

The complaint

Miss F complains that Monzo Bank Ltd ('Monzo') won't refund the money she lost when she fell victim to a scam.

What happened

In early June 2023 Miss F received contact via a messaging app from someone who said they had got her number from a recruitment company. Miss F didn't know at the time, but the contact was from a scammer.

Miss F was offered a job which involved helping app developers optimise their apps. Miss F was told she would receive sets of 40 tasks and would be required to click actions for around 30 minutes a day. The salary was 800USDT for five days, 1500USDT for fifteen days and 3,800USDT for thirty days. In addition to this Miss F could earn commission, which would be increased if she received combination tasks.

Miss F was told that to ensure and guarantee she would complete the tasks she needed to pay a deposit to the company. This deposit could be withdrawn with her commission after the set of tasks had been completed. She had access to a platform which showed her balance and the commission earned.

Miss F received a series of combination tasks which required her to pay increased amounts to avoid having a negative balance in her account. Miss F bought cryptocurrency from various providers which she transferred to the fraudster. I have set out in the table below the payments made by Miss F during the period of the scam.

Transaction	Date	Amount	Recipient
1	02/06/23	£84	Individual 1
2	03/06/23	£89.59	Individual 2
3	03/06/23	£84.90	Individual 3
4	04/06/23	£63	Individual 3
5	07/06/23	£1,000.41	Exchange 1
6	08/06/23	£3,240	Exchange 1
7	08/06/23	£3,000	Individual 4
8	08/06/23	£1,109.20	Exchange 1
9	09/06/23	£4,022.40	Exchange 1
10	09/06/23	£3,618	Exchange 2
11	09/06/23	£1,881	Exchange 1
12	10/06/23	£7,395.30	Exchange 1
13	10/06/23	£1,598.56	Exchange 1

14	11/06/23	£8,340.84	Exchange 1
15	12/06/23	£8,427.76	Exchange 1
16	13/06/23	£8,010	Exchange 1
17	14/06/23	£7,619	Exchange 1
18	16/06/23	£1,300	Exchange 1
19	23/06/23	£3,000	Exchange 1
20	23/06.23	£4,572.44	Exchange 1
Total		£68,456.40	

Miss F realised she was the victim of a scam when she kept being asked to pay further sums before receiving payment. Her representative sent a letter of complaint to Monzo in July 2023.

Monzo said that it followed its internal procedures and its legal and regulatory obligations. As Miss F lost funds from her cryptocurrency accounts the CRM Code doesn't apply, and Miss F should approach the cryptocurrency companies concerned. Miss F also misled Monzo in a call on 10 June 2023 as she said that nobody had given her advice and she was investing by herself. She was given appropriate warnings based on what she told Monzo and was told that if she gave incorrect information Monzo wouldn't be able to reimburse her.

Miss F wasn't happy with Monzo's response and brought a complaint to this service.

Our investigation so far

The investigator who considered Miss F's complaint recommended that it be upheld in part. He agreed that Monzo should have intervened when payment twelve in the table above was made but said that its intervention didn't go far enough. This was because cryptocurrency related payments carry an elevated risk and scam victims are often coached. He went on to say that Monzo should have covered other cryptocurrency related scams and asked whether Miss F had been approached by anyone asking her to make the payment, or asked to lie to her bank. But the investigator felt that there were red flags Miss F should have picked up on so awarded 50% of Miss F's loss from the point at which Monzo intervened on 10 June 2023.

Neither party agreed with the investigator's opinion. In summary, Monzo said:

- It can't be held responsible for Miss F "derailing" its investigation by not telling the truth, and Miss F agreed that if she provided false information to Monzo which resulted in her sending a fraudulent payment Monzo wouldn't reimburse her. When agreeing to this, Miss F should have reassessed what she had been told about lying to her bank.
- It provided warnings about cryptocurrency and investments.
- Miss F paid her own digital wallet, and such a transaction isn't covered by the CRM Code. Liability should sit with the wallet provider. Monzo has systems in place to look out for unusual transactions but as Miss F was investing through a legitimate cryptocurrency platform it would be inappropriate to intervene, as demonstrated in *Philipp v Barclays*. In this case the court said that having the right to decline to carry out a payment instruction isn't the same as being under a duty to do so. Monzo didn't have a right to intervene as there was no suspicion of fraud.
- Monzo referred to various cryptocurrency exchanges and said they are known to have robust security protocols in place and to provide scam warnings. Based on this,

Monzo was confident the transactions weren't fraudulent, and funds were being deposited into an account in Miss F's name.

