

The complaint

Mr H complains that Monzo Bank Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In mid-2023, Mr H started to receive messages from someone he was in an online message group with, about an opportunity to invest in cryptocurrency. The messages said they were from a broker with a cryptocurrency investment company and that, if Mr H invested, they would be able to make a significant amount of money for him. Mr H then checked the company's website and found positive reviews of it online, so agreed to invest.

Mr H initially sent money from an account he held with another bank to his Monzo account, before sending it on to a cryptocurrency exchange and using it to buy cryptocurrency he sent to the investment company. I've set out the payments Mr H made from his Monzo account below:

| Date | Details | Amount |
|------------|----------------------------|--------|
| 5 May 2023 | To cryptocurrency exchange | £1,580 |
| 5 May 2023 | To cryptocurrency exchange | £20 |
| 5 May 2023 | To cryptocurrency exchange | £200 |
| 5 May 2023 | To cryptocurrency exchange | £2,850 |
| 5 May 2023 | To cryptocurrency exchange | £900 |
| 5 May 2023 | To cryptocurrency exchange | £400 |
| 6 May 2023 | To cryptocurrency exchange | £2,000 |
| 6 May 2023 | To cryptocurrency exchange | £8,000 |

Unfortunately, we now know the cryptocurrency investment company was a scam. The scam was uncovered after Mr H asked to withdraw the money the investment company told him he had made. He was initially encouraged not to withdraw, and then told he needed to pay more money in before he could withdraw his profits. And as Mr H never received the money he was told he had made, or his investment back, he reported the payments he had made to Monzo as a scam.

Monzo investigated but said it felt it had correctly followed its internal procedures and regulatory obligations, and had made the payments in accordance with Mr H's instructions. It also said the payments made from Mr H's Monzo account weren't the scam payments, as they'd been made to an account with the cryptocurrency exchange in his own name and the money was then sent on from there. So it didn't agree to refund the money Mr H had lost. Mr H wasn't satisfied with Monzo's response, so referred a complaint to our service.

I sent Mr H and Monzo a provisional decision on 24 July 2024, setting out why I intended to uphold this complaint in part. An extract from the provisional decision is set out below:

"The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr H's account is that customers are responsible for payments they authorised themselves. And, as the Supreme Court has recently reiterated in

the case of Philipp v Barclays Bank UK PLC, banks generally have a contractual duty to make payments in compliance with their customer's instructions.

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, Monzo's April 2023 terms and conditions gave it rights to:

- Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.*
- Refuse to make a payment if it suspects the customer is a victim of fraud*

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 or fraud.*
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.*

While 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 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6).*
- Banks have a longstanding regulatory duty "to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements*

and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).

- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.*
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).*
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.*
- Monzo has agreed to abide by the principles of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstance (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.*

So 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 it fair and reasonable that in May 2023 Monzo should:

- 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 firms 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 firms 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 customers, when deciding whether to intervene.

And so I've considered whether Monzo should have identified that Mr H was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

Should Monzo have made further enquiries before it processed any of Mr H's payments?

The first few payments Mr H made from his Monzo account as part of this scam weren't for what I'd consider to be particularly large amounts, or for amounts where I'd expect Monzo to have identified a risk of financial harm based on their size alone. They didn't leave the balance of his account at particularly unusual levels. And they fluctuated up and down in size, so I don't think they formed a particularly suspicious pattern. So I wouldn't have expected Monzo to identify that Mr H could be at risk of financial harm as a result of these first few payments and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing them to go through.

But when Mr H tried to make the eighth payment here, for £8,000 on 6 May 2023, I think Monzo should have identified a risk. This payment was for a significantly larger amount than the previous payments. Around this time Monzo should have been aware that cryptocurrency related transactions carried an elevated risk of being related to fraud or a scam. And at this point Mr H had tried to make eight payments to a cryptocurrency exchange over two days, which is a pattern of payments often seen when people are falling victim to a scam.

So I think Monzo should have identified a risk when Mr H tried to make this payment and intervened to carry out additional checks before allowing it to go through.

Monzo has argued that Mr H had made and received a number of payments to and from the same cryptocurrency exchange account, and so the account this payment was going to was established as a recognised and often used account – which carries less risk. And I recognise that Mr H had made previous payments to the cryptocurrency exchange account before. But these payments only started less than two months before the payments made as a result of this scam, so I don't think it had been established that Mr H had been sending money to this account for a significant period without any supposed problems. And this payment of £8,000 was significantly larger than any of the previous payments sent to the account. So I still think Monzo should have identified a risk as a result of this payment.

