

The complaint

Miss B complains that Monzo Bank Ltd (“Monzo”) won’t refund the money she lost as a result of a job scam.

She’s being supported by a representative. To keep things simple, I’ll refer to Miss B throughout this decision.

What happened

The background to this complaint is known to both parties, so I won’t repeat all the details here. In summary, Miss B says:

- She was actively looking for part-time work and had uploaded her CV on a legitimate recruitment site. She was contacted by someone pretending to be a hiring manager at a well-known UK-company. The scammer told her they’d received her application and that they had work available. She was then passed on to someone she was led to believe would be her manager for the job, going by the name of Katherine.
- It was explained that her role would involve increasing the visibility of online merchants by carrying out ‘tasks’ for which she’d earn an income. After paying a relatively small initial deposit, Miss B was persuaded to transfer further funds to complete certain tasks. The payments were made to third-party individuals in the peer-to-peer (P2P) market for the purchase of crypto-currency. The crypto-currency was then sent to the scammer’s wallet from her own crypto-currency wallet she’d been told to set up by the scammer.
- She realised she’d been scammed when she asked to withdraw her money but was instead asked to pay more in taxes.

I’ve listed below the payments I’ve considered as part of this complaint. To note, Miss B received about £154 as part of the scam on 16 June 2023.

	Date	Time	Type	Payee	Amount
1	15-Jun-23	8:35	Faster payment	Zeeshan Naseem	£100
	<i>16-Jun-23</i>		<i>Credit</i>	<i>Paid into account</i>	<i>£154.44</i>
2	17-Jun-23	10:30	Faster payment	Aleksejs Jonans	£218
3	17-Jun-23	11:37	Faster payment	Funaloe Cloths Ltd	£584
4	17-Jun-23	14:39	Faster payment	Sergey Travkin	£1,894
5	17-Jun-23	16:27	Faster payment	Proveria Technologies Ltd	£3,964
6	19-Jun-23	20:57	Faster payment	Customized trade corp Sp	£2,513
7	19-Jun-23	22:10	Faster payment	Rex Edward Harrison	£5,799
8	20-Jun-23	7:21	Faster payment	Customized trade corp Sp	£8,563

The scam was reported to Monzo in June 2023. A complaint was also raised and its final response was issued in November 2023. It didn’t agree to compensate Miss B for all the money she’d lost. But, during its investigation into the claim, it was able to return the £218 transfer (above). This was credited to Miss B’s account in September 2023. It also paid her £45 for the delays she’d experienced in having her claim and complaint investigated.

The matter was then referred to the Financial Ombudsman. Our Investigator considered it and upheld it. In summary, she thought that Monzo should have intervened on payment 7 and that, if it had, the scam would have likely been unravelled – but that Miss B should bear equal responsibility for her losses. She recommended a 50% refund of the payments lost from (and including) payment 7, plus interest. She also thought the £45 Monzo had paid her for the impact of its delays in handling the claim was fair.

Miss B accepted that recommendation. Monzo did not. In summary, it said:

- The payees were private crypto-currency sellers. Miss B received the crypto-currency she'd purchased as expected. The payments were legitimate. Monzo was not the point of loss and as such it holds no liability. It can't assess and should not be liable for the onward loss of crypto-currency that occurred from a customer's external account.
- Taking into account the upcoming changes to the PSRs and rules around APP that specifically outline this situation, banks are not expected to assess fraud that doesn't happen within their remit, and banks are not responsible for onward loss of crypto-currency when purchased legitimately.
- 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* and its account terms.

Provisional Decision

I issued my provisional decision to both parties on 9 May 2024. The background was set out as above and I said I intended to uphold this complaint. I provided the following reasons:

The starting point under the relevant regulations (the Payment Services Regulations 2017) and the terms of Miss B's account is that she's liable for payments she's authorised. And as the Supreme Court reiterated in Phillip 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's 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 Phillip, 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 was not the same as being under a duty to do so.*

In this case, Monzo's April 2023 current account terms and conditions gave it rights (but not obligations) to:

- *Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.*
- *Refuse to make a payment if it suspects the customer is a victim of fraud.*

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 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.*

The account terms didn't oblige Monzo to make fraud checks, but I don't 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 wasn't obliged under the contract to make checks, I'm satisfied, 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 fraud and taken additional steps, or made additional checks, before processing payments in some circumstances. In practice, that's something all banks do, including Monzo.

Our Service has issued previous final decisions setting out the relevant considerations we take into account when deciding what's fair and reasonable in these types of cases. I don't consider it necessary to repeat them all again here, though Monzo will be able to review these through past decisions on our website if it wishes to do so.

To summarise, however, 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 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.*

Should Monzo have fairly and reasonably made further enquiries before it processed Miss B's payments?

I've considered Miss B's account activity, and like the Investigator, I don't think there was anything particularly suspicious about the first four payments that ought to have reasonably triggered Monzo's fraud detection systems. The payments were not for significantly high amounts and I'm mindful Monzo says it provided low friction warnings for the transactions (as well as confirmation of payee). I'm also mindful that, although the money was used to

buy crypto-currency, that's not something Monzo would have known because of the method used (P2P) – as far as it could see, Miss B was sending funds to different named parties.

In my view, however, there was enough by payment 5 – about that transaction and the account activity – that ought to have reasonably alerted Monzo of a heightened risk Miss B was being scammed. This payment was for a significantly higher value than the earlier transactions. It was the fourth payment where a pattern of increased spending had emerged (each payment higher than the last) and it was made to the fourth new payee set up on that day. It also took the daily spend to a significantly high amount on an account that had been typically used for relatively low value spending. Taking all these factors into account, I think it's reasonable to say Monzo should have been concerned and questioned Miss B directly about the nature of that payment before processing it.

