DRN-4423172

The complaint

Ms K complains Monzo Bank Ltd didn't do enough to protect her when she fell victim to a job scam.

What happened

Ms K, who has a representative, has an account with Monzo Bank.

Ms K says she was looking for a way to supplement her income when she received a message from someone offering an opportunity to work for a specific company. She says she was used to receiving messages from recruiters, so she didn't think this was unusual. She says she researched the company she was going to be working for online and saw it was a genuine and legitimate company. So, she expressed interest and says she was directed to the company's website and asked to create an account. She says she was then given training before being sent tasks to complete and being added to a group chat. She says she was told she'd need to create a cryptocurrency wallet in order to withdraw any commissions she'd make which she did.

Ms K says she was told she'd have to buy tasks and that she'd earn commission when she completed them – and that she was shown how to buy tasks using her cryptocurrency. She says the price of the tasks started off low and then increased, but that more expensive tasks allowed her to earn more commission too, so she wasn't worried to begin with. However, the price of the tasks then became extremely high – meaning she was only able to complete all of her tasks by borrowing money from her family. Ms K says she ended up making payments totalling £23,950 from her Monzo account between 11 and 15 March 2023 in order to buy cryptocurrency to pay for tasks and withdraw the commission she believed she'd earnt. She says she realised she'd been scammed when she was told she'd have to pay tax on the commission she believed she'd earnt before being allowed to withdraw her balance.

Ms K's representative contacted Monzo on 20 April 2023 to say that Ms K had fallen victim to a job scam and that Monzo hadn't done enough to protect her. They asked Monzo for a refund along with 8% interest.

Monzo investigated Ms K's claim and said that it wasn't able to refund her payments for a number of reasons. For a start, Monzo said that any loss that Ms K had experienced happened after her money had been used to purchase cryptocurrency, so it couldn't be liable for that loss as it was no longer involved. Monzo also said that Ms K should have completed more due diligence before making the payments she had. And that it had sent her a low friction warning when she'd tried to make a payment to new payees but she'd decided to go ahead. Ms K wasn't happy with Monzo's response, so her representative complained to us.

One of our investigators looked into Ms K's complaint and agreed with Monzo that the Contingent Reimbursement Model didn't apply to the payments Ms K had made for a variety of reasons. But they said that Monzo should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customers were at risk of fraud. And on that basis they thought that Monzo ought to have been concerned when Ms K attempted to make her third payment – which was for £9,000 – as that took the total amount that Ms K had sent to the payee in question – a new payee selling cryptocurrency – to £10,000 that day. Our investigator thought that the third payment was, in the circumstances, unusual when compared to Ms K's normal account usage. And that Monzo should, therefore, have intervened. Our investigator thought that had Monzo intervened, the scam would have almost certainly been detected. And that, in the circumstances, Monzo has missed an opportunity to prevent further loss to Ms K. Given various red flags, however, our investigator also thought liability should be shared between Monzo and Ms K on a 50 / 50 basis.

Monzo didn't accept our investigator's recommendation, saying that all the reported payments were legitimate and, as such, it would have been inappropriate of it to intervene in the payment journeys. Monzo also said that our investigator's recommendation would require it to intervene in thousands of transactions daily which was inappropriate given Phillips v Barclays. Monzo asked for a decision from an ombudsman. Ms K's representatives said that they thought the first two payments Ms K had made were unusual enough to warrant an intervention and that Monzo should refund those too. Other than that, however, Ms K's representatives agreed with our investigator's recommendations, including their recommendation that liability be shared on a 50 / 50 basis. Ms K's complaint was, as a result, referred to an ombudsman for a decision. And was ultimately passed to me.

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.

In this case, I'm satisfied that Ms K made four payments to two different beneficiaries totalling £23,950 from her Monzo account between 11 March 2023 and 15 March 2023. The first two payments were for £5,000 and £1,000 to two different beneficiaries and were three days apart. Both payments triggered a low friction warning as both involved payments to a new payee. I agree with our investigator that these first two payments wouldn't have appeared sufficiently unusual to Monzo to intervene further. That's despite the fact that Ms K normally only made small payments – typically under £200 – with the occasional larger transfer. The payments weren't large enough to warrant additional intervention and triggered a low friction warning as they were to new beneficiaries which I consider was appropriate. The third and the fourth payments were for £9,000 and £8,950 and were made on 14 March 2023 and 15 March 2023. I agree with our investigator that the third payment was sufficiently unusual to warrant intervention. I say that because it was the second payment Ms K had made to the same beneficiary that day, and the beneficiary in question had been newly set up. The payment also brought the total Ms K had paid to that beneficiary that day to £10,000. In short, I agree with our investigator that by the time Ms K attempted to make her third payment there was a pattern of fraud emerging. In the circumstances, I agree with our investigator that Monzo should have intervened at that stage.

Monzo says it wasn't under a duty to intervene

In its response to our investigator's recommendation that this complaint be upheld, Monzo said that our investigator's recommendation would require it to intervene in thousands of transactions daily which was inappropriate given Phillips v Barclays. So, I think it's helpful to say more about this.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Ms K's account is that Ms K is responsible for payments Mr N has authorised herself. And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, banks generally have a contractual duty to make payments in compliance with the 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 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 December 2021 terms and conditions – which were the terms and conditions in force at the time of the payments in question – gave it rights (but not obligations) to:

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

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, whilst 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 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 circumstances (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.

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.

Had Monzo intervened when Ms K attempted to make the third payment, I'm satisfied that Ms K would have realised that she was being scammed, as I don't think she would have answered any questions Monzo put to her dishonestly. In other words, I'm satisfied that Monzo would have discovered that Ms K was falling for a job scam. I'm satisfied too that if Ms K had explained what had led up to this – and the steps she'd taken to satisfy herself that it was a genuine opportunity (which were limited) – that Monzo would have rapidly spotted numerous red flags. In short, I agree with our investigator that Monzo missed an opportunity to prevent further loss to Ms K.

Our investigator has set out in considerable detail the red flags that should have made Ms K realise that this wasn't a genuine opportunity. I'm not going to repeat them here, other than to say that I agree Ms K could and should have done more to satisfy herself that this wasn't a scam. Ms K appears to accept she could have done more too – her representative accepted our investigator's recommendation that liability be shared. In the circumstances, I also agree that a 50% reduction to the losses Monzo should refund is fair and reasonable.

Putting things right

Given everything I've just said, I agree that Monzo should have done more when Ms K tried to make her third payment, and that Monzo should refund 50% of Ms K's losses from the third payment onwards. In addition, I agree that Monzo should pay 8% simple interest on these refunds from the date of payment to the date of settlement.

My final decision

My final decision is that I'm upholding this complaint and require Monzo Bank Ltd to refund 50% of Ms K's losses from her third payment onwards. As she made £17,950's worth of payments from her third payment onwards, that means I'm requiring Monzo Bank Ltd to refund £8,975's worth of losses. In addition, I require Monzo Bank Ltd to pay 8% simple interest on these refunds from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 19 March 2024.

Nicolas Atkinson
Ombudsman