

The complaint

Mrs G complains that Monzo Bank Ltd won't refund the money she lost when she was the victim of a scam.

What happened

Mrs G was the victim of a job task scam after being contacted on a mobile messaging service app. She was told that she could earn commission from completing tasks, but that she first needed to deposit funds – in cryptocurrency – to release the tasks she needed to complete. Mrs G says she researched the company online, and was satisfied it was legitimate. She was also added to a chat group with others who were similarly completing the tasks. Unfortunately, and unknown to Mrs G at the time, this was not a legitimate opportunity, she was dealing with scammers.

As part of the scam, Mrs G made payments totalling over £23,000 to the scammer over the course of around three weeks. But when she was repeatedly told she'd need to pay further amounts to release her profits, she became suspicious and realised she had been the victim of a scam.

Mrs G raised a complaint with Monzo, but it didn't feel it was liable for her loss as it did not consider she had taken enough care to ensure that she was paying someone legitimate. So Monzo declined to refund any of the payments she'd made, although it was able to recover £2,400 from one of the recipient accounts, and this amount was returned to Mrs G. Mrs G was unhappy with Monzo's response, so she referred her complaint to our service.

Our investigator upheld the complaint in part. Overall, they thought that Monzo did not provide effective warnings regarding the payments affected by the CRM Code. And, in any case, they thought Monzo ought to have questioned Mrs G about the ninth payment that she made to the scam, on 31 July 2022, as it was unusual in the context of her Monzo account. The investigator thought that, had that happened, the scam would likely have been uncovered. They did, however, think that there were red flags that should have suggested to Mrs G that all was not as it seemed. Therefore, the investigator said that Monzo should refund the money Mrs G had lost from this payment onwards, less a deduction of 50% in recognition of Mrs G's own contributory negligence.

Monzo and Mrs G both disagreed with these findings, so the matter has been passed to me for review.

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.

I've first considered whether the CRM code applies to all the payments Mrs G made as a result of this scam.

The Lending Standards Board Contingent Reimbursement Model (the CRM code) is a voluntary code which sets out a number of circumstances in which firms are required to reimburse customers who have been the victims of certain types of scam. Monzo is not a signatory to the Code, but it has publicly committed to applying its principles. However, the Code does not apply to payments a customer has made to themselves.

In this case, two of the payments Mrs G made were to a cryptocurrency account in her own name – these were the payment for £5,550 on 2 August and the payment for £8,700 on 3 August. So these two payments are not covered by the Code. The rest of the payments Mrs G made do meet the Code's criteria.

The payments covered by the Code

The Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Mrs G fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

There are further exceptions within the Code, but these don't apply here.

Monzo has argued that Mrs G didn't act reasonably and should have done more to check who she was paying. And, having thought carefully, I agree. I appreciate that there were sophisticated elements to this scam, where Mrs G was manipulated through social media before making the payments, and was able to see what appeared to be her profits on this task platform. But there were also a number of things about what was happening and what she was told that I think should have caused her significant concern. Specifically:

- that she was contacted out of the blue on a messaging app by someone offering her a job unrelated to her usual field of work;
- that she received no formal documentation relating to this 'job';
- that she was being asked to make payments to the platform before she could complete the work, this does not seem like something that a legitimate employer would do;
- that many of the payments she was making were to multiple different people.

With this in mind, I don't think Mrs G had a reasonable basis for belief when making any of the payments affected by the Code, and so Monzo doesn't have to refund all of the money she lost as a result of these payments.

Did Monzo meet its requirements under the Code?

Even though I don't think Mrs G had a reasonable basis for belief when making the payments, she may still be entitled to a refund of some of the money she lost if Monzo didn't meet its requirements under the Code – one of which is to provide effective warnings when it identifies a scam risk.

The first eight payments Mrs G made as a result of this scam were for relatively small amounts – between £20 and £824 – and to various different payees. And, in the context of how Mrs G usually used her Monzo account, I don't think these payments would have seemed unusual enough to have triggered any intervention from Monzo. However, the ninth payment made – for £2,400 – was significantly higher than the previous payments made, and an unusually high amount given how Mrs G usually used her account. In addition, this was the second payment to a different new payee in the same day, with the amount significantly higher than the previous payment made. So I think Monzo should have identified a scam risk here, and so provided Mrs G with an effective warning.

The Code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Monzo has sent us screenshots of the warnings it says Mrs G saw when making payments to the scam. These warnings included its 'new payee' warning and a general scam warning.

I appreciate that, in providing Mrs G with these messages, Monzo took steps to provide her with a scam warning during her payment journey. However, despite this, I'm not persuaded Monzo has demonstrated that the warnings met the minimum requirements of an Effective Warning under the Code.

