DRN-4497840

Complaint

Miss A is unhappy that Monzo Bank Ltd didn't reimburse her after she fell victim to a scam.

Background

In mid-2023, Miss A was contacted on social media by someone promoting an investment opportunity. In order to persuade her that the opportunity was a genuine one, this individual showed Miss A examples of the extraordinary returns that had been earned by other clients. Unfortunately, this wasn't a legitimate investment opportunity but a scam.

She was told to open up an account with a third-party cryptocurrency platform. She made deposits into her e-wallet with that platform. Those deposits were then converted into cryptocurrency which she transferred to the scammer. In a period of five days, she transferred £6,200 to that account. This was split into four payments of £300, £1100, £1800 and £3000 respectively.

When she wanted to withdraw the returns on her investment, she was told that there were fees that would need to be paid. Each time Miss A made one of these payments, the scammer would then introduce another (previously undiscussed) fee that needed to be paid. She recognised at that point that she must've fallen victim to a scam.

She notified Monzo, but it didn't agree to uphold her complaint. It made reference to the warning message displayed during the payment process and also argued that Miss A hadn't carried out enough checks or taken reasonable steps to protect herself.

Miss A was unhappy with the response from Monzo and so she referred her complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator said that, by the time Miss A attempted to make the final payment of £3,000, Monzo ought to have recognised that there was a greater than normal risk of fraud. It shouldn't have processed that payment without first contacting Miss A to satisfy itself that she wasn't at risk of financial harm. If it had done so, she was persuaded that it could've prevented her from making the payment.

Monzo disagreed with the Investigator's view.

It said:

- Payments such as these fall outside the scope of the Contingent Reimbursement Model Code because Miss A made payments from her Monzo account to another account that she controlled.

- It's speculative to say that Miss A would've acted any differently even if Monzo had intervened, particularly given that she was persuaded by the legitimacy of the investment.

- It didn't agree that the payments were in quick succession. It might have accepted that argument if they'd been punctuated by minutes, but there were days between the payments here.

- Where a customer is investing money in cryptocurrency, one would expect those payments to be larger than the typical payments from their account.

- The Investigator's view is contrary to the approach outlined by the Supreme Court in the case of Phillip v Barclays.

- Finally, it made reference to the forthcoming changes regarding reimbursement following a scam that have been proposed by the Payment Systems Regulator.

Because Monzo disagreed with the Investigator's view, 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.

Should Monzo have intervened?

The Investigator said that it should've recognised that risk when Miss A made the fourth payment and I'd agree with that conclusion. By processing that payment, it meant Miss A had moved £6,200 to a cryptocurrency platform in a period of less than one week. While I accept that, where a customer is legitimately investing their money in cryptocurrency, one might expect larger than normal payments, that doesn't change the fact that this was activity that was significantly out of keeping with the way Miss A operated her account and was consistent with a recognised fraud pattern.

This was a relatively new account and so there wasn't much data on Miss A's typical spending patterns to serve as a basis of comparison. Nonetheless, the payment of £3,000 was significantly more than any other payment on her account and the way that the four payments were clustered in a period of five days meant it matched a pattern of payments commonly associated with scams.

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 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:

- Block payments where it suspectd 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 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 the point Miss A was attempting to make the £3,000 payment.

Would an intervention have made a difference?

As I've explained, I don't think it should've agreed to make that final payment without first contacting Miss A to ask her about it. In particular, it could've asked her about whether she had control of the cryptocurrency she was purchasing, whether there was someone managing the investment on her behalf, the returns she was promised and how she found out about the opportunity. There's no reason to believe that Miss A wouldn't have been candid in answering these questions and those answers would've revealed that she was falling victim to a commonly occurring scam.

Monzo has argued that this is speculation and that it's unreasonable to conclude that she'd have been dissuaded from making that finally payment. The truth is that it's impossible to know with certainty what Miss A would've done if Monzo had responded differently. Nonetheless, I have to decide this case on the balance of probabilities – i.e., whether it is more likely than not that Miss A would've changed course.

I think there are two important factors here. First, her explanation of events doesn't indicate that she was told to mislead the bank if questioned about the payments. There's no other evidence that contradicts that claim, nor is it inherently implausible. Second, relatively little information would need to be exchanged between Monzo and Miss A for an employee of the bank to recognise that it was extremely likely she'd been targeted by a scammer. Overall, I don't find it unreasonable to conclude that an intervention on Monzo's part would've dissuaded her from making the final payment – instead, I think the weight of the evidence supports such a conclusion.

Can Monzo be fairly held liable for Miss A's loss?

I've also taken into account that Miss A transferred the money to an account in her own name, rather than directly to the fraudster, so she remained in control of her money after she made the payments from her Monzo account, and it took further steps before the money was lost to the fraudsters. But for the reasons I have set out above, I am satisfied that it would be fair to hold Monzo responsible for Miss A's losses (subject to a deduction for Miss A's own contribution). As I have explained, the potential for multi-stage scams 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.

I'm satisfied Monzo should fairly and reasonably have made further enquiries before the £3,000 payment and, if it had, it is more likely than not that the scam would have been exposed. In those circumstances I am satisfied it is fair to hold Monzo responsible for Miss A's loss.

To what extent is Miss A responsible for her own losses?

I've also considered whether Miss A can be considered partially responsible for her own losses here. In doing so, I've taken into account what the law says about contributory negligence, but kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. Having done so, I'm persuaded that it is fair and reasonable for her to be considered partially responsible here.

The returns she was promised by the scammer were clearly too good to be true – she was told that an investment of £300 would produce a return of £20,000 in a matter of days. I also think she ought to have been more sceptical of an investment opportunity that was promoted to her on social media, particularly given that she was contacted out of the blue by the scammer. For these reasons, I think Monzo should be free to deduct 50% from the compensation it pays her.

Other issues

I have also considered Monzo's observation about the PSR's proposed mandatory reimbursement scheme, which – as currently proposed – would not require that it reimburse Miss A. However, those proposals are not yet in force and are not relevant to my decision about what is fair and reasonable in this complaint.

Final decision

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

If Miss A accepts my decision, Monzo Bank Ltd needs to pay her £1,500. It also needs to add 8% simple interest per annum to that sum calculated to run from 18 August 2023 until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 17 January 2024.

James Kimmitt
Ombudsman