DRN-4624211

**The complaint**

Miss B complains that Monzo Bank Ltd won't refund her the money she lost after she fell victim to an Authorised Push Payment (APP) scam.

In bringing her complaint to this service Miss B is represented, but for ease of reading I'll refer to Miss B throughout this decision.

**What happened**

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In or around April 2023, Miss B came across an investment opportunity through social media, which was endorsed by a well-known celebrity. Miss B expressed an interest and was later contacted by a representative from what she thought was a legitimate investment company, who I'll refer to as 'TE'.

TE persuaded Miss B to invest an initial sum of £170, which she did using a credit card. Miss B was led to believe that this investment had increased to £500 within a week. This encouraged Miss B to invest more and, believing everything to be genuine, she went ahead and took a loan out for £6,000, which she used to make a further investment. Miss B made a payment for £6,000, via Open Banking, from her Monzo account to a crypto wallet she'd set up. But unknown to her at the time she was dealing with fraudsters and subsequently sent the money onto accounts the fraudsters controlled. She realised it was a scam when TE wouldn't let her withdraw her money and then started to demand more money, before they became uncontactable.

Miss B raised the matter with Monzo, but it declined to reimburse her the money she had lost as it didn't think it was liable, primarily because she'd sent the money from Monzo to an account in her own name, and because it said she hadn't taken sufficient steps to verify the legitimacy of who she was paying and what for.

Unhappy with Monzo's response, Miss B brought her complaint to this service. One of our Investigator's looked into things and thought Monzo should be, at least in part, held liable for Miss B's loss. In summary, he said this because he thought at the time Miss B made her payment there was enough going on that Monzo should have intervened and spoken to her about the payment, before allowing it to be progressed. It was our Investigator's view that if there had been an effective intervention, then the scam could have been prevented from this point.

But our Investigator also thought Miss B should bear some responsibility for her loss, this was because he didn't think it was evident that Miss B had completed any research before proceeding and had proceeded without any care, or consideration of risk.

Overall our Investigator recommended that Monzo should refund Miss B 50% of the value of her loss, along with interest.

Miss B agreed with our Investigator's view, but Monzo disagreed. In summary it said;

- It considered the payment as out of scope as the money went to a crypto account in the customer's name, therefore the fraud did not occur on Monzo's platform.

- There were no grounds for it to intervene on the payment Miss B made. Adding that it would be inappropriate to interrupt legitimate payment journeys. It believed the principles behind the Supreme Court judgement in the case of Philipp vs Barclays Bank Plc UK were applicable to this case.

As agreement couldn't be reached the complaint has been passed to me for a 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.

There's no dispute that this was a scam, but although Miss B didn't intend her money to go to fraudsters, she did authorise the disputed payment which was sent from her Monzo account. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss B's account is that Miss B is responsible for payments she authorised. 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 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 it's 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)[1].

- 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".*[2].

- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those

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[1] Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.
[2] For example, both the FSA's Financial Crime Guide at 4.2.5G and the FCA's 2015 "Financial crime: a guide for firms" gave examples of good practice in relation to investment fraud saying:

*"A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.*

*A bank contacts customers if it suspects a payment is being made to an investment fraudster.*

*A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules."*

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.

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.

*Should Monzo have fairly and reasonably made further enquiries before it processed Miss B's payment?*

I note that Monzo's final response to Miss B says that the payment was instructed via Open Banking which meant it was unable to present a warning before it was authorised. But the Open Banking payment was a Faster Payment. And, as mentioned above, Monzo is required to exercise reasonable skill and care, pay due regard to the interests of its customer and follow good industry practice to help protect the account and funds. That includes monitoring accounts for payments that could indicate that its customer was at risk of financial harm.

That means Monzo needed to ensure it had systems in place to monitor Miss B's account for unusual transactions or other indications she may have been the victim of fraud. I'm satisfied that as a payment service provider Monzo could have intervened in an Open Banking payment for fraud detection and prevention purposes, much like it would do with other Faster Payments that include the relevant risk factors.

I've reviewed Miss B's Monzo bank statements and I think it's fair to say the value of payments made were generally modest and for day-to-day spending. In the six months preceding the payment Miss B made, which ultimately ended up with fraudsters, there weren't any transactions that approached the value of the payment that was lost. And Miss B's account balance was generally under £500 during this period. So I'm satisfied that a deposit of £6,000 on 24 April 2023 followed by a payment, to the same value, shortly after represented a significant departure from how the account was typically run. So much so, that I think Monzo ought reasonably to have contacted Miss B either by phone or its live chat facility and asked her why she was making the payment.

