

The complaint

Mrs S is unhappy that Monzo Bank Ltd didn't reimburse her after she fell victim to a scam.

Background

In May 2023, Mrs S received a message from someone who claimed to work for a recruitment agency. She'd been looking for work and had left her contact details with several potential recruiters so, as I understand it, this contact didn't surprise her. She was told there was a position available that would enable her to work from home and with flexible hours. Unfortunately, this wasn't a genuine job opportunity. She'd been contacted by a fraudster.

The fraudster told her that she'd be working for a company that specialised in the promotion of films. She would use the company platform to complete tasks that would boost the profile of individual films and, as a result, associated ticket sales. The fraudsters told her she could earn commission payments as a result of completing the tasks.

After working for a short period, she was told that her account on the platform had a negative balance and that she needed to put funds in her account to continue completing the tasks. She funded her account in the anticipation that the commission she expected to earn would make it worthwhile. She used her Monzo account to make peer-to-peer purchases of cryptocurrency. These were deposited in an e-wallet in her name that was held with a third-party cryptocurrency platform. She was then asked to transfer the cryptocurrency to an e-wallet controlled by the fraudster.

The payments she made from her Monzo account in connection with the scam are listed below:

1	25 May 2023	£28.20
2	27 May 2023	£37.00
3	27 May 2023	£250.00
4	27 May 2023	£600.00
5	27 May 2023	£1,700.00
6	28 May 2023	£400.00
7	30 May 2023	£3,000.00
8	30 May 2023	£3,300.00
9	30 May 2023	£715.00
10	06 June 2023	£3,150.00
11	06 June 2023	£350.00

Once she realised she'd fallen victim to a scam, she notified Monzo who didn't agree to refund her. Mrs S wasn't happy with that and so she referred her complaint to this service. It was looked at by an Investigator who upheld it in part. Monzo disagreed with the Investigator's opinion, and so the complaint has been passed to me to consider to come to a final decision.

Findings

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

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. Monzo has agreed to follow the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. However, the Code doesn't cover these payments.

They were payments used to purchase of cryptocurrency. As a result of the transactions, Mrs S did take ownership of the underlying cryptoassets. In other words, the transactions that left her Monzo account were legitimate purchases of cryptocurrency. In summary, the CRM Code requires that she "transferred funds to another person for what [she] believed were legitimate purposes but which were in fact fraudulent." The fact that she later transferred the cryptocurrency to a blockchain address controlled by the fraudster doesn't mean that these initial payments weren't for legitimate purposes.

Although the CRM Code doesn't apply to these transactions, good industry practice required that Monzo be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified. The Investigator thought Monzo should've acted in connection with the eight payment in the table above and I'd agree with that conclusion.

She'd moved over £6,000 to new payees in the same day, and this followed a developing pattern of payments to new payees. In view of those factors, Monzo ought to have recognised that there was an enhanced possibility that she was falling victim to a scam. It shouldn't have processed that payment without first contacting Mrs S to satisfy itself that she wasn't at risk of financial harm due to fraud.

In reaching my decision on that point, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*. 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, the terms and conditions applicable to Mrs S's Monzo account conferred on it rights (but not obligations) to:

1. Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
2. Refuse to make a payment if it suspects the customer is a victim of fraud. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

The starting position at law, therefore, 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 had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse 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 it from making fraud checks before making a payment.

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 carried out additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case for the reasons I have explained, I am satisfied it should have intervened. And if it had, I think it's more likely than not that it would've been able to prevent Mrs S's subsequent losses to the scam. There is no reason to believe that she wouldn't have responded to the bank's queries openly and honestly. There's no evidence that the fraudsters told her that she needed to mislead the bank about the purpose of the payments if questioned. If she'd responded openly to the bank's questions, I think it would've recognised promptly that she'd been targeted by a very commonly occurring scam type and could've prevented her from continuing to make payments.

I've also considered whether it would be fair and reasonable for her to bear some responsibility for her own losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. I've considered the evidence carefully and, while I accept Mrs S did genuinely believe that these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one. There was no formalisation of the arrangement between her and the employer – for example, there was no written contract and indeed no clear setting out of the terms of her employment.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement and Miss M doesn't appear to have asked about it. I think she ought to have proceeded only with great caution. Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to her.

Other issues

I've also taken into account that the loss Mrs S suffered didn't occur from the Monzo account. She did genuinely make purchases of cryptocurrency and took ownership of the underlying assets. It was only when she transferred that cryptocurrency on to the fraudster that she sustained any loss. Nonetheless, Monzo ought to have been aware of the risk of multi-stage scams involving cryptocurrency. Such scams have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and

figures published by the latter show that losses suffered to cryptocurrency have continued to increase since. Overall, I am satisfied that it could have prevented the losses she suffered if it had as I've found it should've done.

For completeness, I've also considered whether Monzo did everything it should've done once it became aware that a scam had taken place. But given that these payments were in relation to genuine purchases of cryptocurrency, any recovery of funds wouldn't have been possible.

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mrs S accepts my final decision, Monzo Bank Ltd should pay her 50% of the funds she lost to the scam from payment 8 onwards. It should also add 8% simple interest per annum that sum calculated to run from the dates the payments left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 August 2024.

James Kimmitt
Ombudsman