

The complaint

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

Mr M is represented by a firm I'll refer to as 'R'.

What happened

Your text here

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

I wrote to both parties saying:

"...Mr M made payments to legitimate crypto exchanges whereby the funds were forwarded on as part of a task-based job scam. The relevant payments are:

Date	Amount
26 April 2023	£0.10
26 April 2023	£205.98
26 April 2023	£2,059.80
27 April 2023	£2,000
27 April 2023	£2,500
27 April 2023	£1,600
28 April 2023	£2,000
28 April 2023	£2,700
29 April 2023	£2,000
29 April 2023	£1,500
30 April 2023	£2,000
30 April 2023	£1,600
2 May 2023	£2,000
2 May 2023	£1,500
3 May 2023	£2,852.50
4 May 2023	£0.10 (credit)
19 May 2023	£3,000
Total:	£29,518.28

Mr M also attempted a £4,500 payment on 19 May 2023 but this was declined. Mr M's account was then blocked before later being closed.

Our Investigator thought this complaint should be upheld in part. He said Monzo ought to have had concerns Mr M was at risk of financial harm from fraud by the point of the second payment (£2,500) on 27 April 2023. And had Monzo carried out additional checks before processing the payment, they would've uncovered that Mr M was being scammed. He noted that Monzo did intervene on 19 May 2023 and, although Mr M seemed to reject the idea he was being scammed, they did prevent

further payments being made – as they declined the £4,500 payment and blocked his account. And so, our Investigator was satisfied Monzo's intervention did work and prevented him suffering further losses.

Because of this, he thought that Monzo could've prevented Mr M's losses from the point of the £2,500 payment on 27 April 2023. He did however think Mr M should share equal responsibility for his loss by way of contributory negligence. He explained that it was unlikely a legitimate employer would ask their employee to make payments as part of their employment. And that, by the time of the £2,500 payment on 27 April 2023, it would've been reasonable for Mr M to have questioned why so many payments were required before he received his wages. So, he thought Mr M could've taken further steps at this point – such as seeking financial advice or carrying out additional research on the internet about the legitimacy of task-based job employment. Had he done so, he would've likely become aware he was falling victim to a scam himself. Our Investigator recommended Monzo refund 50% of Mr M's losses from the £2,500 payment on 27 April 2023 – plus 8% simple interest for loss of use of money.

In response to our Investigator's view, Monzo made – in the summary – the following points:

- They're not liable for Mr M's losses. This is because he sent funds to legitimate crypto exchanges before forwarding it on to the scammers. And so, the point of loss was the point the funds left Mr M's crypto wallets.
- The regulator and courts - as per the Phillips vs Barclays judgement - expect banks to carry out customers' wishes, and it is inappropriate for them to decline to do so.
- Crypto trading is an acceptable use of a Monzo account, and it was the purpose Mr M gave when he opened the account. And although crypto is used in some cases for fraud, they're not able to flag every crypto transaction because of an elevated risk. This is because flagging every crypto transaction would require them to intervene in thousands of transactions daily to uncover potential losses. And it isn't in their regulatory remit to flag every crypto transaction because it may be at a higher risk of fraud.
- They do have systems in place to identify signs a customer may be at risk of fraud but here, Mr M's transactions were legitimate payments to his own crypto wallets. And as the account was newly opened, on 22 April 2023, they didn't have access to transactions history to determine whether the account usage was unusual or out of character for Mr M.
- There's no indication to say whether if they had identified the payments as unusual and suspicious, prompting questioning to Mr M about them, it would have prevented the scam or not.
- Had they made fraud checks, they would've found that the transactions were legitimate and made by Mr M. And that the money was going to an account in Mr M's control. Customers are entitled to make transactions and it's an expectation for them to be able to do so. They therefore can't agree it should've raised suspicions for a customer to move money to an account in their own name.
- Although Mr M did tell them the truth when questioned about the payments, including the nature of the work he was carrying out, this doesn't mean it would've prevented the scam. This is because the truth of the payments was that they were to send funds to Mr M's own crypto wallet and not directly to the scammer – which wasn't the scam. Therefore, it is just as likely that their

intervention wouldn't have prevented Mr M's losses.

- *The reason there weren't any payments made after their intervention was because the account was blocked, with the remaining balance released to Mr M.*
- *They can't agree this was a sophisticated scam and the Investigator's reasoning suggests that Mr M had no reasonable basis for belief.*
- *Given the widespread media coverage of the use of crypto in fraud, Mr M would also reasonably have been aware of the scam.*
- *It remains unclear as to why liability would fall on Monzo for losses that have occurred outside of their platform as this doesn't seem in keeping with the Contingent Reimbursement Model (CRM) code.*

My current thoughts

In broad terms, the starting position in law is that a bank – like Monzo - is expected to process payments their customer authorises them to make. Here, it isn't disputed that Mr M knowingly made the payments to the scammer. I appreciate he was tricked by the scammer into thinking he was making the payments as part of a genuine job opportunity. Nevertheless, I'm satisfied the payments were authorised by Mr M. So, under the Payment Services Regulations 2017 and the terms of his account, Monzo are expected to process the payments and Mr M is presumed liable for the loss in the first instance.

