

The complaint

Miss K is unhappy that Monzo Bank Ltd haven't reimbursed the money she lost through a scam.

Miss K's complaint has been brought on her behalf by a professional representative.

What happened

Around October 2022 Miss K was contacted by a scammer on a messaging app. The scam involved Miss K purchasing cryptocurrency and transferring it to crypto wallets that she thought she was in control of – but they were actually in the scammer's control.

Miss K decided to take up what she thought was a legitimate investment opportunity. She bought £200 of cryptocurrency by faster payment from her Monzo account and invested it in the scam. Her representative has told us she was able to withdraw £200, which convinced her the scam was genuine. She went on to make six further cryptocurrency purchases by faster payment from her Monzo account and then transferred the cryptocurrency to the scammer, as follows:

Date	Amount
8/10/2022	£4,700
25/10/2022	£9,999
26/10/2022	£9,999
27/10/2022	£9,999
4/11/2022	£9,250
25/11/2022	£3,670

In March 2023 Miss K's representative contacted Monzo to report the scam. Monzo asked Miss K for some more information about what had happened so it could investigate further, and attempt to recover the funds.

Miss K provided the information Monzo asked for, but it wasn't able to respond to her until July 2023. It told Miss K it was unable to refund the payments she'd made to the scam, because they hadn't gone directly from her Monzo account to the scammer. It paid Miss K a total of £155 in compensation for the delay in responding to the scam report and to Miss K's subsequent complaint - £30 on 24 June 2023, and £125 on 3 August 2023. And in September 2023 Monzo confirmed it had been unable to recover any of the payments.

Miss K's representative brought a complaint to us on her behalf. Our investigator looked into what had happened, and upheld Miss K's complaint. He thought that Monzo should have intervened at the time Miss K instructed the first payment of £9,999 on 25 October 2022 and if it had, it's likely the scam would have been uncovered at that point and Miss K wouldn't have made any more payments. But he also thought Miss K should share liability for what had happened, because there were some red flags about the circumstances of the scam which should have given Miss K cause to question whether it was a genuine investment opportunity.

The investigator thought a fair outcome would be for Monzo to refund 50% of Miss K's losses from the first payment of £9,999 onwards – with 8% simple interest. But Monzo disagreed with the investigator's view. It responded to say:

- holding Monzo to account for the customer not taking due diligence from an external account goes against the precedent set in *Philipp v Barclays*;
- the transactions Miss K made were legitimate and as this isn't in dispute, holding Monzo liable for payments made outside of Monzo isn't fair; and
- there is no guidance which suggests liability falls with Monzo here or that Monzo should refund the customer, either partially or wholly.

Miss K's representative also replied to the investigator's view to say that Miss K accepted it. Because Monzo didn't agree with the investigator's view, Miss K's complaint has now been passed to me for review and a decision.

I issued my provisional decision on 3 April 2024. This is what I said.

It's not in dispute that Miss K authorised the payments. And Monzo has a duty to act on her instructions. But in some circumstances, and in line with good industry practice, Monzo should take a closer look at the circumstances of the payments – for example, if it ought to be alert to a fraud risk, because the transaction is unusual for the customer, or otherwise looks characteristic of fraud. And if so, it should intervene, for example, by contacting the customer directly, before releasing the payments. But I'd expect any intervention to be proportionate to the circumstances of the payment.

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

*The starting point under the relevant regulations and the terms of Miss K's account is that Miss K is responsible for payments she 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 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 as being under a duty to do so.*

In this case, Monzo's December 2021 terms and conditions 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- *FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6)¹.*

¹ Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

- *Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).*
- *Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.²*
- *Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).*
- *The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.*
- *Monzo has agreed to abide by the principles of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstance (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.*

Overall, taking into account the law, regulator’s 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.*

² For example, both the FSA’s Financial Crime Guide at 4.2.5G and the FCA’s 2015 “Financial crime: a guide for firms” gave examples of good practice in relation to investment fraud saying:

“A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules.”

- *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) and the different risks these can present to consumers, when deciding whether to intervene.*

Monzo has told us that Miss K would have been shown a “new payee” warning when she sent the first payment of £200 to the cryptocurrency platform. But the new payee was a cryptocurrency exchange and so I don’t think the content of the new payee warning would have alerted Miss K to the scam. However, as this was a low value payment I wouldn’t have expected Monzo to have taken any further action at this point.

I’ve reviewed Miss K’s account statements from around May 2022. She’d used the account mainly for low value transactions, apart from a transfer of £4,900 to another account in her name a few months before the scam payments. As far as I can see she hadn’t used the account for buying cryptocurrency before the scam payments.

Scams involving cryptocurrency are becoming increasingly prevalent and well-known to banks. I think Monzo should have been able to identify that the payments were related to cryptocurrency, given that they were sent to a payee firm that’s known to provide cryptocurrency services. At the time these payments were made, I think it was reasonable for Monzo to take into account a range of factors when deciding whether to make further enquiries of its customer about a particular payment.

In this case, I don’t think the second payment to the scam, of £4,700, was of a value to indicate a heightened risk of financial harm. So, in the overall circumstances, I don’t think Monzo should have intervened before it processed this payment.