In reaching this view, I recognise there's a balance to be struck and Monzo can't reasonably be expected to intervene on every payment that may be the result of a scam. But I don't think it got that balance right here. I again note Monzo says it provided Miss B with some low friction warnings, but I don't think these were enough by this point. The warning asked if someone could be trying to scam the payer and said to stop in certain circumstances. The reasons to stop the payment included being told the account is at risk, something that is too good to be true, to double check the payee and if the payer was told to ignore a warning. I don't think this was enough to have resonated with Miss B as it was too general to cover the situation she was in.

If Monzo had made further enquiries before processing the payment, would that have prevented the losses Miss B incurred?

I've thought carefully about how things would have likely unfolded if Monzo had questioned Miss B directly about the nature of payment 5 – and, on balance, I think she'd have been upfront about what she was doing and the scam would have been unravelled.

There's nothing in the messages I've seen between Miss B and the scammer to suggest she was coached on what to say for the transfers to go through without issue. And if Monzo had contacted Miss B directly about what was happening, I think she'd have been honest and explained she was buying crypto-currency. Given the reason for the payment I think Monzo ought to have probed further and established why she was buying crypto-currency – and I'm satisfied that her response is likely to have been concerning given that she thought she was sending crypto-currency for online 'tasks' as part of a job to earn income. As Monzo ought to have been aware of job scams of this nature, this should have signalled something wasn't quite right. And I think it's unlikely Miss B would have gone ahead with further payments after a warning about what her particular situation looked like. I'm therefore satisfied Monzo missed an opportunity here to uncover the scam and prevent Miss B's further losses.

I'm also satisfied Monzo can fairly and reasonably be held liable for Miss B's losses. I realise it wasn't the point of loss and it took further steps before the money was lost to the scammer. But the potential for multi-stage scams ought to have been well known to Monzo at the time and, as a matter of good practice, it should fairly and reasonably have been on the look-out for payments presenting an additional scam risk. And because this scam would have likely been unravelled if Monzo had made further enquiries on payment 5, I'm satisfied it can fairly and reasonably be held liable for the further losses in circumstances where I think it ought to have done more to prevent them.

I note Monzo says that under the upcoming changes to the PSRs and rules around APP, banks are not expected to assess fraud that doesn't happen within their remit, and they're not responsible for onward loss of crypto-currency when purchased legitimately. But I'm not convinced it follows that it shouldn't now compensate Miss B in circumstances where it failed

to act fairly and reasonably, as I've found was the case here. I'd also add the PSR scheme is not yet in force and isn't relevant to my decision on what's fair and reasonable in this case.

Should Miss B share responsibility for her losses?

The concept of contributory negligence centres around whether or not a consumer should have done something to mitigate their losses or should share some responsibility for them.

In this case, I appreciate Miss B says the contact she received from the scammer wasn't unexpected as she'd been looking for work and had sent her CV to a recruitment site. I note she says the scammer came across as professional and she was added to a group chat where other 'agents' messaged about their successes. Even so, I'm not persuaded the proposal made by the scammer was entirely plausible, or that it followed the process that would be usually expected from a legitimate employment opportunity. There was, for example, no contract or paperwork about the job itself. I can't overlook that while she was offered the chance to make money, she was required to deposit money and then pay more as part of the process. And I don't think the scammer gave a plausible explanation as to why she had to make deposits in crypto-currency either.

I think all this would strike most people as unusual and, in my view, there were sufficient red flags that ought to have reasonably led Miss B to have acted more cautiously than she did. A basic check, for example, like contacting the genuine company would have quickly revealed this was likely a scam. So, I think she played a role in what happened such that the refund payable by Monzo should fairly be reduced by 50%.

Recovery

I've thought about whether Monzo could have done more to recover the money after Miss B reported the fraud in June 2023 and I can see it acted quickly to try to recover the funds. It's also important for me to say that, although one payment of £218 was returned to Miss B in September 2023, I don't think there would have been a basis for Monzo to request the return of the funds in any event – given the payments were for the purchase of crypto-currency via third-parties, the crypto-currency was provided, and it was this crypto-currency that was sent on to the fraudster. There's nothing to evidence the third parties were part of the scam itself.

Service provided

As noted earlier, Monzo decided to pay £45 to Miss B in recognition of its delays in handling the claim and complaint. The activity of 'complaint handling' isn't regulated and I've no power to investigate it here. But I can see, from the chat provided, it took some months for Monzo to contact Miss B with its claim outcome, in September 2023. I agree with the Investigator that this would have caused Miss B additional upset at an already difficult time. And I think the £45 paid was fair compensation for the delay (and lack of contact) Miss B experienced, also bearing in mind that much of her distress was caused by the scammer's actions. I don't therefore intend to say that Monzo needs to do more in this regard.

Putting things right

To resolve this complaint, I intend to direct Monzo Bank Ltd to:

- Refund 50% of the payments Miss B lost to the scam from (and including) payment 5.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

Responses to provisional decision

I invited further comments and evidence from both parties. And both parties have responded to say they accept my provisional 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.

Given both parties haven't submitted any new information for me to consider and that both have said they accept my provisional decision, I see no reason to depart from the findings and conclusions reached.

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My final decision

I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 18 June 2024.

Thomas Cardia
Ombudsman