

The complaint

Ms J complains Monzo Bank Ltd didn't do enough to protect her when she was the victim of an investment scam.

What happened

Ms J opened a current account with Monzo in 2018. Ms J says she didn't use the account frequently between 2018 and 2022, and when she did the amounts involved were small.

In 2022 Ms J says she started looking into investment opportunities. She says she'd received compensation and wanted to improve her financial position.

Ms J says she joined an investment group – which introduced her to a genuine investment opportunity. And that a member of that investment group introduced her to a second group of people. Ms J says she ended up talking to a scammer in March 2022 as a result – without realising they were a scammer at the time – namely the leader of the second group. Ms J says the scammer convinced her – and other people in the second group – that she could make money investing in a new cryptocurrency coin that was going to be launched in June or July 2022. Ms J says she trusted the scammer she was speaking to, and that the investment appeared to be genuine. She says that she made a number of payments from her Monzo account between March and July 2022 as a result. Those payments were made to buy cryptocurrency which she then sent to the scammer believing it was being invested in the new cryptocurrency coin and one was an “audit fee” that she was told she also needed to pay. Ms J says she didn't receive the profits she'd been promised after making what she'd been told was her final payment and at that stage she realised she'd been scammed.

On 23 January 2023 Ms J contacted Monzo to say that she'd been scammed. Monzo says it asked Ms J for details of what had happened – and emailed her too as she said she was having difficulties replying to Monzo's chat – but it didn't receive the information that it had asked for. Monzo closed her claim as a result saying that it didn't have enough information to go on.

On 1 February 2023 a representative contacted Monzo on Ms J's behalf to say that it hadn't done enough to protect her when she'd fallen victim to this scam. Ms J's representatives said Monzo should refund her losses.

Monzo investigated Ms J's claim and said that it had warned her about one of the payments before she'd made it – given that it was going to a new beneficiary – and Ms J had gone ahead nevertheless. Monzo also said that as the payments had all been used to buy cryptocurrency in wallets held elsewhere in her name, the payments weren't scam payments as she'd not lost any money at that stage – she'd only done so after transferring the cryptocurrency she bought to the scammer. Monzo said that it couldn't be held responsible for that loss as it had happened after the payments had been completed. For those reasons, Monzo declined the claim. Ms J's representatives disagreed with the position Monzo took and complained to us.

One of our investigators looked into Ms J's complaint and ultimately said that they thought

Monzo should have intervened when Ms J tried to make the fifth payment as this was unusual when compared to the normal usage of the account. Had Monzo intervened, our investigator thought that the scam would have been exposed. In other words, our investigator thought that Monzo had missed an opportunity to prevent further loss to Ms J. They also thought that Ms J should share some responsibility for what had happened. So, they recommended a 50% reduction be applied to the refund. In the circumstances, our investigator recommended Monzo refunding £6,217 – in other words, 50% of Ms J's losses from the fifth payment and onwards – plus an additional 8% interest from the date of payment until the date of settlement.

Ms J's representatives accepted our investigators recommendations, including the 50% deduction. Monzo didn't. Monzo said that it can't be held liable for what happens when a customer has sent funds to another account they own. Monzo also said that it didn't feel any intervention on its part would have made a difference as Ms J had previous positive cryptocurrency investments. And it didn't think a single payment of £5,900 was enough to justify intervention. Monzo also said that our investigator hadn't included regulatory guidance requirements to justify the outcome. Monzo asked for Ms J's complaint to be referred to an ombudsman for a decision. So, it was passed to me.

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.

In this case, I'm satisfied that Ms J made 14 payments totalling just over £12,500 to various cryptocurrency exchanges between March and July 2022. All of the payments – with the exception of the first payment – were faster payments. I agree with our investigator that the first four payments were far too small to justify Monzo intervening – they were all under £150 and mostly £50 or less. The fifth payment was, however, for £5,900, and was the fourth payment Ms J had made to that beneficiary that day – and a new beneficiary at that. I agree with our investigator that this payment was unusual when compared to the normal activity on Ms J's account. I say that because other than two larger payments Ms J had made two weeks earlier – which I'll come back to later – Ms J hadn't made any payments over £1,000 for the last two years with almost all of her payments being under £100.

Ms J's representatives said that Monzo owed Ms J a duty of care in this case without going into great detail in terms of what that might involve. And Monzo mentioned what duty of care, if any, it owed briefly in its responses, but only briefly. Notwithstanding the fact that both parties have only mentioned duty of care briefly, in reaching this decision I've taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Ms J's account is that Ms J is responsible for payments Ms J has 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 if it suspects criminal activity on a customer's account. It explains if it blocks a payment it will let its customer know as soon as possible, using one of its usual 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their "business with due skill, care and diligence" (FCA Principle for Businesses 2) and to "pay due regard to the interests of its customers" (Principle 6).
- Banks have a longstanding regulatory duty "to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime" (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the "Financial crime: a guide for firms".
- Regulated banks are required to comply with legal and regulatory anti-money

laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.
- Monzo has agreed to abide by the principles CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

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 Ms J's payments?

In this case, for the reasons I have explained, I'm satisfied Monzo should have intervened. That's because I'm satisfied that the fifth payment was unusual when compared to Ms J's normal usage of the account and related to cryptocurrency too. In coming to that conclusion, I've taken into account the fact that Ms J made two "unusual" payments two weeks beforehand – one for £6,000 and one for £3,999. Those payments were made in relation to a genuine / legitimate investment opportunity. I don't think it would be fair to say that those payments meant the fifth payment Ms J made should no longer be considered unusual. I should, however, add that I have taken into account the fact that Ms J was investing in a genuine / legitimate investment opportunity at the same time – and for example, how the two opportunities contrast – when deciding what's ultimately fair and reasonable. I've said more about this below.

if Monzo had intervened ...

The key questions I have to decide is:

- whether or not that would have made a difference had Monzo intervened; and
- in the event that it would have made a difference, whether or not Monzo should be responsible for refunding all the payments Ms J made from the date that Monzo should have intervened.

Ms J was investing money in a legitimate investment scheme at the same time as she was investing in this scam. From what I've seen, these two different schemes would have felt very different to one another. The legitimate investment scheme, for example, didn't promise returns that were too good to be true – the scam, in comparison, promised returns of almost 600% in the space of two to three months. And communications in relation to the scam, for example, took place over social media. The documentation was also far less robust. I agree with our investigator that this should have given Ms J reason to question whether or not this was a genuine investment opportunity – there were plenty of red flags. I also agree that it wouldn't have taken a lot from Monzo's side – a few probing questions is probably all that was needed – to make Ms J have second thoughts about the scheme in the circumstances. In other words, I agree that an intervention from Monzo would have made a difference.

Ms J's representatives have accepted – given the red flags and the contrast between the two schemes – that in this case it's fair that both parties should share liability. I think that was the right thing to do. In the circumstances, I agree that a 50% deduction is appropriate.

Putting things right

In this case, for the reasons I've given, I agree with our investigation that Monzo should refund £6,217 – in other words, 50% of Ms J's losses from the fifth payment and onwards – plus an additional 8% interest from the date of payment until the date of settlement.

My final decision

My final decision is that I'm upholding this complaint and requiring Monzo Bank Ltd to refund £6,217 – in other words, 50% of Ms J's losses from the fifth payment and onwards – plus an additional 8% interest from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 8 February 2024.

Nicolas Atkinson
Ombudsman