

Complaint

Miss W is unhappy that Monzo Bank Ltd hasn't reimbursed her after she fell victim to a scam.

Background

In December 2022, Miss W was targeted by a scam. She was contacted on a social messaging platform by someone who claimed to be working on behalf of a well-known recruitment agency.

She was offered the chance to carry out an affiliate marketing role. She was asked to carry out basic administrative tasks on an online platform and was told that this would help the company's clients *"improve their product data and optimize it, resulting in better reviews for the products, and much more purchases by consumers."* Unfortunately, this wasn't a legitimate employment opportunity but a scam. In order to participate on this platform, Miss W needed to deposit funds into her account.

In total she transferred £4,189 from her Monzo account. She transferred the funds to an account with a separate business that was in her own name. From there, she transferred the funds on to an account controlled by the fraudster.

Once she realised she'd fallen victim to a scam, she notified Monzo. It looked into things but it didn't agree to reimburse her. It did, however, agree to pay her £100 in recognition of some customer service difficulties she experienced. Miss W was unhappy with Monzo's response and so she referred her complaint to this service.

It was looked at by an Investigator who upheld it. She said that the earlier payments Miss W made in connection with the scam were generally in line with the typical activity on her account. However, by the time she asked it to make a payment of £2,500, this was the sixth payment in that day and was generally larger than the typical payments from her account.

She thought that Monzo should've intervened and not processed that payment without first speaking to Miss W to satisfy itself that she wasn't at risk of financial harm due to fraud. If it had done so and asked her about the reasons for these payments, it would've uncovered the scam.

However, she also considered whether Miss W was partially responsible for her own losses. She concluded that she was and was satisfied that it was fair and reasonable for Monzo to settle the complaint on a shared liability basis – i.e. that it should only refund 50% of Miss W's losses. The Investigator noted that Miss W hadn't been leaving her contact details with recruiters and wasn't looking for work. She should, therefore, have been surprised when she was offered a role out of the blue. She also thought Miss W should've been concerned at the lack of formalities – for example, there was no contract of employment. Finally, she concluded that £100 was fair compensation for the customer service difficulties she experienced.

Monzo didn't agree with the Investigator's opinion. In summary, it argued that:

- The £2,500 payment was not unusual or out of character.
- Bank accounts are designed to enable customers to carry out everyday spending but also to allow occasional larger purchases.
- By the point Miss W made the £2,500 payment, she had deposited money with and received payments back from the payee. She therefore had an established payment relationship with that business and so the payments wouldn't have appeared out of character.
- The payments were made to an account in the customer's own name – and so Miss W hadn't experienced any financial loss at the point the money left her Monzo account. Her loss only crystallised after she moved her funds from her account with the payee on to one controlled by the fraudsters.
- The Supreme Court decision in *Phillipp v Barclays* concluded that banks are expected to carry out customer's wishes and our findings should reflect that.

Because Monzo disagreed with the Investigator's opinion, the complaint has been 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 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 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 said that the £2,500 payment was the point at which Monzo ought to have intervened and I agree with that conclusion. Having looked at the statements shared with us, I can't see any other payments of more than £1,000 leaving Miss W's account in the twelve months prior to the scam. There were two transactions for exactly £1,000 but these were payments into the account. It's also significant that she'd sent six payments in one day to a payee with which she had a fairly new relationship. I think there was a clear pattern of activity on her account that ought to have suggested that there was a risk of fraud. I don't think Monzo should've processed the £2,500 payment without first making enquiries with Miss W.

In reaching my decision that Monzo should have made further enquires, 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 authorised push payment ("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 Miss W's account gave Monzo the right 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.

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 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. And whilst it 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've explained, I'm satisfied it should've intervened. If it had done so, I find it more likely than not that Miss W would've given a candid description of the opportunity that had been offered to her. The facts concord with a commonly occurring scam type and I'd have expected an employee of the bank to recognise it. Miss W could then have been warned that the opportunity was not legitimate and that she shouldn't make any further payments. If this had happened, I'm satisfied it would've prevented her from making that payment and the one that followed.

I've also considered whether Miss W can be considered partially responsible for her own losses. In doing so, I've kept in mind what the law says about contributory negligence but also that I must decide this case on the basis of what I consider to be fair and reasonable in all the circumstances.

Having done so, I'm satisfied that it is fair and reasonable for her to be considered partially responsible and for broadly the same reasons offered by the Investigator. She should've been sceptical when receiving an unsolicited approach from a recruiter. I also think she should've been concerned by the nature of the employment proposition – she was paying money to participate in this opportunity. In most employment scenarios, the employee expects to be paid by their employer – but this arrangement turned that assumption on its head. Given that, I think she should've had her doubts about whether this could be a genuine opportunity. Overall, I think it's fair and reasonable for Monzo to only refund 50% of the money Miss W lost here.

For completeness, I've also considered whether Monzo did everything it should've done after it was notified that Miss W had fallen victim to a scam. I can see that it notified the intermediary bank promptly which then contacted the ultimate recipient of the funds.

Unfortunately, it confirmed that no funds remained and so nothing could be returned to Miss W's account.

Final decision

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

If Miss W accepts my decision, Monzo Bank Ltd should refund her 50% of her losses from the £2,500 payment onwards. It should add 8% simple interest per annum to that sum calculated to run from the date of the payments until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 21 December 2023.

James Kimmitt
Ombudsman