Would further checks have prevented Mr H's loss?

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the risk I think it should have identified, I think it would be reasonable to expect those checks to include a human intervention with questions about the purpose of the payment and then relevant follow-up questions based on the information it was given.

Monzo has said it showed Mr H a written warning about possible scams before one of the previous payments he made to the cryptocurrency exchange. But I don't think this written warning was specific enough to Mr H's circumstances or went far enough into the details of why Mr H was making the payment. So even if Monzo had shown this warning before the eighth payment Mr H made as a result of this scam, I don't think it would have done enough to address the risk I think it should have identified. And so I still think Monzo should have carried out a human intervention and asked questions of Mr H.

I've not seen anything to suggest Mr H would have lied or tried to mislead Monzo if he was asked about the payment. And when the other bank did contact him about a later payment that didn't ultimately go through, Mr H did say it was for cryptocurrency trading. So, if asked, I think Mr H would likely have told Monzo this payment was for a cryptocurrency investment he was making. I think Monzo should then have asked further questions about how Mr H found out about the investment and what returns he'd been told he could make. And I think Mr H would then have told it he found out about the investment through someone contacting him online and that he'd been told he could double the money he invested.

And as being contacted about investments online and being told you could make very high returns are common features of investment scams, I think Monzo should then have had significant concerns and warned Mr H that he was likely the victim of a scam.

Our investigator suggested that Mr H would likely have continued to make the payment regardless of any intervention Monzo had carried out, due to his answers when the other bank contacted him about the later payment. But while Mr H does initially seem reluctant to answer questions on the call with the other bank and suggests he will make the payment from another account if it is cancelled, the other bank then explains the checks are to help identify potential fraud and Mr H does then answer the questions. So I don't think this is enough to conclude that Mr H would have made the payment regardless of the intervention Monzo carried out.

And as Monzo is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr H. I think if Monzo had explained that his circumstances matched common investment scams and given him some steps he could take to check whether it was legitimate, such as trying to withdraw all the money he had invested so far, the scam would have been uncovered and Mr H wouldn't have made any further payments towards it.

So if Monzo had done more to protect Mr H before allowing the eighth payment here, as I think it should have, I don't think Mr H would have lost the money from this payment. And so I think it would be reasonable for Monzo to bear some responsibility for the loss Mr H suffered from this payment.

Should Mr H bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr H to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where he was given access to a trading platform which appeared to show profits he was making, I do think there were a number of things about what was happening that should have caused him significant concern.

Mr H says he was initially contacted about this potential investment by someone he was in an online message group with. But this isn't how I would expect a legitimate investment company to contact potential clients. All of Mr H's communication with the investment company also appears to have been via text message and he doesn't appear to have been sent any documents or paperwork about his investment. But this isn't how I would expect a legitimate investment company to communicate with clients, particularly given the amount of money Mr H was ultimately investing. So I think this kind of communication should have caused Mr H some concern.

From what I've seen, Mr H doesn't appear to have been given a particular clear explanation or have had a particularly clear understanding of the trading the investment company was doing on his behalf or how the profit he was told he was making was being generated. And

given the amount of money Mr H ultimately paid to the company, I think it would be reasonable to expect him to have had a clearer understanding of this or to have asked more questions about it.

Mr H also says he was told he could double any money he invested, with seemingly no risk of losing his money. And I think such high returns, particularly in such a short period of time and with little risk, should have caused him significant concern that what he was being told was too good to be true.

I sympathise with the position Mr H has found himself in. He has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused him significant concern. And I don't think he did enough, or that the seemingly genuine information he received from the investment company should have been enough, to overcome those concerns. So I think it would be fair for him to bear some responsibility for the loss he suffered.

Summary

As I think both Mr H and Monzo should bear some responsibility for the loss he suffered, I think it would be fair for Monzo to refund 50% of the money Mr H lost as a result of the eighth payment he made."

I said I'd consider anything further Mr H and Monzo sent in following the provisional decision.

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.

Neither Mr H nor Monzo submitted any further evidence or arguments following the provisional decision. I therefore still think the conclusions I set out in the provisional decision are correct, and for the same reasons.

I still think both Mr H and Monzo should bear some responsibility for the loss he suffered, and that it would be fair for Monzo to refund 50% of the money Mr H lost as a result of the eighth payment he made.

My final decision

I uphold this complaint in part and require Monzo Bank Ltd to:

- Refund Mr H 50% of the money he lost from the eighth payment he made as a result of this scam – totalling £4,000.

- Pay Mr H 8% simple interest on this refund, from the date of the payment until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 October 2024.

Alan Millward
Ombudsman