

The complaint

Mr A complains that Monzo Bank Ltd did not refund a series of payments he lost to a scam.

What happened

Mr A was contacted on a messaging app by a recruiter, who offered him a job opportunity. Mr A had been looking for work so did not question the sudden contact. The job was fully remote and offered up to £3,000 per month for Mr A to simulate purchasing goods for retailers. He would receive commission for each set of tasks completed and he had a balance on the work system he could use to simulate purchasing items. Sometimes he would get premium tasks that cost more money, which meant he had to deposit his own funds onto the system via cryptocurrency.

Mr A opened a new Monzo account to facilitate the payments. However, after completing the set of tasks he was asked to pay a withdrawal fee of 20% of his earnings. Despite paying this, he still did not receive his earnings and realised he had been the victim of a scam. Mr A made the following payments from his Monzo account to a cryptocurrency wallet in his name:

Date	Amount
27/09/2023	£5,800.00
28/09/2023	£1,600.00
02/10/2023	£8,500.00
03/10/2023	£1,407.00
10/10/2023	£1,650.00
10/10/2023	£5,850.00
12/10/2023	£1,650.00

Mr A raised a scam claim with Monzo, however they explained the loss originated from his crypto wallet with another provider, so they declined to refund his losses. Mr A referred the complaint to our service and our Investigator looked into it. They felt the initial payment of £5,800 was of a high value and was a higher risk as it was going to cryptocurrency. As there was no evidence Mr A had been given a cover story, they felt it was more likely intervention from Monzo would have revealed the fact Mr A was making payments for a job which is a well-known scam. So, they thought Monzo missed an opportunity to reveal the scam.

However, they also acknowledged that Mr A had accepted a job with no interview or application process, with a high wage that he was told he had to pay cryptocurrency to in order to facilitate earnings. And because of this, they felt Mr A had contributed to his losses and should share liability with Monzo as a result. So, they recommended a reduction in the redress of 50%, as well as 8% simple interest from the date of the transactions to the date of settlement.

Both parties responded disagreeing with the findings. Mr A's representatives felt he had reason to think the employment was legitimate as a genuine company had been cloned and

he received some documents before signing up to the 'job'. And they felt he was vulnerable, but this had not been considered by Monzo. So, they thought full reimbursement was due.

Monzo said that Mr A had listed the account opening reason as 'crypto currency' so the initial payment was as expected and did not need to be checked. They also said that the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25* meant there was no duty for them to block the payments. And at the point of the payments leaving the Monzo account, no scam had occurred as Mr A was using the funds to purchase legitimate cryptocurrency. And they pointed out they did discuss one of the payments with Mr A around the source of the funds into the account, but the scam was not revealed, so they didn't think earlier intervention would have made a difference.

As an informal agreement could not 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 reviewed the evidence submitted by Mr A, I'm satisfied he has been the victim of a task-based job scam, and I'm sorry he's had to go through this experience. As he made the payments to a crypto wallet in his own name, the payments are not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. So Mr A's case does not fall under the same level of protection as one under the CRM would. However, Monzo still have a basic duty of care to its customers to protect their accounts from financial harm.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr A authorised the payments in question as he believed they were part of a legitimate job opportunity. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Monzo was obliged to follow Mr A's instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Monzo did enough to try to keep Mr A's account safe.

I've reviewed Mr A's statements and considered the account opening reason as well as the destination of the transactions. This was a new account, so Monzo did not have any genuine account activity to compare the transactions to. And I've taken on board their comments that Mr A selected crypto currency as one of the purposes of the account. However, I don't think this therefore means Monzo did not have to carry out proportionate checks on any payment Mr A made to cryptocurrency. On balance, I think the value of the initial payment totalling £5,800 was high, and was going to cryptocurrency which inherently carries a higher risk level. And I think Monzo should reasonably have been aware of the elevated risk associated with payments to cryptocurrency in September 2023. With this in mind, I think it would have been reasonable for Monzo to manually intervene in the payment prior to it being processed,

to ask Mr A further questions about it.

