

## **The complaint**

Mr K complains Monzo Bank Ltd didn't do enough to protect him when he fell victim to a job scam.

## **What happened**

Mr K, who has a representative, has an account with Monzo Bank and an account elsewhere.

Mr K says he was looking for work when he received a message from someone claiming to be from a recruitment company with vacancies. Mr K says he expressed interest and subsequently received a call from a woman from a company offering an opportunity to earn commission. Mr K says he checked online and saw that the company offering the opportunity was legitimate and says that its website appeared to be professional and genuine. So, he said he was interested. Mr K says he was added to a group chat on which other people were posting messages about their profits and successes. And he says he was told he had to complete tasks on a platform and that he'd earn 0.25% commission for doing so.

Mr K says he was showed how to make cryptocurrency purchases and how to top up his account on the platform on which he was meant to complete tasks. He says he was told these top ups would simulate buying items and that this is what he'd earn the commission for. Mr K says the first payments he made were small and he was able to withdraw from the platform too. However, he says he then kept on being asked for increasingly large payments to be made onto the platform and was told that unless he completed all of the tasks he had to do – which meant sending the payments he was being asked to make – that he wouldn't be able to withdraw his money. Over a period of three days – from 30 March 2023 to 1 April 2023 – Mr K made payments totalling £28,500. He says he realised he'd been scammed when he was unable to withdraw his money.

Mr K's representative contacted Monzo on 18 April 2023 to say that Mr K had fallen victim to a job scam and that Monzo hadn't done enough to protect him. They asked Monzo for a refund along with 8% interest.

Monzo investigated Mr K's claim and said that it wasn't able to refund his payments for a number of reasons. For a start, Monzo said that any loss that Mr K had experienced happened after his 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 Mr K should have completed more due diligence before making the payments he had. And that it had sent him a low friction warning when he'd tried to make a payment to new payees but he'd decided to go ahead. Mr K wasn't happy with Monzo's response, so his representative complained to us.

One of our investigators looked into Mr K's complaint and agreed with Monzo that the Contingent Reimbursement Model didn't apply to the payments Mr 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 Mr K attempted to make his third payment – which was for £8,000 – as that took the total amount that had left Mr K's account in under 24 hours to £14,500. And payments to cryptocurrency exchanges and new payees at that. Our investigator thought that the third payment was, in the circumstances, unusual when compared to Mr 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 Mr K. Given all the red flags, however, our investigator also thought liability should be shared between Monzo and Mr K on a 50 / 50 basis.

Mr K's representatives accepted our investigator's outcome and said they'd wait to see how Monzo responded. Initially Monzo didn't do so, so this complaint was referred to an ombudsman for decision. Monzo did ultimately respond, 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. Mr K's representatives said, at that point, that they thought the second payment was unusual enough to warrant an intervention. So, the complaint was 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 Mr N made six payments to three different beneficiaries totalling £28,500 from his Monzo account between 30 March and 1 April 2023. The first two payments were for £2,000 and £4,500 to two different beneficiaries and were within five hours of one another. I agree with our investigator that they wouldn't have appeared sufficiently unusual to Monzo to intervene. That's despite the fact that Mr N normally only made very small payments – under £100. The payments weren't large enough to warrant intervention. The second and third payment were for £4,500 and £8,000 to the same beneficiary. I agree with our adjudicator that the third payment was sufficiently unusual to warrant intervention. I say that because it was the second payment Mr N had made to the same beneficiary within two hours, and the beneficiary in question had been newly set up. The payment also brought the total Mr N had paid out of his account to £14,500 in less than 24 hours. In short, I agree with our investigator that by the time Mr N attempted to make his 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. By that time Mr N was also asking to increase his limit saying he needed to make a large payment ASAP and was chatting to Monzo. Monzo didn't take this opportunity to probe why Mr N needed to increase his limit and wanted to send such a large payment.

### ***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 Mr N's account is that Mr N is responsible for payments Mr N has authorised himself. And, as the Supreme Court has recently reiterated in *Phillip 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 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 Mr N attempted to make the third payment payment, I’m satisfied that Mr N would have realised that he was being scammed, as I don’t think he

would have answered any questions Monzo put to him dishonestly. In other words, I'm satisfied that Monzo would have discovered that Mr N was falling for a job scam. I'm satisfied too that if Mr N had explained what had led up to this – and the steps he'd taken to satisfy himself that it was a genuine opportunity (which were almost non-existent) – 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 Mr N.

Our investigator has set out in considerable detail the numerous red flags that should have made Mr N realise that this wasn't a genuine opportunity. I'm not going to repeat them here, other than to say that I agree Mr N could and should have done a lot more to satisfy himself that this wasn't a scam. 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 Mr N tried to make his third payment, and that Monzo should refund 50% of Mr N'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 Mr N's losses from his third payment onwards. As he made £22,000's worth of payments from his third payment onwards, that means I'm requiring Monzo Bank Ltd to refund £11,000'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 Mr K to accept or reject my decision before 21 February 2024.

Nicolas Atkinson  
**Ombudsman**