

## The complaint

Miss O complains Monzo Bank Ltd didn't do enough to protect her when she fell victim to a scam.

## What happened

Miss O has an account with Monzo and accounts elsewhere too.

Miss O says she was contacted by a woman on a well-known communication app about a job opportunity that would allow her to earn commission. The woman explained what was involved and added her to a group of people who were already working for the company. She says she was told she'd need to buy cryptocurrency in order to complete tasks the job involved – the tasks related to hotel bookings – and that the more expensive tasks earned more commission. Miss O says in December 2022 and January 2023 she made payments totalling £32,000 towards what she now realises was a scam. She says she realised she'd been scammed when she was unable to withdraw her earnings. Miss O contacted Monzo to report another scam she'd fallen victim to around the same time and says she thought she mentioned this one too.

Miss O subsequently complained to us to say that she'd not heard back from Monzo about this particular scam. We contacted Monzo and it said Miss O hadn't reported this particular scam to it. So, it asked for the opportunity to look into it. Monzo contacted Miss O to investigate the scam and says she provided very little evidence about what had happened, and certainly not enough for it to investigate properly. Monzo said it was able to recover a £1,500 payment she'd made, and that £12,000's worth of payments she'd complained about had bounced back into her account. Other than that, however, Monzo said it couldn't help as it hadn't been able to investigate properly and that it hadn't done anything wrong.

One of our investigators started looking into Miss O's complaint and asked for additional information and, in particular, evidence about the scam and how it had happened. Having done so, our investigator said that Monzo should have intervened when Miss O tried to make the ninth payment she made to the cryptocurrency exchange involved. Had it done so, our investigator said the scam would have been revealed. In the circumstances, given that our investigator thought Miss O should share responsibility for what had happened, our investigator recommended that Monzo refund 50% of the losses Miss O had made from payment nine onwards. In other words, 50% of £16,430. Miss O accepted. Monzo didn't.

Monzo said 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 a way that was inconsistent with *Phillips v Barclays*. In addition, Monzo said that our investigator's suggestion that cryptocurrency scams had greatly increased in frequency by January 2023 wasn't consistent with the approach we'd taken in other similar complaints. And that our investigator had assumed the scam would have come to light had it intervened without any evidence to back that up. In the circumstances, Monzo asked for a decision from an ombudsman. Miss O's complaint was, as a result, 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 Miss O made thirteen card payments totalling £20,603.94 to a cryptocurrency exchange between 31 December 2022 and 11 January 2023. I agree with our investigator that the first eight payments were too small to have been of concern to Monzo. I agree, therefore, too that the first eight payments were too small to have warranted intervention. I also agree that the ninth payment – which was for just under £3,000 – given that it also took the total amount of money she'd sent to this particular cryptocurrency exchange in a short space of time to over £7,000, was sufficiently unusual to warrant an intervention from Monzo. In short, I agree with our investigator that by the time Miss O attempted to make her ninth payment there was a pattern of fraud emerging.

Given what I've just said, I agree with our investigator that Monzo should have intervened when Miss O tried to make her ninth. Monzo has said that our investigator's suggestion that cryptocurrency scams had greatly increased in frequency by January 2023 – and this should have been factored into when it intervenes – isn't consistent with the approach we'd taken in other similar complaints. I agree with Monzo that consistency is important, and I'm satisfied that the investigator's approach is the right one. The level of intervention our investigator recommended is consistent with what I'd have expected Monzo to do at that time. I'll go onto this point in more detail now.

### ***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 a way that's inconsistent with *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 Miss O's account is that Miss O is responsible for payments Miss O 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 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 Miss O attempted to make the ninth payment, I'm satisfied that Miss O 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 Miss O was falling for a job scam. I'm satisfied too that if Miss O had explained what had led up to this – and the steps she'd taken to satisfy himself that it was a genuine opportunity (which were minimal) – 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 Miss O.

Miss O has accepted that in this case liability should be split on a 50 / 50 basis. Our investigator has set out in detail the red flags that should have made Miss O realise that this wasn't a genuine opportunity. I'm not going to repeat them here, other than to say that I agree Miss O could and should have done a lot more to satisfy herself 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 Miss O tried to make her ninth payment, and that Monzo should refund 50% of Miss O's losses from the ninth 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 Miss O's losses from her ninth payment onwards. As she made £16,430's worth of payments from her ninth payment onwards, that means I'm requiring Monzo Bank Ltd to refund £8,215'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 Miss O to accept or reject my decision before 6 April 2024.

Nicolas Atkinson  
**Ombudsman**