However, I agree with the investigator that Monzo should have made further enquiries when Miss K made the first payment of £9,999 on 25 October 2022. The value of this payment was significantly higher than any payments Miss K had made from the account before, and the increasing pattern combined with the fact the payments were being made to a cryptocurrency exchange should have alerted Monzo that Miss K may have fallen victim to a scam.

Monzo consider that Miss K’s loss was from an external account – because Miss K had held the funds in her own crypto wallet before transferring them to the scammer. And it doesn’t think it’s fair that it should be held liable for what Miss K chose to do with the funds after they had left her Monzo account.

But in deciding whether Monzo should fairly and reasonably have intervened at this point, I’m taking into account that Monzo should have been mindful of the potential risk to Miss K of multi-stage fraud – including, that the customer often first purchases cryptocurrency and moves it on to the fraudster under the assumption that they’re moving it into their own wallet or account.

The use of and risks to customers of these types of fraud was well-known to banks in October 2022. So, I think Monzo ought to have had a good enough understanding of how these scams worked to have been able to identify the risk of harm. Even if Miss K had been sending money to a legitimate crypto platform, it didn't follow that her money was safe, or that she wasn't at risk of financial harm due to fraud or a scam.

This payment was significantly higher than any other payments Miss K had made from her account, and taken in conjunction with the payment of £4,700 made earlier in the same month it establishes a pattern that should have alerted Monzo to the possibility of a scam.

So, I think Monzo should have contacted Miss K directly to discuss the payment and to ask additional questions about typical cryptocurrency scams before it was processed.

If Monzo had contacted Miss K directly to find out more about the circumstances of this payment, I think it would have realised she was falling victim to a scam. Monzo would have been familiar with circumstances of similar scams and would likely have been able to identify it by speaking to Miss K directly. And from what I've seen so far, I have no reason to think Miss K wouldn't have been honest about the circumstances of the payment - she thought she was making a genuine investment.

So, I think it's likely that if Monzo had intervened at this point, it would have uncovered the scam and prevented Miss K from making any further payments to the scam from that point on. For these reasons, I consider it fair to hold Monzo liable for the loss incurred to the scam after and including the payment of £9,999 made on 25 October 2022.

But I've also considered whether Miss K should share any liability for the preventable loss under the principle of contributory negligence, because her actions fell short of the standard of care that would be expected of a reasonable person in these circumstances.

Overall, I do think it's fair to expect Miss K to share some liability for the following reasons:

- Miss K was approached directly about the investment on a messaging app by someone she didn't know. I think the way in which she was approached should have given her cause to question whether the investment was genuine – especially as the suggested returns were high.*
- Although Miss K's representative has said she googled the name of the sender of the message and didn't find anything to cause her concern, I think under the circumstances in which Miss K was approached, it would have been reasonable for her to have done more due diligence in order to establish that the investment opportunity was genuine, such as researching the name of the investment. And if she'd done so, I think she may have come across some "red flags" which would have caused her to question her decision to invest.*

At this point I want to mention that the initial message that Miss K received from the scammer and their subsequent conversation took place in a different language and has been provided untranslated by Miss K's representative. So, I'm basing my decision on the overall circumstances of the scam and on what Miss K's representative has told us about her actions and thought processes at the time. If either party wishes to provide a translated copy of the conversation in support of their argument, they're welcome to do so. I'm providing a copy of the scam conversation to Monzo along with my provisional decision.

Overall, for the loss I think Monzo ought to have prevented, I think it would be fair for Miss K to share 50% liability – and for Monzo to refund the other 50%. It should pay 8% simple interest on top of this to compensate Miss K for the loss of use of the funds.

I can see that Monzo has paid Miss K a total of £155 for the delay in responding to her scam claim and her subsequent complaint. I can understand that this delay would have been frustrating for Miss K. But I think £155 is fair and reasonable in all the circumstances, taking into account the overall impact of the delay.

Miss K's representative replied to say she accepted my provisional decision. Monzo did not accept my provisional decision. It replied to say it wished to confirm previous points made, which were (in summary):

- it was not liable for the customer failing to undertake due diligence and this contravenes the precedent set in Philipp v Barclays. The transactions made were legitimate and due to this, it's unfair to hold Monzo liable for transactions that were legitimate and authorised;
- it has not received any evidence to point towards any guidance/legislation that determines Monzo is liable. It does have sufficient transaction monitoring systems in place, and these have worked as expected. It's unreasonable for it to be expected to do anything further here as if it did, it would have to stop hundreds of thousands of payments per day; and
- Monzo is not required or obliged to conduct any checks therefore it believes this confirms it is not liable.

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've considered Monzo's response to my provisional decision, but as it's said, its response reiterated arguments which I'd already considered and addressed in my provisional decision.

My reasoning on these points has already been explained in detail in my provisional decision as I've set out above. I see no reason to depart from my provisional decision.

My final decision

My final decision is that Monzo Bank Ltd should refund 50% of Miss K's loss to the scam, starting from the payment of £9,999 made on 25 October 2022 and including all subsequent payments made to the scam.

Monzo Bank Ltd should pay 8% simple interest from the date of payment to the date of settlement (less any tax lawfully deductible.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 21 June 2024.

Helen Sutcliffe
Ombudsman