

The complaint

Mr B is unhappy that Monzo Bank Ltd won't refund him the money he lost after he fell victim to a scam.

Mr B is represented in this complaint by a solicitor, but for simplicity I will refer to Mr B throughout this decision, even when referencing what his representatives have said on his behalf.

What happened

Mr B fell victim to a task-based employment scam in February 2023. He was contacted through a social media messaging platform by someone pretending to be from a well-known employment agency. Mr B responded to the message and was then contacted by an individual, claiming to be offering him job. Unfortunately, and unknown to Mr B at the time he was dealing with scammers, this was not a legitimate job opportunity.

The scammer explained to Mr B what the role entailed and offered him a job that would involve completing online tasks to generate reviews for various products. The scammer told Mr B that he would be paid in cryptocurrency for completing these tasks online and he would receive commission and a weekly salary. Mr B has said the company the fraudster claimed to be from had a convincing online presence and seemed legitimate to him.

Believing everything to be genuine, Mr B agreed to proceed. He went through some training and was instructed to make payments to buy cryptocurrency which would then be passed on to the job platform. Mr B was initially depositing small amounts, in order to complete tasks, and was able to make a small withdrawal of his 'profits'. But the deposits he was having to make as part of the job became increasingly expensive over time. He was under the impression that he was topping up the balance in his 'work wallet', but the cryptocurrency he was buying was in fact going to wallets the scammers controlled.

In total Mr B made 22 payments from his Monzo account, totalling £28,174.90, which were faster payments for purchases of cryptocurrency, although Mr B was able to withdraw £2,025 back to his Monzo account. Eventually, when he was unable to withdraw his total 'profits', Mr B realised he had been the victim of a scam.

Mr B raised the matter with Monzo. It has committed to follow the Lending Standards Board Contingent Reimbursement Model (CRM) Code (although it isn't a signatory) which requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams like this in all but a limited number of circumstances. Monzo looked into Mr B's complaint and concluded it had no responsibility to refund his loss.

In summary this was because it didn't consider it could be held liable for the payments under the rules of the Code. Monzo added that it had provided warnings to Mr B about some of the payments he had made and that it did not believe Mr B had done enough to ensure that the payments he was making were for a legitimate purpose.

Unhappy with Monzo's response, Mr B brought his complaint to this service. One of our Investigator's looked into things, and felt the complaint should be upheld in part. In summary our Investigator didn't consider the payments made would be covered by the CRM code. Our Investigator did however think that Monzo ought to have intervened at the time Mr B attempted to make the tenth payment to the scam, for £2,000 on 28 February 2023. They thought this payment would have appeared unusual when compared to Mr B's typical activity.

The Investigator felt that, if Monzo had asked Mr B some reasonable questions about the payments he was making, then it was more likely than not that the scam would have come to light, and that Mr B's further loss could have been prevented. However, the Investigator did consider that Mr B should also share responsibility for his loss, so they recommended that Monzo refund 50% of the payments made from the tenth payment onwards, plus some interest.

Mr B accepted the Investigators findings, but Monzo did not. It says that Mr B's loss was not incurred on his Monzo account, but instead when the cryptocurrency he purchased was sent on to the scammer, so does not consider it has any liability for that loss. It also does not think there was anything about the payments that should have triggered an intervention on its part.

As no agreement could be reached the complaint has been passed to me for a final decision.

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 I've reached the same conclusion as our Investigator and for largely the same reasons.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr B's account is that Mr B is responsible for payments he has authorised himself. 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.

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.

I've therefore considered whether the instructions given by Mr B (either individually or collectively) were unusual enough to have expected additional checks to have been carried out before the payments were processed. To decide this, I've reviewed the activity on Mr B's

account statements, from which the payments were made, for the months leading up to the scam. This is often a finely balanced matter, and I acknowledge that Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Having considered the first nine payments of the scam, on balance, I can't fairly say they were so unusual or suspicious in comparison to Mr B's usual activity, that they ought to have alerted Monzo that Mr B may have been at risk of financial harm. The payments were initially for small amounts, although they did increase over time, but they were not so dissimilar in value to other payments that Mr B had made previously, and I think they ought to have stood out.

