

The complaint

Miss L complains that Monzo Bank Ltd hasn't protected her from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Miss L has explained that in July 2023, she was tricked by a fraudster impersonating Monzo to take out a loan of £7,000 in her name with Monzo, and to make 16 push payments from her Monzo account to another account in her name with R, from where she then sent on the funds, and lost them, to the fraudster. The 16 payments made from Miss L's Monzo account totalled £7,600.

Monzo didn't reimburse Miss L's lost funds, and Miss L referred her complaint about Monzo to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a 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 done so, I've decided to uphold this complaint in part. I'll explain why.

The loan

I agree with the Investigator's conclusions on the loan. Miss L has explained that she was convinced by the scammer impersonating Monzo to take out a £7,000 loan in her name with Monzo. But as the loan was taken out with Miss L's knowledge and consent, I'm satisfied she agreed to the loan agreement, such that it wasn't unreasonable for Monzo to hold her liable for it. The loan was taken out before Miss L made the scam payments out of her Monzo account. I also understand that the loan was repaid promptly. So, the real crux of this case now isn't the loan – it's about the scam payments Miss L made out of her Monzo account and whether Monzo ought reasonably to have prevented these.

Should Monzo reasonably have prevented Miss L's loss?

I'm satisfied Miss L authorised the relevant payments, even though she didn't intend them to be ultimately lost to a scammer. Monzo would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Miss L is presumed liable for the loss in the first instance, in circumstances where she authorised the payments. However, this isn't the end of the story. Good industry practice was that Monzo ought to have been on the look out for transactions that were unusual or uncharacteristic to the extent that they might indicate a fraud risk. On spotting such a payment instruction, I would expect Monzo to intervene in a manner proportionate to the risk identified.

Our Investigator said that Monzo should have recognised the risk when Miss L instructed her sixth payment, and I agree with this conclusion. There are many payments made by customers each day and it's not realistic or reasonable to expect Monzo to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds). And I think it's fair to say the first five payments (the largest of which was £540) reasonably wouldn't have sufficiently stood out to Monzo. But I think Miss L's sixth payment instruction reasonably should have. This is because, as our Investigator explained, by this point, the frequency and value of the payments were unusual for Miss L based on her typical account usage. In the prior six months, Miss L had only used her account for low value day-to-day transactions, with the highest being under £200. Yet here, on the same day in July 2023, Miss L was now instructing her sixth payment – with the previous five payments all made within the last eight or nine minutes – to a new payee which had only just been set up. The six payments now totalled over £2,500. With these six payments being made within the same eight or nine minutes to a new payee, Monzo really ought to have recognised this as an indicator of possible fraud or a scam, and to have realised, at this point, that this sixth payment instruction was sufficiently unusual and suspicious such that it ought not to have allowed the payment through without first contacting Miss L to check everything was in order.

Monzo has said there would have been no reason for concern as it would have seen Miss L was making the payments to her own account with R. However, at the time, Monzo reasonably ought to have had a good understanding of how scams like this work – including that the customer often moves money to an account in their own name before moving it on again to the scammer. So, this hasn't changed my mind.

In reaching my decision, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank PLC [2023] UKSC 25*.

In that case, the Supreme Court considered the nature and extent of contractual duties owed by banks when making payments. Amongst other things, it said, in summary:

- The starting position is that it is an implied term of any current account that, where a customer has authorised and instructed the 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 customer'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 thing as being under a duty to do so.

In this case, Monzo's April 2023 terms and conditions gave it rights to block payments where it suspects criminal activity on the account, or to protect the customer from fraud.

So, the starting position at law was that:

- Monzo was under an implied duty to make payments promptly.
- It had a contractual right to block payments where it suspected criminal activity or to protect the customer from fraud.

It could therefore block 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 industry practice at the time, it should *fairly and reasonably* have been on the look out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks do, including Monzo.

