

The complaint

Mr H 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

Mr H was searching for an additional means of income for his upcoming wedding when he received a WhatsApp message offering remote work from a seemingly legitimate business.

He was told that he would be helping businesses gain more exposure using reviews. He would need to purchase tasks to complete, via cryptocurrency, and then on completion would receive a salary and commission.

Unfortunately, Mr H had fallen victim to a scam, and lost his money. By the time Mr H realised he had been scammed, he had made the following payments to the scammer.

Date	Payee	Payment type	Amount
2 December 2022	Banxa	Faster payment	£81
6 December 2022	Banxa	Faster payment	£146.78
6 December 2022	Mr T – Wise account	Faster payment	£18
6 December 2022	Mr T – Wise account	Faster payment	£20
6 December 2022	Mr T – Wise account	Faster payment	£329.55
7 December 2022	Mr T – Wise account	Faster payment	£725
7 December 2022	Mr T – Wise account	Faster payment	£1,510
9 December 2022	Mr T – Wise account	Faster payment	£5,300
9 December 2022	Mr T – Wise account	Faster payment	£196
9 December 2022	Mr T – Wise account	Faster payment	£2,500
9 December 2022	Mr T – Wise account	Faster payment	£50
9 December 2022	Mr T – Wise account	Faster payment	£10
9 December 2022	Mr T – Wise account	Faster payment	£10
		Total	£10,896.33

Mr H complained to Monzo about what had happened – but it didn't uphold his complaint.

Unhappy, he then came to this Service. Our Investigator looked into things and thought that the complaint should be upheld in part. Mr H accepted this, but Monzo did not.

As no informal resolution was 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 H 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 H 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:

- (Block any payments if...) we suspect criminal activity on your 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 criminal activity.
- It had a contractual right to delay payments to make enquiries where it suspected criminal activity.
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity, 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 considered the payments in question here, I agree with our Investigator that Monzo should have got in touch with Mr H when he made the payment of £2,500 on 9 December 2022 - to check that everything was in order and ask Mr H about what he was doing – the intention being to uncover a potential scam and protect Mr H from financial harm.

While the previous payment was for a higher amount, this payment was going to an account in Mr H's own name – and it isn't unusual for a customer to make a one-off high payments. However – when Mr H made the payment for £2,500 on the same day, a pattern was beginning to emerge.

I understand that Monzo provided Mr H with a warning when he set up the new payees on his account – but I don't think that this goes far enough in providing an effective warning to Mr H about scams. And I think if Monzo had got in touch with him and questioned him about what he was doing, I think that he would have explained this to Monzo, and it would have been apparent that he was falling victim to a scam.

I also know that Monzo doesn't agree that it should be liable for the loss as Mr H sent his money to his own account with Wise before it was moved on to the scammer – but Monzo should know that when a scam takes place, money is quickly moved on from another account, and as I think that it should have got in touch with Mr H, it could have prevented this from happening.

Therefore, I think that Monzo missed an opportunity to intervene, and should refund Mr H from this point.

The only thing left for me to consider is if Mr H 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 H and Monzo from the time I think Monzo should have intervened.

I say this because Mr H 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.

Putting things right

Monzo should refund Mr H 50% of the transactions from payment 10, less the credit of £3.47 Mr H received back from his account with Wise.

I calculate this to be £1,283.27. On top of this, Monzo should pay Mr H 8% simple interest from the date the payments were made until settlement (minus any lawfully deductible tax).

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 H to accept or reject my decision before 12 July 2024.

Claire Pugh
Ombudsman