

## **The complaint**

Miss P complains Monzo Bank Ltd didn't do enough to protect her when she fell victim to a job scam.

## **What happened**

Miss P, who has a representative, has an account with Monzo Bank and an account elsewhere.

Miss P says she was looking for work when she received a message from someone claiming to be from a recruitment company. Miss P says she was offered an opportunity to earn a basic salary and commission. Miss P says the company appeared to be professional and genuine. She says she was added to a group chat of other "employees" who reassured her everything was OK.

Miss P says she was shown how to make cryptocurrency purchases and how to complete tasks. Miss P says the first payments she made were small and she was able to make withdrawals too. However, she says that the payments got larger and that when she didn't complete her tasks on time she was told she'd have to pay a security deposit. Miss P says that she realised she'd been scammed when she ran out of money and was told that the only way to get her money back was to pay a withdrawal fee to upgrade her membership.

On 9 May 2023 Miss P's representative contacted Monzo to say that Miss P had fallen victim to a job scam and that Monzo hadn't done enough to protect her. They asked Monzo for a refund along with 8% interest. Monzo says that was the first time it had been told Miss P had been scammed, so it would reach out to her to ask for more information. Monzo did so and says Miss P said she wasn't in the right state of mind to reply. Monzo says it reached out to the recipient banks in the meantime but was only able to recover around £80.

Monzo investigated Miss P's claim and said that it wasn't able to refund her payments for a number of reasons. For a start, Monzo said that any loss that Miss P had experienced happened after her money had been used to purchase cryptocurrency, so it couldn't be liable as it was no longer involved. Monzo also said that Miss P should have completed more due diligence before making the payments she had. And that it had sent her low friction warnings when she'd tried to make payments to new payees, but she'd decided to go ahead. Miss P was unhappy with Monzo's response, so her representative complained to us.

One of our investigators looked into Miss P's complaint and agreed with Monzo that the Contingent Reimbursement Model didn't apply to the payments Miss P had made for a variety of reasons. But they said that Monzo should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customers were at risk of fraud. And on that basis they thought that Monzo ought to have been concerned when Miss P attempted to make a payment of £5,000 on 13 April 2023 – as that took the amount of money she'd sent to new payees on that day to £7,500. Our investigator thought that this payment was, in the circumstances, unusual when compared to Miss P's normal account usage. And that Monzo should, therefore, have intervened. In addition, our investigator said that Monzo was talking to Miss P about this

payment at the time, albeit because she had concerns it hadn't been received. Our investigator thought that had Monzo intervened, the scam would have almost certainly been detected. And that, in the circumstances, Monzo has missed an opportunity to prevent further loss to Miss P. Given all the red flags, however, our investigator also thought liability should be shared between Monzo and Miss P on a 50 / 50 basis.

Miss P's representatives accepted our investigator's recommendation and said they hoped Monzo would do so too. However, Monzo didn't accept our investigator's recommendations saying that all the reported payments were legitimate and, as such, it would have been inappropriate of it to intervene in the payment journeys. Monzo also said that our investigator's recommendation would require it to intervene in thousands of transactions daily which was inappropriate given *Phillips v Barclays*. Monzo asked for a decision from an ombudsman. So, the complaint 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 Miss P made ten payments to eight different beneficiaries totalling £25,635 from her Monzo account between 2 March 2023 and 28 April 2023. I agree with Monzo that there was nothing sufficiently unusual about the first four payments Miss P made – at least not sufficiently unusual for it to intervene. I say that because the payments were larger than normal for Miss P's account – she generally used it for smaller payments – but I don't think they were large enough to be of concern. One was for £2,500 on 13 April 2023 and the rest were all on 2 March 2023 and were for £170, £1,500 and £850.

Our investigator has said that they would have expected Monzo to intervene when Miss P attempted to make a £5,000 payment on 13 April 2023. That's because she'd already made a £2,500 payment that day to another cryptocurrency merchant meaning this payment took the total she'd sent to new beneficiaries that day to £7,500. Miss P also contacted Monzo about this £5,000 payment as she was concerned it hadn't gone through, so she was speaking to Monzo at the time. In other words, Monzo had an opportunity to ask what the payment was for and should have done. I agree with our investigator that Monzo should have intervened for the same reasons. I can see that Monzo made a note of the fact that Miss P had applied for a loan from them around the same time – which Monzo had declined – had then received approximately £20,000 – I'm satisfied having pawned jewellery and borrowed money – and had asked for her limit to be increased for just one day as she needed to send money to someone urgently and that it might be worth reaching out to see if she needed support. I think these were additional reasons why Monzo ought to have had concerns, and ought to have asked Miss P more questions when she got in contact about the payment she'd made saying she was concerned it hadn't gone through.

For the avoidance of doubt, the £5,000 payment I'm referring to – and the investigator referred to – is the first £5,000 payment Miss P made to the new beneficiary in question. I say this because I can see she made a second £5,000 payment to them. That payment is sometimes said to have been made on 13 April 2023 and sometimes on 14 April 2023. I'm not referring to that second payment when saying what point I believe Monzo should be refunding from – I'm referring to the first payment.

### ***Monzo says it wasn't under a duty to intervene***

In its response to our investigator's recommendation that this complaint be upheld, Monzo said that our investigator's recommendation would require it to intervene in thousands of transactions daily which was inappropriate given *Phillips v Barclays*. So, I think it's helpful to

say more about this.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss P's account is that Miss P is responsible for payments Miss P has authorised himself. 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 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.

Had Monzo intervened when Miss P attempted to make the £5,000 payment she made on 13 April 2023, I'm satisfied that Miss P would have realised that she was being scammed, as I don't think she would have answered any questions Monzo put to her dishonestly. In other words, I'm satisfied that Monzo would have discovered that Miss P was falling for a job scam. I'm satisfied too that if Miss P had explained what had led up to this – and the steps she'd taken to satisfy himself that it was a genuine opportunity (which were limited) – that Monzo would have rapidly spotted numerous red flags. In short, I agree with our investigator that Monzo missed an opportunity to prevent further loss to Miss P.

Our investigator has set out in considerable detail the numerous red flags that should have made Miss P realise that this wasn't a genuine opportunity. I'm not going to repeat them here, other than to say that I agree Miss P could and should have done a lot more to satisfy herself that this wasn't a scam. I can also see from the chat history with the scammer that Miss P had concerns early on. In the circumstances, I also agree that a 50% reduction to the losses Monzo should refund is fair and reasonable.

### **Putting things right**

In this case, for the reasons I've given, I agree with our investigator that Monzo should refund 50% of Miss P's losses from the £5,000 payment she made on 13 April 2023 onwards plus an additional 8% simple interest from the date of the payment to the date of settlement.

### **My final decision**

My final decision is that I'm upholding this complaint and requiring Monzo Bank Ltd to refund 50% of Miss P's losses from the £5,000 payment she made on 13 April 2023 onwards plus an additional 8% simple interest from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 7 June 2024.

Nicolas Atkinson  
**Ombudsman**