

Complaint

Mrs A is unhappy that Monzo Bank Ltd didn't reimburse her after she told it she'd fallen victim to a scam.

Background

In late 2023, Mrs A was approached by someone on a messaging app offering her a job opportunity. She was told her role involved "data optimisation," which required her to complete tasks on a client's online platform, primarily rating apps. The supposed goal was to simulate demand and improve the marketability of the client's apps. For every group of tasks she completed, she was promised a commission. However, in order to participate, she was required to fund an account by making deposits.

Mrs A used her Monzo card to make several payments to a third-party cryptocurrency exchange. Her deposits were converted into cryptocurrency and transferred into the fraudsters' control. The payments she made were as follows:

1	A	25 October 2023	£18
2	B	30 October 2023	£50
3	B	30 October 2023	£50
4	C	30 October 2023	£24.80
5	C	30 October 2023	£8.27
6	B	1 November 2023	£650
7	B	1 November 2023	£1,300
8	B	1 November 2023	£300
9	B	1 November 2023	£2,650
10	B	1 November 2023	£1,420

Once Mrs A realized she had fallen victim to a scam, she notified Monzo. However, Monzo declined to refund her, which led Mrs A to refer a complaint to this service. An Investigator reviewed her case and partially upheld her complaint. The Investigator noted that Monzo had a responsibility to monitor for potential fraud. Upon recognizing suspicious activity, the bank was expected to take proportionate steps to protect its customer. The Investigator believed Monzo should have raised concerns by the time of payment 9, given the significant increase in payment values. In the Investigator's view, if Monzo had questioned Mrs A at that point, she likely would have revealed she was making payments in connection with a job opportunity, which would've allowed Monzo to warn her that it was a scam.

However, the Investigator also thought Mrs A should bear some responsibility for her own losses by way of contributory negligence. He recommended that Monzo refund 50% of payments 9 and 10

Monzo disagreed with the Investigator's findings, so the complaint was passed to me to consider and 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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Monzo be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to make enquiries with the customer to satisfy itself that they weren't at risk of financial harm due to fraud.

After reviewing the case, I agree with the Investigator's conclusion that Monzo should have intervened at payment 9. Although the earlier payments were relatively low in value, by payment 9, they had increased significantly. Additionally, Monzo was aware that the payments were being made to a cryptocurrency platform and the associated fraud risk. The pattern of Mrs A's payments closely matched what we commonly see in job scams. In view of that, Monzo shouldn't have processed payment 9 without first questioning it with Mrs A

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, Monzo's terms and conditions gave it rights 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. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

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 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 carry out fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded it from doing so 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.

In this case for the reasons I have explained, I am satisfied it should have intervened here at payment 9. If it had done so, it is more likely than not that it could have prevented payments 9 and 10. From the evidence provided, Mrs A was not advised to lie to the bank if any of the payments were questioned. If they had been, and if she had revealed the nature of the payments, Monzo would have been in a position to warn her that the job opportunity was a scam.

I have also considered Monzo's reference to Regulation 82 of the Payment Services Regulations 2017, which outlines a payment service provider's (PSP) obligations when it chooses not to process a customer's payment. However, this regulation does not limit how a PSP may exercise its discretion to decline payments. Therefore, I do not find Monzo's argument relevant to the outcome of this case.

I've also considered the fact that Mrs A initially transferred funds to an account in her own name before they were eventually lost to the fraudsters. The loss therefore didn't occur at the point the funds left Mrs A's Monzo account. However, I think Monzo ought to have been aware of the risks associated with multi-stage scams, particularly involving cryptocurrency. I'm therefore satisfied that Monzo should have made further inquiries before allowing payment 9. If Monzo questioned these transactions, it is more likely than not that the scam would have been uncovered, and Mrs A's subsequent losses would have been prevented.

I have also considered whether it is fair for Mrs A to bear some responsibility for her own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I consider to be fair and reasonable in the circumstances. While it is clear that she was the victim of a sophisticated scam, there were several aspects of the arrangement that should have raised concerns. First, she received unsolicited contact and was offered a job without any formal hiring process, such as an interview. This lack of formality should have made her more cautious. Furthermore, the job involved an inversion of the typical employer-employee relationship, where she was required to transfer money instead of being paid directly. Mrs A did not question this unusual arrangement, and I believe she should have exercised greater caution in this situation. For these reasons, I'm satisfied it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to Mrs A.

In reaching this decision, I do not intend to downplay the fact that Mrs A has fallen victim to a cruel and manipulative scam, and she has my sympathy. However, my role is to assess the actions and inactions of the bank, and based on the evidence, I believe this resolution is fair.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mrs A accepts my final decision, Monzo Bank Ltd should refund 50% of payments 9 and 10. It should also add 8% simple interest per annum to those payments calculated to run

from the date the payments debited her account until the date any refund is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 25 October 2024.

James Kimmitt
Ombudsman