

## The complaint

Miss W complains that Monzo Bank Ltd won't refund over £18,000 she lost to a bank impersonation scam in December 2022.

## What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief summary, Miss W fell victim to a scam after she received a call from someone purporting to be from Monzo ("the scammer"). Miss W was told that her bank accounts had been compromised and that she'd need to take steps to secure them.

The scammer encouraged Miss W to move money between her existing accounts held with "Firm A", Monzo and "Firm C" where it was then paid to cryptocurrency wallets in her name and transferred on to the scammer. She made the following payments from her accounts:

#	Date	Payment type	Payee	Amount – Firm A	Amount – Monzo	Amount – Firm C
1	8 December 2022	Faster payment	Miss W	£3,000		
2	8 December 2022	Debit card	Firm C		£600	
3	8 December 2022	Debit card	Firm C		£600	
4	8 December 2022	Debit card	Firm C		£600	
5	8 December 2022	Debit card	Firm C		£600	
6	8 December 2022	Debit card	Firm C		£600	
7	8 December 2022	Debit card	Crypto.com			£2,978.20
8	8 December 2022	Faster payment	Miss W	£3,000		
9	8 December 2022	Faster payment	Foris Dax		£375	
10	8 December 2022	Faster payment	Miss W		£495.50	
11	8 December 2022	Faster payment	Miss W		£424.60	
12	8 December 2022	Faster	Miss W		£468.40	

		payment				
13	8 December 2022	Faster payment	Miss W		£431.70	
14	8 December 2022	Faster payment	Miss W		£482.20	
15	8 December 2022	Faster payment	Miss W		£349.10	
16	8 December 2022	Debit card	CRO			£2,567.21
17	8 December 2022	Faster payment	Miss W	£2,995		
18	8 December 2022	Faster payment	Miss W		£426.27	
19	8 December 2022	Faster payment	Miss W		£327.62	
20	8 December 2022	Faster payment	Miss W		£317.42	
21	8 December 2022	Faster payment	Miss W		£341.79	
22	8 December 2022	Faster payment	Miss W		£326.38	
23	8 December 2022	Faster payment	Miss W		£341.27	
24	8 December 2022	Faster payment	Miss W		£337.94	
25	8 December 2022	Faster payment	Miss W		£318.28	
26	8 December 2022	Faster payment	Miss W		£196.78	
27	8 December 2022	Debit card	Binance			£2,887
28	9 December 2022	Faster payment	Miss W	£3,000		
29	9 December 2022	Faster payment	Miss W		£427.51	
30	9 December 2022	Faster payment	Miss W		£561.92	

31	9 December 2022	Faster payment	Miss W		£627.51	
32	9 December 2022	Faster payment	Miss W		£562.73	
33	9 December 2022	Faster payment	Miss W		£683.48	
34	9 December 2022	Faster payment	Miss W		£197.23	
35	9 December 2022	Faster payment	Miss W	£3,000		
36	9 December 2022	Faster payment	Miss W		£693.72	
37	9 December 2022	Faster payment	Miss W		£574.58	
38	9 December 2022	Faster payment	Miss W		£685.48	
39	9 December 2022	Faster payment	Miss W		£747.52	
40	9 December 2022	Faster payment	Miss W	£3,000		
41	9 December 2022	Faster payment	Miss W		£721.62	
42	9 December 2022	Faster payment	Miss W		£692.78	
43	9 December 2022	Faster payment	Miss W		£793.59	
44	9 December 2022	Faster payment	Miss W		£637.61	
45	9 December 2022	Faster payment	Miss W	£4,000		
46	9 December 2022	Faster payment	Miss W		£783.76	
47	9 December 2022	Debit card	Binance			£9,321
48	9 December 2022	Faster payment	Miss W		£598.62	
49	9 December 2022	Debit card				£811

50	9 December 2022	<i>Credit</i>	<i>Miss W – sent from Firm C</i>	(-£16.55)		
51	10 December 2022	<i>Credit</i>	<i>Miss W – sent from Monzo</i>	(-£3,075.57)		
52	30 December 2022	<i>Credit</i>	<i>Foris Dax</i>		(-£375)	
	<b>Total loss:</b>			<b>£18,902.88</b>	<b>£18,574.91</b>	<b>£18,564.41</b>

Miss W reported the fraud to all three firms when she realised she'd been scammed, but they all declined to refund the money she'd lost as they said she'd authorised the payments and made them to her own accounts. Unhappy with this, Miss W referred the matter to our service.

Our investigator upheld Miss W's complaint. She thought that all firms, including Monzo, had the opportunity to prevent Miss W's loss such that they should share liability in refunding her loss. In terms of Monzo's liability, she recommended that the bank do the following to put things right:

- Refund 100% of payments 11-15 – totaling £2,156
- Refund 50% of payments 18-26 (sharing liability with Firm C) – totaling £1,466.88
- Refund one third (33.33%) of the transactions made from payment 29 onwards (sharing liability with Firm A and Firm C) – totaling £3,329.86
- Monzo's total liability: £6,952.76

Miss W agreed to settle her complaint on this basis. Both Firm A and Firm C also agreed to settle Miss W's complaint in line with the investigator's recommendation to share liability, but Monzo disagreed. In summary, it said that it shouldn't be held liable for payments being made from Miss W's Monzo account to another regulated bank. It also said it has a duty to execute payments instructions given by its customers, which it duly followed in this case. As Monzo didn't agree, 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.

Having done so, I agree with the conclusions reached by the investigator and have decided to uphold it.

Both Firm A and Firm C have agreed to share liability for Miss W's loss, and the acts/omissions of these firms is not the focus of this decision, which is solely concerned with whether it would be fair and reasonable in these circumstances for Monzo to also share liability, which I'm satisfied it is. I'll explain why.

