

## Complaint

Mr A is unhappy that Monzo Bank Ltd didn't refund him after he fell victim to a scam.

## Background

Mr A was contacted through a social messaging app by someone promoting a job opportunity. After expressing interest, he was introduced to another individual who provided details about the role. He was told that he would be working in affiliate marketing, reviewing films on an online platform managed by the purported employer. The reviews, he was led to believe, would boost the exposure and commercial success of the films.

Unfortunately, this job opportunity turned out to be a scam. Mr A was promised commission for his work, but was asked to fund an account on the employer's platform to carry out the tasks. Using his Monzo account, he made payments to several third-party cryptocurrency exchanges. The funds were then converted into cryptocurrency and transferred into the fraudsters' control.

Mr A made the following payments:

1	1 July 2023	£165
2	1 July 2023	£41.24
3	1 July 2023	£250
4	1 July 2023	£257
5	3 July 2023	£1,325
6	9 July 2023	£4,000
7	10 July 2023	£3,962
8	18 July 2023	£3,000
9	18 July 2023	£1,786

Once Mr A realized he had been scammed, he notified Monzo. It didn't agree to pay him a refund. Unhappy with this outcome, Mr A referred his complaint to this service. An Investigator reviewed the case and partially upheld the complaint. The Investigator observed that Monzo was expected to monitor unusual or out-of-character account activity that could indicate a fraud risk. In this case, according to the Investigator, Monzo should have been alerted by payment 7.

The Investigator thought that Monzo should have flagged the payment and contacted Mr A before processing it. If Monzo had intervened, it was likely that Mr A would have explained the payments were related to the job opportunity, and Monzo could have warned him that the job was likely a scam. Despite finding that Monzo should have acted at this point, the Investigator also found that Mr A bore some responsibility for his losses due to contributory negligence. The Investigator recommended that Monzo refund 50% of the losses from payments 7, 8, and 9.

Mr A accepted the Investigator's conclusions, but Monzo didn't. Monzo argued that payment 7 was not out of character, pointing to two other transactions of similar value made around the same time. Additionally, Monzo noted that Mr A had previously made payments to a

cryptocurrency exchange, suggesting that such transactions were not unusual for him. Monzo also contended that it was speculative to assume Mr A would have been forthcoming if they had questioned him about the payment.

Since Monzo disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Monzo be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to make enquiries with the customer to satisfy itself that they weren't at risk of financial harm due to fraud

In this case, the Investigator concluded, and I agree, that Monzo should have been concerned about payment 7. To have two payments of around £4,000 each on successive days to a cryptocurrency exchange was out of character for Mr A's account. Monzo argued that two other transactions of similar size had occurred around the same time. However, both payments took place after the scam had started, and the first was a transfer to Mr A's own account. Given these circumstances, Monzo could not reasonably rely on those transactions to suggest that payment 7 was consistent with Mr A's typical account activity. In addition, while Mr A had previously made smaller payments to cryptocurrency platforms, these transactions were for modest amounts—ranging from £10 to £100. This does not indicate that Mr A was experienced in cryptocurrency investments, nor do I find that it diminished the likelihood that payment 7 was linked to a scam.

I have 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 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, the terms and conditions applicable to Mr A's Monzo account conferred on it rights (but not obligations) to:

1. Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.

2. 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.

The starting position at law, therefore, 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 fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Monzo to undertake fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded it from doing so before making a payment.

Whilst Monzo was not required or obliged under the contract to carry out 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 carried out additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case, I'm satisfied that Monzo should've intervened and that, if it had done so, it could've prevented Mr A's subsequent losses. I say that because there's nothing to show that he was directed by the fraudsters to mislead the bank in the event that it questioned the payments. It's therefore more likely than not that Mr A would've responded to the bank's questions with reasonable candour. Monzo could have identified that he was falling victim to a scam and warned him appropriately. If it had done so, I can't see any reason why he would want to continue to make the payments.

I've taken into account the fact that these payments were being made to accounts in Mr A's own name. He then converted those deposits into cryptocurrency which remained (albeit briefly) under his control before it was transferred into the control of the fraudster. Mr A therefore didn't experience any financial loss at the point the funds left his Monzo account. Nonetheless, Monzo ought to have been aware of the risk of multi-stage scams involving cryptocurrency. Such scams have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency have continued to increase since. Overall, I am satisfied that it could have prevented the losses he suffered if it had acted as I've found it should've done.

However, I've also considered whether it would be fair and reasonable for Mr A to bear some responsibility for his own losses here. In doing so, I've taken into account what the law says about contributory negligence, but also kept in mind that I must decide this case based on what I consider to be fair and reasonable in the circumstances. Having done so, I do think it's fair and reasonable for Monzo to make a deduction from the compensation payable. I say that because I think Mr A ought to have taken more care than he did here. The job opportunity arose as a result of unsolicited contact, and I think that ought to have led him to do more to question whether it was legitimate. The expectation that he make payments in order to work should also have raised concerns. In a legitimate employment scenario, the employer pays the employee for their services. The idea of an employee having to pay to carry out work should have raised doubts. These red flags should have prompted Mr A to exercise more caution and ask questions before proceeding but it doesn't appear that he did

so. Given these factors, it is reasonable for Monzo to deduct 50% from any compensation it pays, reflecting Mr A's contributory negligence.

### **Final decision**

For the reasons I've set out above, I uphold this complaint in part.

If Mr A accepts my final decision, Monzo Bank Ltd needs to refund 50% of payments 7, 8 and 9. It should also add 8% simple interest per annum to those payments calculated to run from the date the payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 October 2024.

James Kimmitt  
**Ombudsman**