- Monzo referred to cryptocurrency scam information that is available online, including on the Financial Conduct Authority website.

In summary, Miss F said:

- Monzo should have intervened when she made the payment of £1,004.41. This was because Miss F set up four new payees in a two day period, made multiple payments in a day, there was a pattern of increasing payments, the account had been inactivate before the transactions, the value of the transactions was higher than before and some payees had links to cryptocurrency.
- A 50% deduction for contributory negligence is unfair. There were terms and conditions within the scam application, and it is not uncommon to use a messaging app in business.

I carefully considered what each party said and issued a provisional decision on 17 July 2024 in which I said I was minded to require Monzo to refund 50% of payment seven and all subsequent transactions, plus interest. In the section headed, "What I've provisionally decided – and why" of my provisional decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss F's account is that she is responsible for payments she's 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 is not the same as being under a duty to do so.

In this case, Monzo's April 2023 terms and conditions gave it rights (but not obligations) to block payments if it suspected criminal activity on an account or to protect a customer from fraud.

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. And as Monzo did in this case.

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, own accounts or me-to-me transactions) and the different risks these can present to consumers, when deciding whether to intervene.

I need to decide whether Monzo acted fairly and reasonably in its dealings with Miss F when she authorised payments from her account or whether it could and should have done more before processing them.

Miss F opened her Monzo account in August 2022 and made two very small transfers (£12 and £30) in that month. There were no further transactions on the account until the scam transactions around ten months later.

I consider Monzo acted reasonably in not intervening when Miss F made transactions one to five in the table above. Miss F made some very low value transactions to individuals followed by a low value transaction to a cryptocurrency exchange. While there are known fraud risks associated with cryptocurrency, as scams like this have become more prevalent, many of Monzo's customers use their services to legitimately invest in cryptocurrency - particularly as many high street banks have applied limits or restrictions. I am also mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

I consider that when Miss F made payment six in the table above, which was of a slightly higher value and to an identifiable cryptocurrency exchange, Monzo ought to have provided a warning tailored to cryptocurrency investment scams. The warning should have covered the key elements of a cryptocurrency investment scam and steps to take to avoid falling victim to such a scam. But I'm not persuaded that such a warning would have positively impacted Miss F's decision making. I say this because she wasn't falling victim to an investment scam, so a warning aimed at scams of this nature was unlikely to resonate with her.

Miss F then made a transfer of £3,000 (transaction seven) to another new payee. Miss F had already made transfers the day before and on the same day which totalled £4,244.40. The £3,000 transfer took this figure to £7,244. I consider this activity to be unusual and out of character, particularly given that Miss F had only made two very small payments since the account was opened in August 2022 (other than a low value transaction on 7 June 2023 (£230.10)). She had set up five payees, including a cryptocurrency exchange, over the

course of a week and there was a general pattern of transactions becoming more frequent and increasing in size.

I consider Monzo should have asked Miss F about the reason for payment seven and provided appropriate scam warnings. In considering what is likely to have happened if Monzo had intervened as I think it should have, I've taken into account what happened when it appears that Miss F attempted to make a payment of £7,513.99 on 10 June 2023. This transaction was flagged by Monzo and following Monzo's interaction Miss F made transaction twelve in the table above. Monzo told Miss F in its chat that it reviews some payments to ensure it does all it can to protect its customers from fraud. Monzo went on to say it had temporarily frozen Miss F's account and a member of its scam team would be in touch with her shortly.

Although Monzo hadn't asked Miss F any questions Miss F responded to the message from Monzo by saying, "*Trading crypto on exchange so it's my own money*".

