for her 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 considered what Miss S has said about why she trusted this scammer, more than the first, and believed she was dealing with a legitimate and professional broker. I appreciate she found them to be polite and that she put some (albeit misplaced) trust on the social media platform vetting its users. I also appreciate she was an inexperienced investor and that believing she'd been 'referred' by a family friend may have added some reassurance.

Even so, I'm not convinced the opportunity presented by the scammer was entirely plausible. I note, for example, some of the messages she exchanged again included the promise of "guaranteed huge profits" within five hours without any credible explanation as to how this was possible. I also think it's fair to say that she was sending money to a 'platform' she knew little about. I've already mentioned the FCA's notice warning customers about FlexTradingFx and the lack of protection on the basis of it being unauthorised. And I can't ignore that, according to her testimony, she started to engage with this particular scammer very soon after she'd realised she'd fallen victim to a separate scam with similar characteristics.

I think all this should have prompted a higher level of care on her part. And because I'm not satisfied she carried out sufficient due diligence that would likely have uncovered this scam, I agree she should bear equal liability for her losses such that the compensation payable by Monzo should fairly be reduced by 50%.

Recovery

A business should, in general, attempt to recover lost funds once a scam has been reported. But given the card payments were made to an account in Miss S's name before being sent onto the scammer, it's unlikely a chargeback would have been successful, as Miss S would have received the services from the crypto-platform as intended.

Putting things right

To put things right, I'm minded to direct Monzo Bank Ltd to:

- *Refund 50% of the payments Miss S lost to scam 2, from (and including) payment 6.*
- *Pay 8% simple interest per year on each payment from the date of loss until the date of settlement.*

Responses to my provisional decision

I invited further comments and evidence from both parties. Monzo accepted my provisional decision. Miss S responded to say she doesn't believe any warnings were shown. She'd like to see evidence of an 'effective intervention' and that warnings were ignored. She added that Monzo didn't act in the spirit of the CRM Code as effective warnings weren't provided and the warnings Monzo claims to have provided were not impactful.

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've reached the same conclusions as set out in my provisional decision.

I note Miss S says she doesn't recall any warnings and that no 'effective warnings' were provided under the CRM Code. To repeat, however, only the first payment of £800 to scam 1 was covered by the CRM Code. And although the CRM Code sets out expectations for what it defines as an 'Effective Warning' when a firm identifies an APP scam risk in relation to a payment, I've also already explained that I wouldn't have expected Monzo to have identified such a risk here – given the information it had available about that payment at the time.

In other words, I agree there was no 'effective intervention' or 'effective warning' for the payment to scam 1 (and so there's no such evidence for us to provide). The point though, as set out in my provisional decision, is that I wouldn't have expected Monzo to have intervened at all in the circumstances of that payment. And given also my findings that Miss S didn't have a reasonable basis for believing the person she was dealing with was genuine, I won't be asking Monzo to make any refund in relation to the payment she made to scam 1.

All subsequent payments were made by card (and to an account in Miss S's name) before they were sent to scam 2, so it's again important to note they're not covered by the CRM Code. In my provisional decision, I explained why, in my view, there wasn't enough about the first five card payments that ought to have alerted Monzo of a heightened risk of a scam. I did not suggest that effective warnings had been provided and had been ignored.

I set out why it wasn't until payment 6 that a suspicious pattern had developed such that an intervention, with probing questions as to the reasons for the payment, ought to have come about. I agreed that Monzo ought to have done more to protect Miss S from financial harm (and intervened) at that point. I went on to explain why I thought such an intervention would have likely prevented Miss S's further losses and why her and Monzo should share equal responsibility for those losses. I've been provided with no new evidence in this regard. And so I see no reason to depart from those conclusions as set out in my provisional decision.

Putting things right

To put things right, I direct Monzo Bank Ltd to:

- Refund 50% of the payments Miss S lost to scam 2, from (and including) payment 6.
- Pay 8% simple interest per year on each payment from the date of loss until the date of settlement.

My final decision

For the reasons given, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 30 August 2024.

Thomas Cardia
Ombudsman