

## The complaint

Mr K complains about Monzo Bank Ltd.

He says that Monzo didn't do enough to protect him when he became the victim of a scam and would like Monzo to refund him the money he has lost as a result.

## What happened

The details of what happened here are well known to all parties, so I won't repeat them here. In summary, Mr K was approached on WhatsApp about a flexible role involving data extraction, where he would complete tasks to earn commission.

Payment was to be made upfront to purchase tasks via cryptocurrency, and then Mr K would be able to withdraw his payment plus commission.

Mr K felt that this was a genuine opportunity and decided to sign up. Unfortunately, Mr K had fallen victim to a scam, and he realised this when he was asked for more and more money before he could take out the commission, he thought that he had earned.

Mr K made the following payments as part of the scam.

Date	Payee	Payment type	Amount
14/04/2023	Kucoin.com	Debit card	£100
15/04/2023	Kucoin.com	Debit card	£200
17/04/2023	Kucoin.com	Debit card	£450
17/04/2023	Kucoin.com	Debit card	£1,412
17/04/2023	Kucoin.com	Debit card	£100
17/04/2023	Kucoin.com	Debit card	£4,100
		<b>Total</b>	<b>£6,362</b>

Mr K reported the scam to Monzo, and made a complaint, but Monzo didn't uphold this.

Unhappy, Mr K then came to this Service.

Our Investigator looked into things, and initially said that Mr K should be refunded the £4,100 payment. They also said that Monzo should pay Mr K £300 for trouble and upset after Monzo didn't give a response to his complaint in a timely manner.

After receiving further information from Monzo, our Investigator then said that there should be a 50% reduction on the refund given, and reduced the trouble and upset to £100.

Mr K accepted this, but Monzo did not.

As no informal agreement could be reached, the complaint has been passed to me to make a final decision.

## 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've decided to uphold this complaint in part, for broadly the same reasons as our Investigator. I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr K authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Monzo should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Mr K when he authorised payments from his account or whether it could and should have done more before processing them.

In reaching my decision, I have also considered 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 (but not obligations) to:

- Refuse any payment instruction if it reasonably suspects it relates to criminal activity on the account.

It explained that if it blocked a payment, it would let a customer know as soon as possible via one of its usual channels which could be the Monzo app, email phone or mail.

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 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

Having looked at the payments in question here, I think that Monzo should have got in touch with Mr K when he made the payment for £4,100, to check that everything was in order and ask Mr K about what he was doing – the intention being to uncover a potential scam and protect Mr K from financial harm. The size of the payment was unusual for Mr K's usual spending pattern – and was going to a crypto provider, which carries an elevated risk.

Had Monzo got in touch with Mr K, and asked suitable probing questions about the payment, the scam would have become apparent. I haven't seen anything to suggest that Mr K was told to lie to Monzo – or conceal what he was doing – so I think he would have answered its questions openly and honestly. Monzo could then have then provided him with an appropriate and effective warning – and I don't think he would have ignored such a warning from his trusted bank.

Monzo has said that the payment for £4,100 wasn't unusual – it says that Mr K regularly made transfers between his 'pots' for larger amounts than this, and that he held a balance of around £10,000 in one of his pots – so payments of this amount aren't unusual for him. It

also says that as Mr K received payments of £2,000 and sent around £1,400 that £4,100 isn't an unexpected jump.

It goes on to say that Mr K had made payments to Coinbase the previous year, and to Kucoin earlier in the scam, so they payments to crypto wouldn't be seen as out of the ordinary for Mr K. It follows by saying as Mr K sent money to a crypto wallet in his name that the loss didn't occur from his Monzo account.

But I disagree with all of these points. £4,100 to crypto currency *is* a big jump from Mr K's usual spend – and Monzo should know that while not every payment to crypto is because of a scam, payments such as this do carry an elevated risk. Mr K may have made a crypto purchase the year before – but this isn't a recent transaction, and the payments to Kucoin were all made as part of the scam. It is also irrelevant what Mr K held in his savings pot – having savings doesn't necessarily mean that consumers will make large payments.

I also don't agree with Monzo about the loss not occurring from Mr K's account, so it should not be liable for the loss. Monzo should be aware that when a scam takes place, the funds are moved on very quickly from one crypto wallet to another – and as I've said above, I think it could have prevented this.

So, taking everything into account, I think that Monzo could have prevented the loss from payment six.

The only thing left for me to consider is if Mr K should bear some responsibility for the loss – and having thought about this carefully, I agree with our Investigator that responsibility for the loss should be shared between Mr K and Monzo from the time I think Monzo should have intervened.

I say this because Mr K doesn't appear to have taken enough care as he should have done before parting with his money. He had been contacted out of the blue with the offer of a job he didn't apply for, and for a level of pay which seemed too good to be true. And I think that having to pay to receive work and subsequent commission should have seemed unusual to him given the way that normal paid employment works.

I also agree with our Investigator that Monzo should pay Mr K £100 for trouble and upset, which I understand it has already agreed to do.

### **Putting things right**

Monzo Bank Ltd should pay Mr K 50% of the £4,100 – I calculate this to be £2,050. On top of this, it should also pay Mr K 8% simple interest, from the date of the payment until settlement (less any lawfully deductible tax).

It should also pay Mr K the £100 it has agreed to if it hasn't done so already.

### **My final decision**

I uphold this complaint in part. Monzo Bank Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 July 2024.

Claire Pugh  
**Ombudsman**