In this case, for the reasons I have explained, I am satisfied Monzo should therefore have intervened when Miss L instructed her sixth payment – it should have paused this payment, pending enquiries with Miss L to check everything was in order, before it allowed it through. Like our Investigator, I haven't seen anything that persuades me Miss L wouldn't have fully explained what she was doing, if Monzo had asked her what the payment was for and for the basic surrounding context. So I think Miss L would have explained she was making the payments because she'd been contacted by someone from Monzo, in which case Monzo ought to have been able to quickly uncover the scam – such that Miss L wouldn't have made this sixth or subsequent payments.

It's also most likely that, had this happened as it should have, Miss L's first five payments would have been recoverable either from Miss L's account with R or the fraudster's account. I say this because Miss L appears to have made all sixteen payments from her Monzo account to her account with R, and only then, after that, sent them from her account with R to the fraudster's account. So, it's likely that had Monzo intervened at payment six as it should have, Miss L either wouldn't have forwarded these first five payments from her account with R to the fraudster's account because Monzo's intervention would already have uncovered the scam; or, at the very least, those payments would likely have been recoverable from the fraudster's account, given Monzo ought reasonably to have already intervened and given how quickly recovery would then have followed. I've not seen evidence to persuade me otherwise of this. So, I think it's fair to decide, here, that had Monzo intervened as it should have, not only would payment six to 16 not have been made, but payments one to five would have been recoverable.

Should Monzo be fairly and reasonably held responsible for Miss L's loss?

Monzo has argued that there wasn't a loss from Miss L's Monzo account because her payments from Monzo were made to her own account with R. And in reaching my decision about what is fair and reasonable, I've considered that Miss L paid money from her Monzo account to her account with R before only then moving it onto the scammer. But for the reasons I have set out above, I am satisfied it would be fair to hold Monzo responsible for Miss L's losses (subject to a deduction for Miss L's own contribution). As I have explained, the potential for multi-stage scams ought to have been well known to Monzo and as a matter of good practice Monzo should fairly and reasonably have been on the look out for payments presenting an additional scam risk including those involving multi-stage scams. And I'm required to consider the complaint in front of me, and I have found Monzo did not act fairly and reasonably in the circumstances of this case.

Should Miss L bear any responsibility for the loss?

I've thought about whether Miss L should bear some responsibility for these losses by way of contributory negligence (which might justify a reduction in compensation). In this case, I don't think it's unfair to say Miss L wasn't as careful as she reasonably ought to have been – given the fraudster asked her to take a Monzo loan out in her name and transfer the funds in sixteen different payments, and given the plausibility of this being what Monzo would reasonably ask of her. So, like our Investigator, I'm satisfied Miss L should share equal responsibility for the loss.

Putting things right

I've explained why I think if Monzo had done what it reasonably ought to have done, payments six to 16 would have been prevented. These total £5,590. However, I understand that Revolut refunded Miss L £1,610 which it managed to recover from the recipient account. I think these recovered funds would have been from these later payments. So, I think Miss L's remaining loss, in respect of payments six to 16 is £3,980 (that's £5,590 less £1,610). Miss L should share equal responsibility for this loss, so Monzo should pay Miss L £1,990 (which is half of £3,980) to compensate Miss L for the loss of these payments.

With regards to the first five payments, I've explained why I think these would likely have been recoverable had Monzo intervened in Miss L's payments when it should have. Payments one to five total £2,010. Miss L should again share equal responsibility for this loss, so Monzo should pay Miss L £1,005 (which is half of £2,010) to compensate Miss L for the loss of payments one to five.

I'm satisfied that to compensate Miss L for having been deprived of these funds Monzo should also pay Miss L interest on these amounts calculated at 8% simple per year from the date of the payments to the date of settlement.

My final decision

For the reasons explained, I uphold this complaint and I direct Monzo Bank Ltd to pay Miss L:

- £2,995; plus
- interest on this amount calculated at 8% simple per year from the date of the payments to the date of settlement (if Monzo deducts tax from this interest, it should provide Miss L with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 23 July 2024.

Neil Bridge
Ombudsman