

The complaint

Miss E has complained that Monzo Bank Ltd won't refund the money she lost after falling victim to a scam.

What happened

In autumn 2023, Miss E was cold-contacted by scammers offering her an online job. The job was entirely remote, with flexible hours, performing simple tasks in exchange for high rates of commission. She was set up with an account on the scammers' platform, given training, and allowed a small initial withdrawal. The scammers persuaded Miss E to pay in her own money to clear negative balances and fund higher-value tasks for more commission. Then Miss E was faced with a task she couldn't afford, she was unable to withdraw her earnings, and the scammers threatened her. She realised she'd been scammed. In total, Miss E sent around £5,700 to the scammers, by making card payments from her Monzo account to a cryptocurrency account of her own, then sending the funds to the scammers from there.

Monzo was unable to recover the money. And it didn't think it was otherwise liable for Miss E's loss.

Our Investigator looked into things independently and partially upheld the complaint. Monzo didn't agree, so the complaint's been passed to me to decide.

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.

There's no dispute that Miss E authorised the payments involved, even if she didn't intend for the money to end up with scammers. So under the Payment Services Regulations and the terms of her account, Miss E is liable for the loss in the first instance. But the matter doesn't end there.

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 that Monzo should have fairly and reasonably:

- Monitored accounts and payments to counter risks such as fraud and scams;
- Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;
- In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.

Like our investigator, I find that Monzo should have intervened at the point of the £4,500 payment. That was a substantial payment, and far larger than Miss E's previous largest payment in the months before. It went to a very new payee, which was an unregulated crypto site; and by this point, the Financial Conduct Authority (FCA) and Action Fraud had warned about cryptocurrency scams, there was wide media coverage, and other leading firms had restricted such payments, so Monzo should've been aware of the heightened risk of these scams. I've reviewed Miss E's account activity in the months leading up to the scam, and I can't see any comparable activity. I think that payment stood out as being remarkable, so I think it should have prompted Monzo to intervene. Indeed, Monzo's own system appears to have flagged the matter, but Monzo missed an opportunity to speak to Miss E about the reasons behind this payment.

In reaching my decision that Monzo should have made further enquiries, I've 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. In summary, among other things, it said:

- 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 was not the same as being under a duty to do so.

In this case, Monzo's terms and conditions gave it rights to block payments or cards where it suspects criminal activity on the account or where it is concerned about the customer being a victim of fraud, and to contact the customer about this.

So the starting position in 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 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, even if it was not under a contractual duty to do either of those things.

While the account's terms did not oblige Monzo to do fraud checks, I do not consider that any of these things (including the implied basic duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And while 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 lookout for the possibility of fraud and scams, and should have taken additional steps – or made additional checks – before processing payments in some circumstances, such as in the circumstances of this case.

So for the reasons I've explained, I find that Monzo should have intervened in this case and made person-to-person enquiries with Miss E about the reasons behind the £4,500 payment before it processed it.

Had Monzo done so and asked reasonable, proportionate questions, I think it would have most likely come to light that Miss E was being scammed. Reasonable questioning would've revealed things like how Miss E was having to pay to work, that her pay was in crypto and not – for example – a legitimate PAYE salary in pounds, that the offer was too good to be true, that she'd been cold-contacted, that she had no contract or paperwork, and that she was unable to withdraw her earnings until she paid more money in. The matter bore many hallmarks of a prominent scam, so it's most likely that Monzo would've been able to identify what was happening and prevent it.

I've seen nothing to substantiate that Miss E would not have been honest about why she was sending this money – she thought she was just doing her job. And I've found no good reason why Miss E would not have listened to Monzo – it is a well-known name in banking.

Monzo argued that it should not be held liable for the payments involved, because they went to a crypto account in Miss E's name. But as Monzo should well know, it should have fairly and reasonably been on the lookout for potentially fraudulent payments, even if the payments were going to another account in the customer's name. There are prominent scams which involve paying an account in one's own name. And identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So Monzo can still be held liable for a loss which resulted from its failure to intervene – which is what I've found to have most likely been the case here.

So I find that Monzo bears some liability for Miss E's loss from the point of the £4,500 payment onwards.

I've also thought carefully about Miss E's role in what happened. I do understand that she'd put her CV online and so wasn't surprised to hear about a job, that the staff were friendly, that there was a group chat and a good-looking website which appeared to have cloned a genuine business, and that she was allowed an initial withdrawal. But I'm afraid I think Miss E ought to have had more concerns along the way about what she was being told and being asked to do – not least by the point of the £4,500 payment. No legitimate job would function like this, she'd been cold-contacted with an offer that was much too good to be true given the level of experience and effort required, she was given no proper contract, the staff used poor grammar and there were discrepancies in what they said about things like the exact amount of pay, she doesn't appear to have reasonably looked into the business, an internet search at the time should've come up with scam warnings which pre-dated Miss E's contact with them, and Miss E expressed suspicion that this was a scam before the £4,500 payment but proceeded anyway. Overall, I'm afraid I don't think Miss E had a reasonable basis on which to believe that the matter was legitimate.

So I don't think I can hold Monzo solely responsible for Miss E's losses from the £4,500 payment onwards. I think Miss E should also bear some responsibility for that loss.

Next, I've considered whether Monzo should've done more to try to recover Miss E's money once she made it aware of the scam. But as the payments went to a crypto account of Miss E's, and she sent that money onto the scammers, Monzo couldn't get that money back. As they were card payments to a crypto account of her own, these were not covered by the CRM Code. And there was no realistic prospect of success for a chargeback – there was no chargeback reason which reasonably covered this situation, and a chargeback would've been against the crypto platform rather than the scammers, but the platform did its job. So there wasn't anything more that Monzo could reasonably do to get the money back.

Lastly, I see that Monzo didn't sufficiently address the issue or provide sufficient support to Miss E after she reported the matter. Taking into account the distress this added for Miss E, alongside our guidelines for compensation, I agree with our Investigator that Monzo should pay her an additional £100 compensation to put that right.

Putting things right

I direct Monzo Bank Ltd to:

- Refund 50% of the loss from the £4,500 payment onwards, which comes to £2,750.
- Add simple interest at the rate of 8% simple per year onto the refund, payable from the date each partially-refunded payment debited until the date of the refund.

If Monzo considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Miss E how much tax it's taken off. It should also give Miss E a tax deduction certificate if she asks for one. Miss E may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

- Pay Miss E £100 compensation for the trouble and upset it caused.

My final decision

For the reasons I've explained, I uphold Miss E's complaint in part, and direct Monzo Bank Ltd to put things right by doing what I've said above.

If Miss E accepts the final decision, Monzo Bank Ltd must pay her within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 2 October 2024.

Adam Charles
Ombudsman