It isn't in dispute that Miss W has fallen victim to a scam here, nor that she authorised the disputed payments she made from her Monzo account (where her funds were transferred to

other accounts in her name before being moved on to the scammer). The payments were requested by her using her legitimate security credentials provided by Monzo and, as the bank has pointed out, the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

Monzo has said that The Supreme Court judgment in *Phillips V Barclays* upheld that a bank should carry out its customer's payment instructions promptly and it would be inappropriate for it to decline to do so.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss W's account is that she is responsible for payments she's authorised herself. And, as the Supreme Court has recently reiterated in *Philipp 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 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 December 2021 terms and conditions gave it rights (but not obligations) to:

- Block payments where it suspects criminal activity on the account. It explains that if it blocks a payment, it will let its customer know as soon as possible, using one of its channels (via its app, email, phone or by post).

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 criminal activity
- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, 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 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. Monzo has received several decisions from this service setting out our relevant considerations in this respect, so I don't consider it necessary to repeat everything again here.

But overall, 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 W's payments?*

Having considered everything, I'm satisfied there was enough unusual activity on Miss W's account to have warranted Monzo making further enquiries. I appreciate that the individual amounts Miss W was sending from her account were not uncharacteristically high in value. But there soon developed a pattern of Miss W receiving frequent deposits into her account, which would then be immediately paid out in smaller increments. Monzo ought reasonably to have been aware that such activity can be a strong indication of someone falling victim to a scam, as there would be very little reason for someone to make multiple payments in quick succession to the same payees, as this is often a tactic used by scammers to avoid detection from a bank's fraud monitoring systems.

I acknowledge that this wouldn't have been apparent from the first disputed payment Miss W made from her Monzo account, or even the payments that followed. But certainly by payment 11 on 8 December 2022, I think there was enough cause for concern that Miss W was at risk of financial harm, such that Monzo should have blocked the payment until it had spoken to her.

In reaching my view that Monzo ought fairly and reasonably to have made further enquiries, I consider the bank ought to have been mindful of the potential risk to Miss W of 'multi-stage' fraud – whereby victims are instructed to move funds through one or more legitimate accounts held in the customer's own name to a fraudster, particularly in the context of safe account scams. The use of and risks to consumers of multi-stage fraud were well known to banks in December 2022.

If Monzo had spoken to Miss W, either through the phone or through its mobile banking app,

it would have likely discovered that she was moving money after supposedly being told to do so by Monzo. It could have told her that this was a scam, and that it would never tell her to move her money.

So, I'm satisfied Monzo should fairly and reasonably have made further enquiries before payment 11 made on 8 December 2022 and, if it had, it is more likely than not that the scam would have been exposed and Miss W would not have lost any more money. In those circumstances I am satisfied it is fair to hold Monzo responsible for Miss W's loss. I am mindful, however, that there were other firms involved in the scam, which could have also done more to prevent Miss W's loss. But both Firm A and Firm C have already agreed to share liability on this basis. And I'm satisfied it's fair and reasonable for Monzo to also share liability in these circumstances, in the way that has been recommended by the investigator and agreed to by Firm A and Firm C.

Monzo has argued that it cannot be held liable for reimbursing the payments as they were made to Miss W's own accounts before being transferred on to the scammer. However, as I've set out above, the potential for multi-stage scams involving cryptocurrency wallets and other bank accounts ought to have been well known to Monzo 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, including those involving multi-stage scams. As a result, I'm satisfied it is fair to hold Monzo jointly responsible for Miss W's loss along with Firm A and Firm C.

Monzo has also made several references to the CRM Code throughout this complaint which, although it is not a signatory, it has agreed to follow the principles of. However, as explained by the investigator, Monzo's liability in this case isn't being determined in line with the CRM Code. It is accepted that the Code has no application to the payments made from Miss W's Monzo account as they were not paid to another person. So, I don't consider it necessary to address or explain further why Monzo isn't liable under the CRM Code, as this is not in dispute.

### Contributory Negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Miss W should bear some responsibility by way of contributory negligence. But I'm not satisfied she should in these circumstances.

Miss W has explained that the scammer knew personal information about her, including her name and card number, which convinced her that the call was genuine. The scammer also said they were working alongside Firm A and Firm C to prevent fraud, and she received text messages from a spoofed number that appeared to come from Firm C, which added to the authenticity of what she was being told.

Overall, I do not think Miss W could have foreseen the risk that the person she was dealing with was a scammer rather than being a genuine call from Monzo. So, in the circumstances, I do not think it would be fair to reduce compensation on the basis that Miss W should share blame for what happened.

### Recovery

Monzo was able to recover £375 from Foris Dax, but I don't think there was anything more it could've done to recover any of the other payments after the fraud had been reported, as we know the payments went to other accounts controlled by Miss W before being transferred on to the scammer, so there would've been little prospect of recovering any of the funds given we know they would've already been paid out of her receiving accounts.

### **Putting things right**

As explained above, Firm A and Firm C have agreed to share liability with Monzo. In terms of Monzo's own liability, I'm satisfied it would be fair and reasonable for it to do the following:

- Given it failed to reasonably make further enquiries from payment 11, it should refund 100% of payments 11-15 – totaling £2,156
- Refund 50% of payments 18-26 (sharing liability with Firm C) – totaling £1,466.88
- Refund one third of the transactions made from payment 29 onwards (sharing liability with Firm A and Firm C) – totaling £3,329.86
- Pay 8% simple interest per year on this amount from the date each payment was made until the date of settlement.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to pay redress in line with my direction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 4 March 2024.

Jack Ferris  
**Ombudsman**