

The complaint

Ms A complains that Monzo Bank Ltd ('Monzo') won't refund the money she lost after falling victim to a scam.

What happened

Ms A says she was contacted via a social media app by someone posing as a recruitment agent. Ms A was offered a role working for a large well known UK company. Ms A was told that the job could be done in as little as 20-60 minutes per day, and she could earn a basic salary of £3,000 per month. The job would require her to buy sets of tasks to complete. Ms A was shown an online platform which would track her balance, what tasks were available for her to purchase, and log the tasks she'd completed.

To buy the tasks, Ms A needed to transfer cryptocurrency to the online platform. So, Ms A purchased cryptocurrency which was paid into a wallet in Ms A's name, before being sent to the platform. These are the payments Ms A made from her Monzo account.

Date	Time	Pmt No	Transaction details	Amount
21.4.2023		1	Payee 1	£164.00
22.4.2023	06:17	2	Payee 1	£409.65
22.4.2023	10:35	3	Payee 2	£902.89
22.4.2023	12:26	4	Payee 3	£1,717.60
22.4.2023	16:51	5	Payee 4	£1,500.00
22.4.2023	17:29	6	Payee 4	£1,842.00
			Total loss	£6,536.14

Ms A says she completed 40 tasks on the first day and completed 38 tasks on the second day. However, each set of tasks became more expensive than the previous set, and Ms A's balance on the platform dipped into negative. Ms A was told that her platform account would be frozen, and she couldn't withdraw her earnings without adding more funds to her account. At this point, Ms A realised it was a scam and raised a fraud claim with Monzo.

Monzo declined to refund Ms A saying she'd been given a new payee warning, and that she hadn't completed sufficient checks before making the payments.

Ms A wasn't happy with Monzo's response, so she brought a complaint to our service.

An investigator looked into Ms A's complaint and partially upheld it. The investigator felt Monzo should've intervened when Ms A made the fourth payment of £1,717.60, based on the pattern of the payments and Ms A having set up three new payees in the same day.

However, they felt Ms A should've done more to mitigate her loss, so only recommended that Monzo refund 50% of the payments.

Monzo disagreed with the investigator's opinion and raised the following points:

- Ms A regularly makes faster payments, so these payments weren't unusual activity on her account.
- The loss occurred from Ms A's cryptocurrency wallet, so Monzo aren't liable for her loss.
- There is a legal precedent and expectation (Philipps vs Barclays UK PLC court case) that banks should carry out customer's wishes.
- Ms A has been negligent and should've been concerned about the legitimacy of the job. They highlighted that the platform Ms A used didn't bear the genuine company's logo and the company's name was misspelt – along with other concerning aspects of the job.

As Monzo didn't agree with the investigator's opinion, the case was passed to me to review. Having reviewed the case, I intended to reach the same overall outcome as the investigator, but with a different redress award. So, I issued a provisional decision, sharing my reasoning and giving both parties a chance to respond.

My provisional decision

In my provisional decision issued 25 January 2024, I said:

In broad terms, the starting position in law is that Monzo are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

Monzo aren't a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (the CRM Code), but they've agreed to adhere to the provisions of the Code. However, the CRM Code doesn't apply to payments made for legitimate purposes. In this case, Ms A purchased cryptocurrency from independent third parties, which she transferred into a wallet in her own name, before passing the funds onto the scammer. So, I can't consider Ms A's case under the CRM Code.

Monzo have referred to the Philipp v Barclays UK PLC court case, saying there is a legal precedent and expectation that they should carry out customer's payment 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 6 December 2021 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 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.

Should Monzo have intervened before following Ms A's payment instructions?

Having reviewed Ms A's previous account activity, I'm satisfied that Monzo should've identified a scam risk when she made the fifth payment – for £1,500. I say this because while Ms A regularly made faster payments from her account, I can't see that she regularly set up multiple new payees on the same day and this was the third new payee on the same day. Also, this payment meant that Ms A had transferred over £4,500 which was unusual for her account. Usually, Ms A made small payments from her account, with no payments out of her account larger than £1,000.

I think this combination of factors meant that the activity was so unusual and out of character that Monzo should've identified a potential scam risk and intervened.

I'm satisfied that had Monzo intervened and contacted Ms A to ask questions about this payment, it's more likely than not the scam would've been uncovered. I say this because all the information Ms A had about the job wasn't indicative of a genuine job offer and would've suggested she was the victim of a scam. The salary she was quoted was unrealistically high, she was being asked to pay money in order to earn a salary and the website she was using wasn't branded accurately for the company she thought she was working for. Also, Ms A hadn't been able to withdraw any earnings or commission, and the increasing payment pattern out of her Monzo account is something that is common in scams. On that basis, Monzo should refund payments 5 and 6.

But, I've also considered whether Ms A should share liability for her loss.

Should Ms A have done more to mitigate her loss?

Ms A says that she believed it to a genuine employment opportunity because of professional onboarding, training and support from a customer support agent. However, I'm satisfied that there were sufficient red flags that Ms A should've been concerned and completed independent checks – which would've quickly highlighted that this was a scam. I say this because:

- The salary Ms A was being offered of £3,000 per month was unrealistic for the type of work she was being asked to do and the amount of time she was told she would need to commit per day.
- While Ms A refers to professional onboarding and training, the platform that she was using didn't have the genuine company logo and the company name wasn't spelled correctly – it had a shortened version of their name. It also didn't look as professional as I would expect for a large UK company.
- Ms A believed she was being employed by a large company, however there was no paperwork to set out the terms of her employment – which would be usual practice.
- I think Ms A also should've had concerns about being employed on a basis where she had to pay her employer, in order to get work that she would get paid for.
- Especially as she was being asked to buy cryptocurrency then send that cryptocurrency to the employer's platform – this was very unusual and should've been concerning for Ms A.

Taking all of these points into consideration as a whole, I think a reasonable person would've been concerned about the legitimacy of the job offer that was presented to them. Any basic checks with the genuine company, or about the level of pay for roles with that firm would've quickly highlighted to Ms A that this was most likely a scam. On that basis, I think it's fair for Ms A to share equal responsibility for her loss with Monzo. So, Monzo should only refund 50% of payments 5 and 6. As Ms A has been without the use of this money, Monzo should pay interest on the refund at 8% simple interest, calculated from the date Ms A made the payments, until the date of settlement.

My provisional decision was that I intended to partially uphold this complaint.

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.

Both Ms A and Monzo responded to the provisional decision saying they accepted my recommendation.

As neither party provided any new evidence for me to consider, I see no reason to reach a different outcome or redress recommendation.

On that basis, I'm satisfied it's fair for Monzo to refund 50% of payments 5 and 6, with Ms A sharing responsibility for her loss. Monzo should pay interest on that refund calculated at 8% simple interest per year, calculated from the date Ms A made the payments until the date of settlement.

Putting things right

To put things right Monzo Bank Ltd should:

- Refund 50% of payments 5 and 6 – being a refund of £1,671.
- Pay simple interest of 8% per year on that refund, calculated from the date Ms A made the payments until the date of settlement*

**If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms A how much it's taken off. It should also give Ms A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

My final decision is that I partially uphold this complaint against Monzo Bank Ltd and require them to compensate Ms A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 5 March 2024.

Lisa Lowe
Ombudsman