

The complaint

Ms L complains that Monzo Bank Ltd (Monzo) won't refund money she lost in an advance fee scam.

What happened

What Ms L says:

Ms L located to the UK and her children were at school/university here. She was looking to earn extra money to pay fees and living costs. She was approached on social media on or around August 2023 by someone representing a 'recruitment firm'. She was told about a job she could do from home, and it was flexible – she only needed to work one hour a day. She was told the company she would work for was an agency which worked to improve 'App optimisation, i.e. boost the sales of online items by making them seem more popular. Ms L went through the training which appeared professional, and the website seemed credible. She was asked to create an account for herself on the firm's website.

Ms L was told she needed to complete a certain number of reviews to be able to access her income. She spoke to the firm's representatives over WhatsApp. To complete the tasks, Ms L had to put in money before she got paid. Then, to complete further tasks, she was required to put more funds herself into the account.

Ms L had to set up a crypto wallet, from where the funds were sent to the scammers' platform. Each time, the scammer's address/bank destination changed.

Ms L made several payments as shown from her Monzo account. She also made further payments totalling £7,000 from two other bank accounts (both of which are subject of complaints brought to our service). **(continued)**

	Date	Payment	Amount
1	18 August 2023	Mobile phone payment	£695.46
2	24 August 2023	Mobile phone payment	£2,000

3	25 August 2023	Mobile phone payment	£3,000
4	26 August 2023	Mobile phone payment	£810
	Total losses		£6,505.46

The scam ended when Ms L used up her funds in the bank accounts and couldn't put any more in - as she ran out of money. Ms L asked that she withdraw her funds but this proved impossible.

As a result of what happened, Ms L has lost her life savings. She borrowed money from friends and now must pay that back. She has fallen out with her husband who didn't agree with what she was doing.

Ms L asked that Monzo look into the fraud claim on 18 September 2023. And after Monzo rejected the claim, complained to the bank.

She says she made high value payments in quick succession which should've triggered Monzo's fraud detection systems –and these were payments to a new payee.

Ms L says Monzo should refund the as she had been the victim of a fraud.

What Monzo said:

Monzo said the fraudulent payments was sent from Ms L's crypto wallet, and that was where the loss occurred. The bank said Ms L should contact that firm about the claim. So Monzo didn't uphold Ms L's main complaint.

But the bank did agree they'd not responded as quickly as they should when Ms L contacted them by the chat service, and for that, paid compensation of £30.

Our investigation so far:

Ms L brought her complaint to us. Our investigator said the payment of £3,000 should've caused an intervention by Monzo. The payments were unusual and to a payee known to be associated with crypto currency scams. She said Monzo should've provided a tailored message warning Ms L about the possibility of a scam but didn't. If the bank had done so, she considered Ms L would've stopped the payments – as she had done when warned by another bank on one of her other claims. She said the third payment of £3,000, and the next one should have been stopped. So – Monzo should refund the final two payments for £3,810.

But she said – the claim should be reduced by 50% as Ms L didn't do any research into the job opportunity. So, the refund should be £1,905, plus interest at 8% per annum simple.

Ms L accepted this, but Monzo didn't. The bank said:

- Monzo quoted a recent high court appeal judgement and said “...*the contract permitted (the bank) 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 other words, Monzo could refuse payments where it suspected fraud, but it didn’t have a contractual duty to do this.

- And in this case, Monzo had no reason to suspect fraud. The payments were legitimate payments, to private sellers of crypto currency via the platform.
- Ms L suffered her losses when the crypto currency was sent from the platform to the scammers.
- To expect Monzo to intervene wasn’t practical, given the thousands of payments made each day.

Because Monzo objected, the complaint has come to me to make 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.

I’m sorry to hear that Ms L has lost money in a cruel scam. It’s not in question that she authorised and consented to the payments in this case. So although Ms L didn’t intend for the money to go to a scammer, she is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Monzo acted fairly and reasonably in its dealings with Ms L when she made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn’t apply in this case. Monzo hasn’t signed up to the Code, but they follow its principles. That said, it applies to faster payments made to another UK beneficiary– and in this case, the payments were made by Ms L to her own crypto wallet. So it doesn’t apply in this case. I have therefore looked at this complaint using general Authorised Push Payment (APP) considerations.

The first consideration here is: if the payments were of a sufficient size and were out of character with how Ms L normally used her account – then I need to consider whether

Monzo should have intervened and spoken to Ms L. I looked at Ms L's account from February 2023, and it's fair to say that the scam payments were unusual – as she used her account only to make day to day expenditures of low value. There was one payment for £9,875 on 25 May 2023 – but that was to Ms L's own account. Otherwise, other payments were well below £100.

And here, these were payments to a new payee. And were out of character for how Ms L used her account.

But looking at the first two payments, these were for relatively low values and I don't consider Monzo needed to intervene. There's a balance to be made: Monzo has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think Monzo acted reasonably in processing the first two payments.

But after that, I think it's reasonable to have expected Monzo to have intervened, or at least sent a warning to Ms L, but didn't.

By the time of the third payment, Ms L had made payments for £5,695 in a week – which was a lot more than she was used to doing.

I also noted that Monzo didn't send any warnings of any sort to Ms L when she made the payments, or when she set up the payees. Confirmation of Payee was completed for three of the payments – but I don't think this meant there wasn't a risk of fraud.

I can also see the payments were preceded by credits into Ms L's account of a similar amount – signs of a scam. These were:

18 August 2023: £5,000, £800.

23 August 2023: £3,000.

25 August 2023: £800.

Monzo was the expert in such matters and if they'd intervened, held the payments and contacted Ms L we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the job?
- How were you contacted about it?
- Where did the money come from that you're sending?
- How will you get paid and why are you paying out money for a job?

Monzo would've found out that Ms L had been contacted 'out of the blue' via a WhatsApp chat, and the contact had originated from the internet. And she was being asked to pay money to get income. This was a common scam. These were red flags and there was enough going on to persuade me that Ms L would've been warned about the risks involved and wouldn't have made the payments from the third payment (for £3,000) onwards.

Monzo have raised objections based on the High Court appeal decision. In reaching my decision that Monzo should have made further enquiries, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*.

In this case Monzo's 23 April 2023 terms and conditions gave 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.

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 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.

In this case for the reasons I have explained, I am satisfied it should have intervened.

So, I consider Monzo is liable to refund the third and fourth payments in the first instance.

Contributory Negligence:

But that's not the end of the story here. I also considered whether Ms L could've done more to protect herself and whether she should therefore reasonably share some of her losses. And I think she should. I say that as:

- She didn't do any research into the job offer.
- There wasn't any written terms and conditions, or contract as would normally be the case with a genuine job offer.
- No credible employer would expect an employee to pay money to the firm to get income, as was the case here.
- I can see from the WhatsApp chat that Ms L showed she had concerns throughout the scam, but still went ahead.
- The WhatsApp chats with the scammers show Ms L's husband was very concerned, he thought it was a scam and told her not to go ahead many times, but she ignored him and went ahead.

For these reasons, I think it is fair that Ms L bears 50% of the losses.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Monzo took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. Monzo contacted the recipient bank on 20 September 2023 – but by then, there wasn't any money left to reclaim. I'm not surprised by that as it's usual in such cases that the funds are removed within hours, or even minutes.

Putting things right

Monzo must refund the money paid in the third and fourth payments, plus 8% per annum simple from the date of the payments.

My final decision

I uphold this complaint. Monzo Bank Ltd must:

- Refund £1,905, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 13 May 2024.

Martin Lord
Ombudsman