

The complaint

Mr F complains Monzo Bank Ltd (Monzo) won't refund the money he lost when he fell victim to a scam.

What happened

Mr F was looking for part time work when he was contacted on a messaging app by someone claiming to be a recruiter with a job opportunity. He was added to a group with others who he understood were doing this job – which involved completing tasks online, supposedly to optimise apps. He had to make payments to the site to access the tasks, which he did by sending funds from his Monzo account via a cryptocurrency platform. Mr F thought he would earn a salary and commission. Unfortunately, the job was a scam.

In May 2023, Mr F made a payment of £1,200 to the scam via his Monzo account. The next day he sent payments of £2,000, £60, and £7,105.16 respectively. These were largely funded by a £2,000 loan he took out with another firm, and a £7,000 loan he took out with Monzo.

When Mr F was continuously asked to load more funds to complete tasks, he became suspicious and searched online for similar scams. He found the details of the company he thought he had been dealing with and contacted them. They confirmed they had been impersonated, and the job was a scam.

Mr F reported the scam to Monzo, explaining he would struggle to repay the loan as a result. Due to the time Monzo took looking into his scam claim, Mr F complained. Monzo paid him £100 for the service issues during the claim and offered him support with his loan. But it didn't agree to refund him for the scam – arguing the scam payments occurred from his cryptocurrency wallet, not his Monzo account.

Unhappy with this response, Mr F referred his complaint to our service. Our investigator thought the service compensation and loan help Monzo had offered was fair. While she didn't think Monzo had cause to suspect Mr F was at risk of fraud immediately, she thought it should have been concerned about the last disputed payment. She recommended Monzo should refund 50% of this payment, with interest – as she thought appropriate intervention by Monzo at this point would have uncovered the scam, but also considered it fair to expect Mr F to share liability for the loss incurred.

While Mr F has accepted the investigator's outcome, Monzo has appealed. It argues it isn't liable as the fraudulent loss was incurred from the cryptocurrency wallet; it has a duty not to interrupt legitimate payment journeys; and the payment didn't look unusual as Mr F had made cryptocurrency payments beforehand – nor was the size considered large.

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 agree with the conclusions reached by the investigator. I'll explain why.

In line with the Payment Services Regulations 2017 (PSRs), the starting position is Mr F is liable for payments he authorises. As Monzo has pointed out, the Supreme Court has also recently considered the nature and extent of the contractual duties owed by banks when making payments in "*Philipp v Barclays Bank UK PLC [2023] UKSC 25*". 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 from April 2023 gave it rights to:

- 1) Block payments where it suspected criminal activity on the account, or to protect the customer from fraud.
- 2) Refuse to make a payment if it suspected the customer was a victim of fraud. Or to not make a payment if it reasonably believed the payment may be connected to a scam, fraud, or other criminal activity.

Overall, I consider Monzo was under an implied duty in law to make payments promptly. It had a contractual right not to make payments, or to delay payments to make enquiries, when 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.

While I accept 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 to 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, I don't think the first three scam payments looked so unusual for Mr F, or otherwise concerning, that it was wrong from Monzo to execute his payment instructions without completing further checks. But I do think it ought to have been concerned by the time of the fourth scam payment.

While Monzo argues this payment – for £7,105.16 – wouldn't be considered a high payment, I don't agree with that *in the context of how Mr F usually transacted on his account*. I think it looked significantly unusual for him. Especially in the context of it being the third payment that day, and the fourth in two days, to what appears to have been a new payee.

Monzo argues it didn't look unusual as Mr F had made cryptocurrency-related payments prior. But these were all for significantly less than the fourth disputed payment. And he didn't have a history of making multiple cryptocurrency payments within a day – nor of making payments of this size at all. I'm therefore persuaded Monzo ought to have been concerned, and so should have taken further action before processing this payment.

I have taken into account that Mr F transferred the money to a cryptocurrency wallet in his own name, rather than directly to the scammer. But for the reasons I set out earlier, I'm satisfied it would still be fair to hold Monzo responsible. By the time of these payments, cryptocurrency scams had risen greatly in frequency, including multi-stage scams, and it's reasonable to conclude Monzo had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud.

If Monzo had reached out to Mr F to find out more about the circumstances of this payment, I think it's likely this would have uncovered the scam and thereby prevented Mr F's further fraudulent loss. Looking at his contact records with the scammers, these suggest he would have been upfront about what he was doing if questioned – as he was when he proactively contacted Monzo the following day. It doesn't appear he had been coached on what to say about the payments.

I therefore think it's likely that, in response to open questioning, Mr F would have explained he was sending cryptocurrency on as part of an online job completing tasks. I would have expected Monzo to have realised, and warned Mr F, that no legitimate job would operate in this way. I think this would have prevented him from proceeding. Particularly as the messages he's provided suggest he already had some concerns about what he was being asked to do.

For the reasons given above, I think it's fair to hold Monzo liable for the loss Mr F incurred due to its failure to intervene appropriately. However, I think it would also be fair to expect him to share liability for this loss, to reflect his role in what happened.

I can see from the messages that the scammers were using impersonation tactics and social engineering to persuade Mr F to continue sending payments. But the messages also suggest he had concerns about what he was being asked to do. Yet he didn't look into the company he thought he was dealing with until after he had paid £10,000 in cryptocurrency – a large proportion of which he had borrowed – in order to receive a salary.

I think it should have been concerning to Mr F that he was being asked to pay so much in order to *earn* money. Furthermore, I think the way the scammers contacted him about the job opportunities should have struck him as unusual for a genuine job. It also doesn't appear he was sent a contract for the work, as you would normally expect when undertaking employment.

All in all, I think Mr F ought to have looked into the job opportunity further. And when he did so, he was able to identify it was a scam. I therefore consider it fair to reduce Mr F's compensation by 50% to reflect his contributory negligence.

It appears the concerns Mr F has raised about the service provided by Monzo (separate to its *decision* on his scam claim) have been resolved. But for completeness – I agree with the investigator that the £100 compensation Monzo has paid is a fair reflection of the distress and inconvenience caused by its service failings when looking into the scam claim. I think there were delays, which would have been frustrating. But I don't think the non-financial impact of this on Mr F warrants further compensation. This is taking into account that I am awarding interest on top of his loss to compensate him for the loss of use of the funds.

I'm also satisfied Monzo has treated Mr F fairly regarding his concerns about repaying the loan. It gave him a breathing space on the loan, froze the interest, and has agreed a repayment plan with him based on what he can afford to repay each month. I think these concessions show it treated Mr F with forbearance in light of his circumstances.

Overall, I've therefore decided the investigator's proposal that Monzo should refund 50% of the last disputed payment, with interest, would be a fair and reasonable way to resolve this complaint.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. Monzo Bank Ltd must refund Mr F 50% of the last disputed scam payment (for £7,105.16). It should also pay 8% simple interest per year on this amount, running from the date of payment to the date of settlement, less any tax lawfully deductible.

Monzo Bank Ltd must pay this compensation within 28 days of the date on which our service tells it Mr F accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 May 2024.

Rachel Loughlin
Ombudsman