The Code sets out minimum criteria that a warning must meet to be an 'Effective Warning'. I consider it reasonable to expect that any Effective Warning should have had a realistic prospect of preventing a scam of the general type the warning was intended for. Here, Mrs G was making a payment that she believed was to facilitate work she had been hired to do. That is a relatively common scam type and one for which I'd expect Monzo to be able to tailor a warning. But the warnings Monzo gave weren't particularly relevant to the scam Mrs G was a victim of. Instead they were fairly generic in nature, highlighting some possible hallmarks of scams, but nothing that I think would have rung particular alarm bells for Mrs G. I think she might reasonably have concluded the warning simply wasn't relevant to her. So I don't think the warning was sufficiently impactful or specific as required by the Code.

So, while it appears Monzo had identified a scam risk here, I'm not satisfied that the warning messages it gave were sufficient to show it complied with the requirements of the Code in relation to the payments Mrs G made. And so I don't think Monzo met its requirements under the Code to provide effective warnings. And so I think Monzo should refund 50% of the payments covered by the Code that Mrs G made from the ninth payment onwards.

The payments not covered by the Code

As I explained above, two of the payments Mrs G made aren't covered by the Code as they were to an account in Mrs G's own name – from which they were then passed on to the scammers. And the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs G's account is that she is responsible for payments she 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.

So, 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 preventing fraud and scams.

Taking the above into consideration, I need to decide whether Monzo acted fairly and reasonably in its dealings with Mrs G, or whether it should have done more than it did.

And, as explained above, I consider that by the time of the ninth payment (for £2,400) there was enough going on that Monzo should have intervened directly to satisfy itself that Mrs G wasn't at risk of financial harm.

As explained above, Monzo has shown that Mrs G was shown a warning when she made this payment. But I don't think this was sufficient to address the risk Monzo should have identified, and I think Monzo should have blocked the payment and contacted Mrs G to carry out additional checks before allowing it to go through. Had it done so, I think it's likely that Mrs G would have been open and honest about what the payments were for – paying to release 'tasks' that would earn her commission. And given this information, I think Monzo should have had serious concerns and explained to Mrs G that she was likely the victim of a scam, including detail about how these scams can work.

I think a warning like this would have carried significant weight with Mrs G, and it's likely the scam would have unravelled, and Mrs G would not have made any further payment towards it. So, I think it's likely that, if Monzo had carried out additional checks and given more specific advice to Mrs G at the time of the £2,400 payment, then Mrs G wouldn't have made any further payments and so wouldn't have lost the money from the two later payments that are not covered by the Code here.

I acknowledge what Monzo has said about the loss relating to these payments being from Mrs G's cryptocurrency account, not from her Monzo account. But given that I'm satisfied Monzo could have prevented these payments if it had stepped in to question what was happening at a much earlier stage, I'm satisfied that it is reasonable for Monzo to bear responsibility for the loss resulting from these payments. The potential for multi-stage scams ought to have been well known to Monzo and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams, such as this one.

I have though thought about whether it would be fair for Mrs G to bear some responsibility for the loss she suffered relating to these payments too. And, for similar reasons to why I don't think she had a reasonable basis for belief when making the payments, I think it would be fair for her to do so. I think there were a number of things about what was happening that should have caused Mrs G significant concern, including how she was first contacted, how she was asked to make the payments and the lack of formal information she was given about this 'job opportunity'. So I think liability for these payments should be shared between Mrs G and Monzo, and so Monzo should refund 50% of the payments not covered by the Code that Mrs G made as a result of this scam.

Lastly, I've considered whether Monzo could have done more to recover the funds that were lost to this scam, but I'm satisfied it did all it could here. Monzo contacted the receiving banks within a reasonable time of the scam being reported, and was able to recover the payment for £2,400, but the other funds had already been moved on at the point the scam was reported, so no further funds remained for Monzo to recover.

Overall then, I think Monzo should refund 50% of the payments covered by the Code, as I don't think Mrs G had a reasonable basis for belief when making the payments but Monzo also failed to meet its requirement under the code. And I think Monzo should refund 50% of the payments that aren't covered by the Code, as I think it should have done more to protect Mrs G but that it is fair for her to also bear some responsibility for what happened here.

Putting things right

To resolve this complaint Monzo Bank Ltd should:

- Refund the payments made as a result of this scam from the £2,400 payment on 31 July 2022 onwards (inclusive) minus the funds that were recovered and returned to Mrs G.

- Pay 8% simple interest on this refund, from the date of the payments until the date of settlement.

My final decision

I uphold this complaint in part. 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 Mrs G to accept or reject my decision before 11 April 2024.

Sophie Mitchell
Ombudsman