

The complaint

Miss T complains that Monzo Bank Ltd won't refund over £17,000 she lost to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. However, in brief, Miss T fell victim to a fake job scam after she was contacted on a messaging app – I will call the scammer 'O'. O told Miss T that she would be paid for completing a number of tasks, but she would have to pay in funds to the task platform first using cryptocurrency. Miss T realised she had been scammed when O continued to pressure her to pay more into the scam without allowing her to withdraw her salary.

Miss T made 6 payments to the scammer. After an initial payment of 10p the next two payments to a crypto exchange were reversed immediately. The following three payments were made to a trading company and the funds were then forwarded on to O. These payments were made via faster payment and they totalled around £17,000.

Our investigator upheld the complaint because they thought that Monzo should have intervened when Miss T contacted it about the two returned payments and explained that she was trying to purchase crypto. She thought that at this point had further questions been asked, Miss T would have explained that she was trying to send crypto to unlock money she had earned through an online job. Had this happened she believed that Monzo could have provided a warning that it was likely a scam and therefore Miss T would not have sent any successful payments to the scammer.

Monzo disagreed, so the matter has been escalated to me to determine.

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.

It isn't in dispute that Miss T has fallen victim to a scam here, nor that she authorised the payments that are the subject of this complaint. And the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss T's account is that Miss T is responsible for payments she has authorised herself. In reaching my decision I have also 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 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:

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.

So, the starting position in law is 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 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 industry practice at the time, it should fairly and reasonably have been on the look-out for the possibility of Authorised Push Payment "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.

So, with this in mind, I've considered whether Monzo should have done more to prevent Miss T from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular payment. For example, if it was particularly out of character for that account holder.

The investigator considered that when Miss T contacted it about the two returned payments Monzo should have asked questions about what she was doing especially when she said she was trying to purchase crypto and I agree with this. Especially as Miss T had reported a crypto scam the year before, which means that any payment to crypto could potentially be a recovery scam. Also, the payments she was trying to make were a significant increase in her spending on the account and my view this really should have been flagged by Monzo as being unusual account activity.

Given this, I think a reasonable intervention at this stage would have been direct contact with Miss T – via the chat function on the app or on the phone – to ask Miss T some open questions about what she was making the payments for.

Miss T doesn't appear to have been given any cover story by the scammers, so if Monzo had questioned her about these payments, I think it's likely she would have been honest about what they were for and how she had come across the job opportunity. So Monzo would have likely discovered that she had been contacted via a messaging app by a company offering to pay her for completing tasks, but that Miss T had been told that she would have to pay money into the scheme using cryptocurrency to unlock more task.

This is not how companies normally operate and it has all the hallmarks of a cryptocurrency scam. I consider there would have been reasonable grounds for suspicion here. And Monzo would have been able to clearly identify the significant risk that these payments were part of a scam and could have made that clear to Miss T. I consider it likely that Miss T would have acted on any such a warning.

Monzo does not believe it is liable for Miss T's loss, as it said it occurred from her cryptocurrency account rather than her Monzo account. However, just because a payment is to an account in the customer's own name that does not mean it bears no risk, and I would still expect Monzo to keep an eye out for payments that bore hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

Firstly, I should say it is not clear whether the account that Miss T sent the funds to was in her own name as it seems to be some sort of trading platform. Though from the chats it is clear that the scammer did receive the funds. But even if the funds initially sent to an account in Miss T's own name, I still think that Monzo should have intervened.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks or e-money providers, and then on to buy cryptocurrency – is increasingly a feature of several types of scams. And I would expect Monzo to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

In light of this, I think Miss T's losses were foreseeable to Monzo. And I'm satisfied that, had Monzo asked relevant questions of Miss T it would have been apparent that she was falling victim to a scam and Monzo would have been able to provide an appropriate warning which would likely have prevented Miss T from making any further payments to the scammers.

As a result, I believe Monzo should refund the payments Miss T lost to the scam.

I've also thought about whether Miss T did enough to protect herself from the scam, and, having thought carefully about this, I don't think she did. I think she ought reasonably to have had concerns about the legitimacy of the job offered, amongst other things, the requirement to send funds to acquire the profits she'd supposedly earned.

I also think receiving an unsolicited job offer, via a mobile messaging service app, should've been seen as unusual to Miss T, and so should have led to her looking more deeply into this job she was apparently being offered. I also think that she should have been more wary especially as she seems to have lost funds to a crypto related scam in the past. Also in the chats with the scammer she says she is worried that this might be a scam and despite this she then sent the scammer funds.

Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Monzo could have done more to attempt to recover the payments after Miss T reported the fraud. But I'm satisfied that Monzo would not have been able to recover the payments that Miss T sent given the nature of the payments.

Putting things right

To resolve this complaint Monzo Bank Ltd should:

Refund the payments Miss T lost to the scam less a deduction of 50% in recognition of Miss T's own contributory negligence towards her loss.

Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

I uphold this complaint in part and Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 October 2024.

Charlie Newton
Ombudsman