As Monzo has pointed out, these payments aren't covered by the CRM code. This is because they were mostly made by debit card and the transactions that were made by way of fund transfer, aren't covered as the funds were sent to an account held in Mr M's own name.

But while these payments aren't covered by the CRM code, I've also taken into account regulatory rules and guidance, relevant codes of practice and good industry practice. This includes, but isn't limited to:

- *The British Standards Institute code of practice PAS 17271.*
- *FCA Principles for Businesses 2 and 6, and SYSC 3.2.6R.*
- *The FSA's (the predecessor to the FCA) thematic review paper of 2012, 'Bank's defences against investment fraud – Detecting perpetrators and protecting victims'.*

I'm therefore satisfied that Monzo ought to have been monitoring accounts to counter various risks including preventing fraud and scams. To do this, Monzo should've had systems in place to identify unusual transactions, or other signs, that its customers were at risk of fraud. And carried out additional checks before processing a payment or, declined the payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr M to Monzo (either individually or collectively) were unusual enough to have expected additional checks being carried out before the payments were processed.

The Monzo account was newly opened and so there wasn't any historical spending to have allowed Monzo to assess whether the scam transactions were unusual or out of character for Mr M. I've therefore thought about whether the payments themselves, without any typical account usage available, were suspicious enough to have prompted Monzo to consider Mr M was at risk of financial harm from fraud.

The payments were made to legitimate crypto exchanges. And while there are known fraud risks associated with crypto, as scams like this have unfortunately become more prevalent, many of Monzo's customers use their services to legitimately invest in crypto - particularly as many high street banks have applied limits or restrictions. Monzo therefore must strike the balance between allowing customers to be able to use their account and questioning transactions to confirm they're legitimate.

Here, Monzo has confirmed that Mr M gave crypto trading as the purpose for the account opening. Because of this, it would've been reasonable for Monzo to have expected Mr M to have made payments to crypto exchanges. However, given the prevalence of crypto being used by scammers, to which Monzo is aware of, I don't think the account opening purpose provided by Mr M removed Monzo's responsibility to protect him from financial harm, as a result of crypto fraud, completely. And it seems Monzo is aware of this given they did carry out additional checks on Mr M's payments to crypto exchanges in May 2023.

Having thought carefully about this, I think Monzo ought to have had concerns Mr M was at risk of financial harm from fraud by the point of the £2,000 payment on 28 April 2023. This is because, by this point, he had made seven payments to three different crypto exchanges across three days that totalled over £10,000. And so, while it would've been reasonable to expect Mr M to have made crypto payments due to the account opening purpose he provided, I think this activity was unusual and suspicious – as multiple crypto payments to several different exchanges over a short period of time can be an indicator of fraud.

I therefore think Monzo should've contacted Mr M to carry out additional checks before processing this payment. And so, I've thought about what would've most likely happened had Monzo done this. When considering this, I've taken into account the conversations Monzo had with Mr M in May 2023 which led to the £4,500 payment being declined and his account blocked.

Mr M was open and honest about the purpose of the payments when he was contacted by Monzo in May 2023. So, I've no reason to think he would've acted any differently had Monzo contacted him earlier in respect of the 28 April 2023 payment. And from the conversations Monzo had with Mr M, they identified that he was making payments to a crypto wallet in his own name with a legitimate crypto exchange for the purpose of a task-based job. Monzo appropriately identified this as a scam and informed Mr M of this. Although it seems Mr M wasn't receptive to such advice, as he believed the job opportunity to be genuine, Monzo were effective in preventing his losses from the point they intervened as they declined the £4,500 payment and blocked his account – thereby preventing further payments being made.

It follows that while I think Monzo did take reasonable steps to protect Mr M from the scam, I think they ought to have done so sooner. I therefore consider Monzo is responsible for Mr M's loss from the point of the £2,000 payment on 28 April 2023.

I understand Monzo don't believe they should be held responsible for Mr M's loss as they say it didn't occur with them. I've taken into account that Mr M transferred the money into his own crypto wallets, rather than directly to the fraudster, and so he remained in control of his money after he made the payment from his Monzo account and that it took further steps before the money was lost to the scam. However, for the reasons I've explained, I am satisfied that it would be fair to hold Monzo responsible for the loss Mr M suffered from the point of the £2,000 payment on 28 April 2023.

This is because the potential for multi-stage scams ought to have been well known to Monzo and as a matter of good practice they should fairly and reasonably have been on the look-out for payments presenting an additional scam risk – including those involving multi-stage scams. And from their conversations with Mr M, it seems Monzo

did exactly this by correctly identifying the funds were being used as part of a task-based job scam but – unfortunately – at too late a stage of the scam. I therefore consider, in these circumstances, that it is fair to hold Monzo responsible for this loss.

*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 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 terms and conditions gave them rights (but not obligations) 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. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.*

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.*
- They had a contractual right not to make payments where they suspected fraud.*
- They had a contractual right to delay payments to make enquiries where they suspected fraud.*
- They could therefore refuse payments, or make enquiries, where it suspected fraud, but they weren't under a contractual duty to do either of those things.*

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.

