

The complaint

Mr M via a representative complains that Monzo Bank Ltd (“Monzo”) won’t refund over £40,000 he lost to a fake job scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here.

In brief, Mr M fell victim to a fake job scam after receiving a phone call from a scammer that I will call B. B said that they were a recruiter for a company that I will call C and it told Mr M that he would be paid for completing a number of tasks, but he would have to send funds to C via a crypto exchange to unlock these tasks. Mr M made the following debit card payments from his Monzo account to a crypto exchange.

Transaction Number	Date	Amount
1	26 March 2023	£519.56
2	26 March 2023	£1,235.88
3	31 March 2023	£3,089.70
4	31 March 2023	£4,732.10
5	6 April 2023	£9,269.10
6	12 April 2023	£4,119.60
7	13 April 2023	£9,269.10
8	14 April 2023	£9,900.03

Mr M realised he had been scammed when he could not withdraw his earnings. He raised a complaint with Monzo as he believed that it should have prevented him from making the payments.

Our investigator upheld the complaint in part. He thought that Monzo ought to have questioned Mr M about payment 4. The investigator thought, had that happened, the scam would likely have been stopped. Therefore, the investigator said that Monzo should pay 50% of the loss after this point. He said this because he thought that Monzo and Mr M were each responsible for 50% of the loss. So, there should be a deduction of 50% in recognition of Mr M’s own contributory negligence. Monzo did not agree requested that this case be reviewed by an ombudsman.

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.

It isn’t in dispute that Mr M has fallen victim to a scam here, nor that he authorised the disputed payments he made to B (where his funds were subsequently transferred on to the scammers). The payments were requested by him using his legitimate security credentials provided by Monzo, and the starting position is that banks ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

Monzo has mentioned *Philips v Barclays* and that it has to process payments without intervention. 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 as not the same as being under a duty to do so.

In this case, Monzo's terms and conditions from the time of the 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 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.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Monzo, so I don't intend to repeat it here. But in summary, overall, taking into account the law, regulatory 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 including the use of cryptocurrency accounts, to consumers' own accounts or "me-to-me" transactions) and the different risks these can present to consumers, when deciding whether to intervene.

The first three payments were not sufficiently large or out of character for Mr M for Monzo to have believed that he was being scammed. I say this particularly because Mr M had made large payments before and had paid crypto exchanges before.

I understand the investigator considered payment 4 ought to have been regarded as unusual, given that this combined with payment 3, which was made on the same day, was unusual for Mr M's account. In my view this really should have been flagged by Monzo as being unusual account activity. Monzo would have known that multiple payments being made to the same payee in relatively quick succession can often be an indication of fraudulent activity. So, I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by Monzo.

I note Monzo's comments that in 2022 a payment was made to the same crypto exchange and that a sudden increase in payments to crypto exchanges is normal given the nature of crypto currency. I don't agree though as multiple payments on the same days is more indicative of someone being scammed rather than someone investing in crypto currency. After all why would Mr M need to split a payment in two on the same day rather than sending the full amount to the crypto exchange. So, I think that Monzo should have intervened at payment 4.

Had Monzo contacted Mr M at this point and used the opportunity to ask suitably probing questions, there is no reason to suggest he wouldn't have been forthcoming about what he was doing especially.

If Monzo had questioned Mr M about these payments, it would have likely discovered that he had been 'contracted out' by a company offering to pay Mr M for completing tasks, But Mr M had been told that he would first have to pay for these tasks. I also think that Monzo would've discovered that Mr M had made a large amount of payments but had not received anything back despite him apparently working for C. It also would have likely come to light that Mr M was having issues withdrawing his earnings as he had to reach "diamond level" with C and then he would be able to withdraw his earnings. Being asked for more and more money to withdraw money already earned has all the hallmarks of a job scam.

This is not how companies normally operate. I consider there would have been reasonable grounds for suspicion here. And Monzo ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with this type of scam.

I recognise that if an intervention by Monzo had taken place, it likely would've identified that the payment was going to the consumer's own account with the crypto exchange. But I don't think the conversation should have stopped only on the basis that the money appeared to be going somewhere safe and within the consumer's control.

I say this because, by the time Mr M made these payments, Monzo ought reasonably to have had a good enough understanding of how these scams worked, to have been able to identify the risk of harm occurring to its account holders from fraud. This includes the consumer often making a number of transactions in a relatively short space of time or a consumer repeatedly sending money to a platform where the money is subsequently moved on to or taken by the scammer. So, it is with this in mind that I think Monzo ought to have probed further about the nature and context of the payments Mr M was making.

In light of this, I think Mr M's losses were foreseeable to Monzo, despite the payment on the face of it not leaving his control. I'm also satisfied that, had Monzo asked relevant questions of Mr M, it would have been apparent that he was falling victim to a scam. In other words, but for Monzo's failure to make reasonable further enquiries, it would have been on notice that there was a very high chance that Mr M was going to suffer financial harm from fraud.

Had Monzo provided Mr M with a warning, it would have led Mr M to question whether he was in fact dealing with a legitimate business – especially as he had made a number of payments to B but had not received his funds in return.

I have considered whether Mr M would have carried on anyway if he had been warned by Monzo as after all he carried on despite having issues withdrawing his "earnings". But I think a warning from his trusted bank combined with him already being concerned about making a withdrawal would have stopped him from making further payments. The result of this is that, probing questions from Monzo about the nature of the payment would have likely stopped Mr M from making any further payments.

As a result, I believe Monzo should refund the payments Mr M lost to the scam from transaction 4.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mr M should bear some responsibility by way of contributory negligence. In the circumstances, I'm satisfied he should do so in this case.

In the circumstances, I don't consider Mr M carried out sufficient due diligence to ensure that the company he was dealing with was genuine. Mr M was approached via a random call and was offered a job within a short amount of time. This is without signing a contract.

He also contributed to his own loss due to carrying on making payments despite being unable to withdraw his earnings.

Therefore, I'm satisfied that Mr M's lack of due diligence and failure to question what he was being promised contributed to his loss, such that he should share responsibility with Monzo. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether Monzo could have done more to attempt to recover the payments after Mr M reported the fraud. However, the funds were forwarded on from the crypto exchange to C as part of the scam. Also, the Contingent Reimbursement Model ("CRM") does not apply to debit card payments.

I also don't consider Monzo ought to have attempted a chargeback claim, as Mr M made payments to his own crypto account for the purchase of crypto and he seems to have received this before he forwarded it on to C. So, he got what he paid for.

Putting things right

For the reasons given above, I uphold this complaint in part and direct Monzo Bank Ltd to:

- Refund the payments Mr M lost to the scam from and including transaction 4 onwards. Then reduce this by 50% in recognition of Mr M's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

My decision is that I uphold this complaint in part and direct Monzo Bank Ltd to pay the redress outlined above.

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

Charlie Newton
Ombudsman