

The complaint

Mr O complains that Monzo Bank Ltd (Monzo) won't refund the money he lost when he fell victim to a scam.

What happened

Mr O was actively looking for work when he was contacted on a messaging app by someone who said they were an employee of a recruitment company – 'D'. They offered him a part time job, which entailed completing tasks on their platform. He had to set up a cryptocurrency wallet, to send funds on to D's platform to complete tasks and earn commission. Unfortunately, this was a scam.

In late 2022 Mr O sent 10 payments totalling almost £9,500 over three days to the scam (via the cryptocurrency wallet). He says he could access the platform, and this appeared to show profits he was making, and he was also in a messaging group with other employees of D who said they were earning commission.

I understand D then requested a payment of £21,000, at which point Mr O became suspicious. He then spoke to his girlfriend, who realised it sounded like a scam. He tried to contact D but didn't get a response.

Mr O complained that Monzo missed an opportunity to intervene to prevent the scam. He said the payments from his Monzo account were uncharacteristic and were sent to a 'banned' merchant (the cryptocurrency wallet provider). So Monzo should have questioned him about what he was doing – which would have uncovered the scam.

Monzo didn't agree it held liability for Mr O's loss, so he referred his complaint on to our service. Our investigator didn't think Monzo had cause to be concerned about the first nine payments. But she thought the final scam payment – of £5,513.27 – should have flagged as unusual. She thought Monzo should refund 50% of this, with Mr O sharing liability for what happened.

While Mr O accepted this outcome, Monzo appealed. So the case has been passed to me for a final decision. I've outlined the main arguments Monzo has raised for why it doesn't agree with the investigator's outcome:

- The payments happened over more than one day and were spread out, so didn't look concerning. While it has systems in place to detect risky transactions, these ones wouldn't have raised any alarm bells.
- It's not expected to stop all cryptocurrency payments, and points out the funds were sent to Mr O's own wallet before being transferred on to the scam platform.
- It has a duty under the Payment Services Regulations 2017 (PSRs) to let customers use their money how they would like.

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 come to the same overall conclusions to that of our investigator. I'll explain why.

The starting point under the relevant regulations (in this case, the PSRs) and the terms of Mr O's account is that he is responsible for payments he authorises. 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 terms and conditions that were in force at the time of these payments 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 an authorised scam is encompassed within Monzo's definition of criminal activity. But in any event, whilst the 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 authorised scams 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)¹.
- 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*”².
- 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.

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.

¹ Since 31 July 2023 under the FCA’s new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

² For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

- 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.

With all that said, the key question I need to consider is whether Monzo should fairly and reasonably have made further enquiries before it processed Mr O's payments.

I agree with the investigator that it was reasonable for Monzo to process the first nine disputed payments without completing further checks. Despite Mr O's comments about the cryptocurrency merchant he paid, it wasn't banned, and there's no allegation it was complicit in the scam. The destination alone wouldn't have caused concern.

The scam started with a few payments to the cryptocurrency wallet on the same day. These were for relatively low sums and appeared in line with Mr O's general account use. I don't think they looked concerning enough for Monzo to be held at fault for simply following the payment instructions.

Similarly, the only scam payment the next day was for a small amount (less than £20). So, again, I don't think Monzo had reason to suspect it presented a fraud risk. But then the following day, there was a series of escalating scam payments. Mr O sent in the region of £3,900 over four payments. I don't think the individual payments looked so unusual that it was unreasonable to process them. But then Mr O requested an additional payment of £5,513.27.

By that point, I do think the level of spending looked significantly unusual for Mr O. The individual payment, as well as the total amount being sent, was a lot more than he usually spent. The pattern of escalating cryptocurrency payments also arguably fit a known pattern of fraud.

While Monzo points out the funds weren't lost to the scam immediately, as they were sent on from the wallet – I'd expect Monzo to be well-versed in the usual features of cryptocurrency scams by the time of these payments. Such scams generally involve funds being sent on in this way. So, this is something I'd expect Monzo to be monitoring for. While we don't expect it to block all cryptocurrency payments, there are circumstances where I'd consider it appropriate to do so. For the reasons I've explained, I think those apply here.

Overall, I therefore think Monzo had cause to make further enquiries before processing this payment. And, if it had done so, I think it's likely the scam would have been uncovered – and Mr O's further losses would have been prevented.

Based on what Mr O has told us about the scam, and the records he's provided of his contact with the scammer, I've seen nothing to indicate he wouldn't have explained what he was doing if asked. He thought the work was legitimate, so had no reason to conceal it. I would have expected Monzo to have realised the type of work Mr O thought he was undertaking was actually a scam. If it had explained this to him, I don't think he would have proceeded.

I therefore consider it fair to hold Monzo liable for the fraudulent loss incurred from this payment. But I agree with the investigator it would also be fair to expect Mr O to share liability. While I appreciate he was tricked by the scam, I think he overlooked some warning signs that the job might not be legitimate.

From what Mr O told Monzo at the time, and what he has told us since, it doesn't appear he did much due diligence into the company or the work it was offering him. And it appears he wasn't given a contract for the work. The way he was approached also seems somewhat unusual for what you'd expect from a genuine employer. As does the fact he thought he had to make payments with his own money, in order to earn money for the work he was doing.

Overall, I therefore consider it fair to expect Monzo and Mr O to share liability for the final scam payment. Which is why I've decided Monzo should refund 50% of that payment, along with our usual interest award to compensate Mr O for the loss of use of the funds.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. Monzo Bank Ltd must refund Mr O 50% of the £5,513.27 scam payment (less any funds recovered). It must pay 8% simple interest per year on this amount, calculated from the date of payment to the date of settlement, less any tax lawfully deductible.

Monzo Bank Ltd must pay the compensation within 28 days of the date on which we tell it Mr O accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 10 April 2024.

Rachel Loughlin
Ombudsman