However, as these payments progressed, a pattern had started to emerge and at the point, on 28 February 2023, when Mr B was attempting to make a payment of £2,000, I think Monzo ought to have had some concerns and made further enquiries before allowing it to be processed. I say this because, by that point, it was the tenth payment to a new or relatively new payee within the space of just a few days, in a series of payments that were increasingly escalating in value, the value of this tenth payment - £2,000 - was relatively unusual for Mr B's account, and it was to a cryptocurrency platform. Monzo will be aware that multiple escalating payments being made in quick succession, and to payees associated with cryptocurrency, can often be indicative of financial harm.

With this in mind, I consider that Monzo should've contacted Mr B directly about the payment for £2,000 before processing it. Had Monzo done so and asked proportionate questions, I've no reason to think Mr B wouldn't have been honest about the detail behind the payments – that being for a job involving completing tasks, in which he would get paid in crypto, and that he had to make payments to various individuals to buy cryptocurrency to increase his wallet balance.

Given Monzo's familiarity of scams, including those involving completing tasks such as this, I think this would've been a red flag. And so, at this point, I think Monzo ought to have highlighted to Mr B that there was a significant risk of it being a scam and encouraged him to not make any further payments. I've no reason to doubt that Mr B would have acted on such advice. I think it's reasonable to assume, that had he been given a clear warning that it was very likely he was being scammed, Mr B would've most likely not proceeded with making the £2,000 payment to the scammers, nor the subsequent payments he made. It follows that I consider Monzo's lack of intervention led to Mr B suffering the loss from this point.

In saying that, I acknowledge what Monzo has said regarding the 'confirmation of payee' warnings Mr B received, and the general scam warnings he was shown when setting up new payees. But I don't consider that these warnings would have broken the spell of this scam. Only one of the confirmation of payee warnings was regarding a complete mismatch – and this was for a small payment very early on in the scam, the others were for near matches and I've not seen evidence to show that the implication of such a mis-match was explained to Mr B. Monzo has also provided copies of the general warning that it showed Mr B when setting up a new payee, but this warning was relatively generic and I don't think, without further more detailed probing, this warning would have unravelled the scam for Mr B.

I have though thought about whether, overall, Mr B did enough to protect himself from the scam, and I don't think he did. While I understand Mr B was trusting of the fraudster as he believed they'd been recommended by a recruitment firm that he was familiar with, I think it would've been reasonable for him to have had concerns about the legitimacy of the job offered. This is because I consider the concept of completing tasks to drive ratings for products or services he hadn't used or purchased, being paid in cryptocurrency and having to deposit funds in order to acquire earnings doesn't seem genuine, and so should've

prompted concerns. I also don't think the explanation given around having to purchase cryptocurrency through third parties in order to fund the job rings true of how a legitimate company would typically run.

So, considering the specific circumstances of this case, on balance, I think that there was enough going on and sufficient red flags that Mr B ought reasonably to have taken further steps to protect himself. I therefore think it would be fair and reasonable to make a 50% reduction in the award.

Finally, I've considered whether Monzo did all it could to try and recover the money Mr B lost, once he had reported the scam to it. From the evidence I've seen, Monzo did contact the receiving banks when the matter was raised, but while Monzo was able to recover £1,340 from one of the banks, the others confirmed that no funds remained. So, I think Monzo has done what it could reasonably have been expected to and I don't think it has missed an opportunity to recover more of the money Mr B lost to the scam.

Putting things right

To resolve this complaint Monzo Bank Ltd should;

- Refund Mr B 50% of the money he lost from the point he made the payment for £2,000 on 28 February 2023 onwards (inclusive) minus any sums already refunded or recovered
- Pay 8% simple interest on this amount to compensate Mr B for the loss of use of these funds, from the date of each payment to the date of settlement.

My final decision

I uphold this complaint. Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2024.

Sophie Mitchell
Ombudsman