In this case for, the reasons I have explained, I am satisfied Monzo ought to have intervened when Mr M made the £2,000 payment on 28 April 2023. And had Monzo done so, they've demonstrated – from their May 2023 actions - they would've been able to prevent Mr M's losses from this point onwards.

I've thought about whether Mr M should also bear responsibility for his loss. And I agree with our Investigator that it would be fair to apply a 50% reduction in the award

due to contributory negligence on Mr M's part. This is because, while I note Monzo don't feel Mr M fell victim to a sophisticated scam and that he ought to have been aware of it given the widespread media coverage of crypto fraud, he was very clearly under the spell of the scammer and genuinely believed the job opportunity was legitimate. This was because of the professionalism of the scammer, their website and as he thought he was contacted as the result of actions of a legitimate recruitment agency. Nevertheless, I think Mr M should've done more to protect himself from the scam – particularly by the point of the 28 April 2023 as he'd paid significant sums of money as part of this employment opportunity in a short period of time without yet receiving any of the wages he was led to believe he would receive. Mr M was also contacted about the opportunity on a mobile messaging service app, which is unusual, and the concept of rating items to falsely boost their marketability doesn't sound genuine. I think it would've been reasonable to have expected Mr M to have carried out additional checks – such as researching these types of jobs/scams online – before making the payments. If he had done so, then I think he ought to have realised it was a scam.

Next steps

It follows that, in considering the overall circumstances of this complaint, to put things right, I think Monzo should refund Mr M £10,576.20 - that being 50% of the payments he made from 28 April 2023 onwards. They should also pay 8% simple interest, calculated from the date of each payment to the date of settlement, to recognise Mr M's loss of use of money."

R confirmed Mr M's acceptance. Monzo however did not agree and, in short, they've added:

- The payments are out of scope as they were sent to Mr M's own crypto accounts. And there weren't any vulnerabilities present to suggest Mr M wasn't in a capacity whereby they should've intervened.
- Given there wasn't any prior transaction history on Mr M's account due to it being newly opened, my conclusion that the payments were unusual is baseless.

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, and having thought carefully about the additional points put forward by Monzo, I see no reason to depart from the above.

As I've explained, although these payments aren't covered by the CRM code, there are circumstances where it might be appropriate for Monzo to carry out additional checks before processing a payment to protect a customer from the possibility of financial harm from fraud. And here, I think Monzo ought to have taken steps to protect Mr M from the scam sooner than they did. Had Monzo done so, I consider they could've prevented Mr M suffering the losses he did.

Monzo has argued that, given there wasn't any prior transaction history on Mr M's account, my conclusion the payments were unusual is baseless. While I accept it cannot be said these scam payments were out of character for Mr M due to the account being newly opened, Monzo ought to have still been monitoring his account to identify unusual or suspicious transactions that indicated he was at risk of fraud. And here, for the reasons I set out, I think Mr M's account activity became sufficiently unusual and suspicious by the point of the £2,000 payment on 28 April 2023. This is because, irrespective of whether there were any known vulnerabilities, Mr M had made seven payments to three different crypto

exchanges across three days that totalled over £10,000. And as multiple payments to several different exchanges over a short period of time can be an indicator of fraud, I would've reasonably expected Monzo to have identified this as unusual and suspicious account activity. Thereby prompting Monzo to question Mr M about the purpose of the payments – including what they were for and why he was making payments to multiple crypto exchanges rather than a single exchange.

I remain of the view that, had this happened, Monzo would've most likely identified Mr M was falling victim to a scam – as they did when they contacted him about the attempted £4,500 payment. And that they would likewise have been effective in preventing him from making further payments to it.

I'm aware the payments were made to an account held in Mr M's own name rather than directly to the fraudster. This meant Mr M remained in control of his money after he made the payments from his Monzo account. But, as I explained, Monzo ought to have been familiar with multi-stage scams and been on the look-out for this type of risk. When Monzo spoke with Mr M, they rightly identified the payments were being made as part of a task-based job scam. And so, I'm satisfied Monzo were able to identify Mr M was falling victim to a scam but I think that they should've done so earlier. It therefore follows that I consider Monzo is responsible for Mr M's loss from the point of the £2,000 payment on 28 April 2023.

I've thought further about whether Mr M should bear responsibility for his loss. And in the absence of any additional arguments about Mr M's role in what happened, I remain of the same view that it would be fair to reduce the amount refunded by 50% due to contributory negligence for the reasons I've explained. Similarly, as no further comments have been raised regarding Mr M's loss of use of money, I likewise consider that Monzo should also pay 8% simple interest per year to recognise his loss of use of funds.

My final decision

My final decision is that I uphold this complaint in part. I direct Monzo Bank Ltd to:

- Refund £10,576.20
- Pay 8% simple interest, per year, calculated from the date of each payment made from the 28 April 2023 onwards to the date of settlement - less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 April 2024.

Daniel O'Dell
Ombudsman