Monzo asked Miss F some questions including:

- the research she had completed
- whether she had been given investment advice or guidance on, for example, social media or through a cold call
- if she was being advised, whether she had signed a contract and when she first encountered the advisor
- whether she had previous experience of investing in cryptocurrency
- what cryptocurrencies she intended to buy
- to confirm she opened the account herself and had full access to and control of it

Miss F's responses confirmed:

- she was trading in cryptocurrency and, "*it's simply taking [the] opportunity on the daily pricing changes to make a profit*"
- she didn't have experience of trading in cryptocurrency
- she was trading in USDT
- no advice had been given to her
- the account was in her control

Monzo asked Miss F to take a screenshot of her trading account to show it was in her name and asked if an agent could call her. During the call (on 10 June 2023) Miss F was asked about her cryptocurrency trading. She reiterated what she had said in the chat with Monzo – that she was trading in USDT and taking advantage of price changes. The Monzo agent questioned Miss F about her plans for the funds and whether she intended to move the funds to any other wallets or investment. Miss F confirmed that she didn't.

After the call, Monzo gave Miss F some general scam advice covering safe account scams and said that if Miss F misadvised it and a fraudulent payment was sent as a result, Monzo would not be able to provide her with a refund. Monzo went on to provide investment scam advice including faked earnings, FCA registration, guaranteed profits being an indicator of a scam and deals that are too good to be true. The advice provided by Monzo also said that scammers will go to great lengths to convince you they are not involved in a scam. Miss F was asked to confirm that she understood and agreed with the chat advice – which she did.

It's not possible to know for sure what would have happened if Monzo had intervened as I think it should have. I consider it more likely than not that Monzo would have taken the same steps it took when it chose to intervene on payment twelve and that Miss F would have provided similar responses.

It's clear that Monzo recognised a scam risk and took steps to understand the reason for the payment and to provide scam advice. Miss F's initial response when Monzo said it had blocked her account was concerning. Without being asked any questions, Miss F said that she was trading cryptocurrency and it was her own money. Scammers advise victims to tell their banks information like this and the fact Miss F said this without any prompting was an indication that something was amiss.

I accept that Miss F followed advice she was given by the scammers and misled Monzo. But Monzo will be aware that scammers frequently tell victims to lie to their banks to facilitate the scam and avoid detection. So I consider Monzo ought reasonably to have asked Miss F a specific question about whether she was being advised by anyone to lie to her bank and probed whether she was receiving advice from anyone. At the same time, Monzo should have provided some context and explained that if Miss F was told to lie to her bank it was a scam, and she should not proceed with the payment.

I also consider that by June 2023 Monzo ought to have been aware of the prevalence of job scams and the trend in victims being asked to buy cryptocurrency for a range of reasons including releasing tasks and avoiding having negative balances. In the circumstances, I consider Monzo ought reasonably to have considered the possibility that Miss F was falling victim to a scam of this nature and asked questions aimed at establishing if she was falling victim to a job scam.

In reaching my provisional decision that Monzo ought fairly and reasonably to have made further enquiries I've taken into consideration the fact that it ought to have been mindful of the potential risk to Miss F of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate account(s) held in the customer's own name to a fraudster. The use of, and risks to, customers of multi-stage fraud were well known to banks when this scam occurred in 2023. Given this, I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account and the fraud then happened from there.

I'm persuaded that had Monzo taken the additional steps I have referred to above, Miss F would not have proceeded with any further transactions. When she first started to communicate with the scammer Miss F was cautious and asked about a contract and termination clause.

I've gone on to consider whether Miss F should bear any responsibility for her loss. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint. On balance, I think she should for the following reasons:

- Miss F received unexpected contact via a messaging app from someone who said they were from a recruitment company. She then received contact from someone who said they had received her details from the recruitment company. There was no evidence that the person messaging was from a genuine recruitment company or of any links between the person who later messaged Miss F next and a genuine company. It's also unusual to receive contact about genuine roles in this way.
- The nature of the job was unusual and implausible, and I think this ought to have led Miss F to complete some research.
- Miss F asked for terms and conditions and was told there weren't any (although she would be asked to sign a user agreement on registration).
- I think Miss F ought reasonably to have had serious concerns about being asked to buy and transfer cryptocurrency in connection with a job. No legitimate employer would ask an employee to pay money in this way in order to receive a salary/commission. And the salary was high for such a simple, task-based role that Miss F was able to complete in addition to a full time job.