In reaching my decision that Monzo should have made further enquires, 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 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 23 April 2023 terms and conditions gave it rights 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.

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 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 make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded them 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.

In this case for the reasons I have explained, I'm satisfied Monzo should have intervened. And if it had I think it is more likely the scam would have been revealed due to the type of scam Mr A was the victim of. I think some basic questions about what the payment was for would have revealed that Mr A was making payments as part of his job, which is a well-known type of scam. And nothing I have seen suggests Mr A was given a cover story or told to lie to Monzo, so I see no reason why he would not have been honest about the purpose of the payments.

Monzo has highlighted that they did freeze Mr A's account on two occasions as they had concerns over the source of the funds into the account, and they've said because they did not uncover the scam during those conversations, earlier intervention would not have revealed the scam. But I don't agree with this. Monzo asked questions about the source of the funds but did not ask probing questions about what the payments were for specifically, if Mr A was just investing in cryptocurrency or if the payments were related to something else. And I've seen nothing to suggest Mr A would not have been honest if he'd been asked these questions.

I appreciate Monzo's comments that the end loss did not occur from Mr A's Monzo account, and that Mr A was legitimately buying cryptocurrency. However, he wasn't doing so in order to have the cryptocurrency for personal use or gain, he was doing so because he had been coerced into buying cryptocurrency under false pretences as part of a scam. As explained above I think the first payment of £5,800 should have been treated as suspicious by Monzo and if it had carried out further checks as a result of this, I think it would have become clear that Mr A was purchasing cryptocurrency as part of a scam, so I think any further payments could have been stopped. With this in mind, I think it is reasonable for Monzo to reimburse Mr A from the payment of £5,800 onwards.

I've also considered whether or not Mr A should reasonably bear some responsibility for the losses as a result of any negligence in his actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Mr A has acted as a reasonable person would to protect himself against the loss he suffered. The test is objective but needs to take account of the relevant circumstances.

In doing so, I've taken on board the comments made by Mr A's representatives that they think it was reasonable Mr A felt the job opportunity was legitimate, and that he was vulnerable at the time. However, I also have to consider that Mr A was contacted out of the blue with a job opportunity he did not have to apply for or interview for, that was incredibly flexible and offered a relatively significant salary, which I think he should have viewed as suspicious. And he was then asked to deposit his own funds via cryptocurrency in order to work, which I don't think was reasonable. His representative made the point when arguing Monzo should have picked up on the scam when they spoke with Mr A that '*no legitimate company would ask their employees to deposit funds into cryptocurrency, especially if it is a paid job*' and I agree with this. So, I think Mr A should bear some responsibility for the loss.

I understand Mr A was dealing with a lot at the time of the scam, and I can see it would have had an effect on him. As a reminder, the transactions are not covered by the CRM Code, which requires a firm to reimburse customers who are considered vulnerable and less able to protect themselves against that particular scam. For APP scams not covered by the CRM Code, we would expect a bank to take action to protect a vulnerable consumer where they are aware of those vulnerabilities prior to the scam occurring. However, in this case, Monzo were not made aware of Mr A's issues so could not reasonably have taken steps to protect him in the circumstances. So, I don't think they have made an error in how they have treated Mr A when processing the transactions related to the scam.

It should be noted Monzo were unable to recover any funds from the beneficiary account. Mr A had already forwarded the funds in the account onto the scammer, so there was nothing more Monzo could do to help once they were aware of the scam.

With the above in mind, I think it is reasonable that Monzo reimburse Mr A from the first payment onwards, however it can reduce the redress by 50% to account for Mr A's contribution to the loss. They should also add 8% simple interest from the date of the transactions to the date of the redress.

My final decision

I uphold Mr A's complaint in part and recommend that Monzo Bank Ltd pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 August 2024.

Rebecca Norris
Ombudsman