I've gone on to consider whether I think it more likely than not an intervention would have made a difference. I think there are two important factors here. First, Miss B's explanation of events don't indicate that she was told to mislead the bank if questioned about the payments. There's no other evidence that contradicts that claim, nor is it inherently implausible. Second, relatively little information would need to be exchanged between Monzo and Miss B, when she was making the payment, for an employee of the bank to recognise that it was extremely likely she was at risk of financial harm. Overall, I don't find it unreasonable to conclude that an intervention on Monzo's part would've dissuaded Miss B from making the payment – instead, I think the weight of the evidence supports such a conclusion. I'll explain why.

If Monzo had questioned Miss B further about this payment, for reasons explained I've no reason to doubt she would have spoken freely about the purpose, after all she wasn't being coached by the fraudster to provide a cover story which can sometimes, but not always, be the case with these type of scams.

I've thought carefully about whether the kind of questions that I believe ought fairly, reasonably and proportionally to have been asked by Monzo would've made a difference. And on the balance of probabilities, I think they would have. If Monzo had asked around the basic surrounding context of the payment Miss B was making, I think it's likely she would have explained what she was doing, i.e. that she was sending money to a newly opened account with a cryptocurrency platform for the purposes of making an investment.

I wouldn't expect Monzo to have just accepted the reason for the payment at face value before releasing the funds. As I've set out above, Monzo ought to have had a good understanding of how 'multi- stage' fraud commonly works. It could have enquired as to how Miss B had found the investment opportunity and whether anyone else was involved.

Had it done so, as I think it ought to have done, it could've discovered that she had found the investment opportunity through social media, which had supposedly been endorsed by a celebrity, and that a broker, who had remote access to her device, was advising her to transfer money to a newly opened account to purchase cryptocurrency. Alongside this it could have established that TE had told her she could begin to realise substantial profits within days and weeks, with minimal risk and that she'd been advised to take out a loan to fund the investment.

These are all common hallmarks of investment scams and ought reasonably to have alerted Monzo that Miss B was most likely being scammed. So, I think it missed an opportunity here to uncover the scam and prevent the loss.

I understand Miss B transferred the funds to an account in her name, rather than directly to the fraudsters, before subsequently moving the money onto accounts controlled by the fraudsters. But, for the reasons I've set out above, I am satisfied that it would be fair to hold Monzo responsible for Miss B's losses (subject to any deductions that I'll comment on below). The potential for a multi-stage scam of this nature ought to have been well known to

Monzo and as a matter of good practice it should fairly and reasonably have been on the lookout for payments that represented an additional scam risk, including those involving multi-stage scams.

In summary and in my view, Monzo should've fairly and reasonably intervened before approving the £6,000 payment and, if it had, it is more likely than not that the scam would've been identified at that time. And if the scam had been identified before the payment of £6,000 was made, Miss B wouldn't have lost those funds.

*Should Miss B bear any responsibility for her losses?*

There is a general principle that consumers must take responsibility for their decisions, and I am mindful of the law relating to contributory negligence and the impact a finding of contributory negligence may have to reduce the damages recoverable by a claimant in court proceedings.

I have duly considered whether Miss B should bear some responsibility by way of contributory negligence, and I'm satisfied she should in the circumstances of this case. I say this because I consider there to have been enough warning signs that she was being scammed, which Miss B does not appear to have reasonably acknowledged or acted upon.

Miss B had been told that she could realise profits in excess of 100% and with minimal risk, within a matter of days. I think the promise of a return of this magnitude and so soon after investing ought to have stood out to Miss B as being improbable, to the point of simply being too good to be true.

Alongside this, I've not seen that Miss B was provided with any documentation regarding her investment or that she questioned why she should take a loan out to enable her to invest more money. I don't think a legitimate investment firm would recommend to its customers that they obtain credit in order to invest, or that they would ask for remote access, as happened here.

As a result, I'm satisfied Miss B should've had reasonable cause for concern, but it doesn't appear that she made adequate enquiries into the legitimacy of what she was being told. I might understand how in isolation any one of these things may not have prevented Miss B from proceeding. But when taken collectively I think there were sufficient red flags here that reasonably ought to have led Miss B to have acted far more cautiously than she did.

So, I think Miss B did have a role to play in what happened and I think that the amount Monzo should pay to her in compensation should fairly and reasonably be reduced to reflect that role. I think that a fair deduction is 50%.

Lastly, I've considered whether Monzo should have done more to try to recover Miss B's money. But as the payments went to her own cryptocurrency account, there wasn't anything more that Monzo could reasonably do there, as the money was subsequently moved onto fraudsters, so there would have been no prospect of Monzo recovering any of the money.

**Putting things right**

For the reasons explained above Monzo Bank Ltd should now:

- Refund Miss B 50% of the payment she made to the fraudsters, being £3,000 (50% of £6,000).

- Pay 8% interest on this amount, from the date the payment was made to the date of settlement.

## My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 June 2024.

Stephen Wise
**Ombudsman**