- When Monzo intervened it advised Miss F, *“Just to let you know, if you’ve provided us with any misinformation across our chat that results in you sending a fraudulent payment, we will not be able to refund you for the money you lost”* Miss F was asked to confirm this information following her call with Monzo on 10 June 2023. I’m satisfied that, in light of this message, Miss F ought reasonably to have reflected on the advice she was given by the scammers to lie to her bank about the payment purpose.

Overall, I’m provisionally minded to conclude that Monzo should have done more to protect Miss F and should resolve this complaint by making the payments I have set out above.

Responses to my provisional decision

Miss F let me know that she accepted my provisional decision. Monzo didn’t agree. In summary, it said:

- It has systems in place to look out for unusual transactions, but Miss F was not at risk of fraud from her Monzo account as the funds went to a legitimate cryptocurrency platform. And it’s not practical to assume that all higher value payments relate to a scam.
- Interrupting a legitimate payment journey would have been inappropriate and directly contradicted the PSR rules and the Supreme Court judgment in Phillip v Barclays. As there was no suspicion of fraud occurring because all payments were legitimate, Monzo didn’t have the right to intervene in line with Phillip v Barclays, its account terms and the PSRs.
- Many legitimate cryptocurrency payments are made through Monzo and some of the sellers were genuine peer to peer sellers. So Monzo said it didn’t need to intervene and when it did so, Miss F didn’t present an accurate picture of what was happening.
- There doesn’t appear to be any real justification as to why I have said Monzo’s liability should begin at payment seven. And given Miss F’s replies when it did intervene, Monzo doesn’t consider the scam could have been prevented at this point.
- Monzo recognised that its intervention focused on cryptocurrency investment scams, but said such scams far outweigh advance fee scams so it follows that these scams would be its primary focus. There are also features common to both scam types, including taking instructions from third parties.
- Monzo is aware scammers tell victims to lie to banks, but this is usually a more effective tactic when there is an element of fear or consequence, but this scam is based on the premise of financial gain in employment.

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 carefully considered Monzo’s response to my provisional decision I’ve reached the same outcome as I set out in it, and for the same reasons. I have reproduced my provisional decision findings above.

Monzo has raised the Supreme Court judgement in Phillip v Barclays and its terms and conditions. This service has set out our position in respect of this judgement in many final decisions and I covered it in my provisional decision. So I don’t propose to repeat what I said here. It’s also clear that Monzo did intervene in this case.

I covered in my provisional decision why I was persuaded Monzo ought reasonably to have been aware of the risk of multi stage fraud when Miss F transferred funds to a cryptocurrency account.

I accept that many cryptocurrency payments are genuine. But Monzo should have been aware that cryptocurrency payments feature heavily in investment and task based scams, and that many high street banks do not allow payments to them. It's also important to take into account the other risk factors I set out in my provisional decision including the fact the account hadn't been used much in the period leading up to the scam, the pattern of payments, the increased size of payments and the number of new payees set up in a short timescale. It is the combination of factors that is relevant here.

I acknowledge that Miss F followed instructions the scammers gave her not to reveal to Monzo the true nature of the payment. This is very common in scams of this type. The reason scammers tell victims to do so is to ensure that the scam is effective, and funds are transferred to them. Victims are told that if the transactions aren't successful, they won't receive the payments and commission they think they have earned. Monzo didn't ask Miss F if she was being told to lie to her bank and, if this was the case, she was being scammed. Had it done so, I consider Miss F's loss could have been prevented.

Putting things right

Overall, I'm satisfied that Monzo should reimburse Miss F 50% of all transactions from and including payment seven, plus interest as set out below.

My final decision

I require Monzo Bank Ltd to:

- Refund 50% of payment seven and all subsequent scam payments; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Monzo Bank Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss F how much it has taken off. It should also give Miss F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 12 September 2024.

Jay Hadfield
Ombudsman