

Complaint

Miss M is unhappy that Monzo Bank Ltd didn't reimburse her after she told it she'd fallen victim to a scam.

Background

In later 2023, Miss M was offered a part-time role working remotely. The role was in affiliate marketing – essentially, she was asked to complete tasks on an online platform maintained by the company. Completing those tasks would earn her commission. However, from the outset, she was expected to fund her account by making deposits. She did so in the anticipation that she'd be able to earn those costs back as part of her commission payments. Unfortunately, this wasn't a legitimate job opportunity, but a scam.

She made the following payments by card on 10 and 11 October 2023.

- £59
- £160
- £444
- £1,050
- £1,870

She made these payments to a third-party cryptocurrency platform. Those funds were then converted into cryptocurrency by the fraudsters and transferred into their control. When Miss M realised that she'd fallen victim to a scam, she notified Monzo. It didn't agree to reimburse her. It said that no fraud had occurred at the point the funds left her Monzo account – that only took place when the funds left her e-wallet with the cryptocurrency platform. It said she should instead complaint to the cryptocurrency platform. It did, however, offer her £125 for the time it took to respond to her claim.

Miss M wasn't happy with that response and so she referred a complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator said that Monzo was expected to be on the lookout for account activity that was unusual or out of character to the extent that it might have been connected with fraud. In the Investigator's view, the final payment Miss M made (£1,870) was the point at which those concerns should've resulted in an intervention. However, the Investigator was also persuaded that Miss M should bear some responsibility for her own losses by way of contributory negligence.

He recommended Monzo refund 50% of the final payment. Monzo disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments

and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. Monzo has agreed to follow the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. However, the Code doesn't cover these payments. They were card payments used to fund the purchase of cryptocurrency and, as a result of the transactions, Miss M did take ownership of the underlying cryptoassets. In other words, the transactions that left her Monzo account were legitimate purchases of cryptocurrency. In summary, for the CRM Code to apply, it requires that she *"transferred funds to another person for what [she] believed were legitimate purposes but which were in fact fraudulent."* The fact that Miss M later transferred the cryptocurrency to a blockchain address controlled by the fraudster doesn't mean that these initial payments from her Monzo account weren't for legitimate purposes.

Although the CRM Code doesn't apply to these transactions, good industry practice required that Monzo be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified. The Investigator thought Monzo should've acted in connection with the final payment, and I'd agree with that conclusion. Although the value of these transactions wasn't necessarily cause for concern in itself, Miss M made payments in quick succession to a new payee that was connected with a cryptocurrency platform. In view of those factors, by the time of the final payment, Monzo ought to have recognised that there was an enhanced possibility that she was falling victim to a scam. It shouldn't have processed that payment without first contacting Miss M to satisfy itself that she wasn't at risk of financial harm due to fraud.

In reaching my decision on that point, I have taken into account 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 customer'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, the terms and conditions applicable to Miss M's Monzo account conferred on it rights (but not obligations) to:

1. Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
2. Refuse to make a payment if it suspects the customer is a victim of fraud. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

The starting position at law, therefore, 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 fraud.

- It had a contractual right to delay payments to make enquiries where 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.

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 it from making fraud checks before making a payment.

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 carried out additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case for the reasons I have explained, I am satisfied it should have intervened at the time of the final payment. And if it had, I think it's more likely than not that it would've been able to prevent Miss M's subsequent losses to the scam. There is no reason to believe that she wouldn't have responded to the bank's queries openly and honestly. There's no evidence that the fraudsters told her that she needed to mislead the bank about the purpose of the payments if questioned. If she'd responded openly to the bank's questions, I think it would've recognised promptly that she'd been targeted by a very commonly occurring scam type and could've prevented her from continuing to make payments.

I've also considered whether it would be fair and reasonable for her to bear some responsibility for her own losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. I've considered the evidence carefully and, while I accept Miss M did genuinely believe that these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one. There was no formalisation of the arrangement between her and the employer – for example, there was no written contract and indeed no clear setting out of the terms of her employment.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement and Miss M doesn't appear to have asked about it. I think she ought to have proceeded only with great caution. Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to her.

Other issues

I've also taken into account that the payments were made to another business and that Miss M might potentially have a claim against it in respect of its actions. Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Miss M has not referred a complaint about that business to me and DISP does not empower me to instruct her to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that Monzo did not act fairly and reasonably in the circumstances of this case. And whilst it is a possibility that she may have cause to complain against the other business, I am not persuaded it would be fair

to reduce the award solely for that reason. She is entitled to choose to complain only about Monzo and I am satisfied that it could have prevented some of the losses she suffered if it had intervened as I've found it should've done.

I've also considered whether it would've been possible for Monzo to recover some of Miss M's losses through the chargeback process. To raise a chargeback, it would need to identify a valid reason code as part of its submission to the card scheme. While there are codes that cover circumstances where a customer hasn't authorised payments, that wasn't the case here. The transactions that were processed by Monzo were in connection with legitimate purchases of cryptocurrency and those payments were authorised by Miss M. For that reason, unfortunately, I don't think a chargeback would've had any prospect of success.

Final decision

For the reasons I've explained above, I uphold this complaint.

If Miss M accepts my final decision, Monzo Bank Ltd should refund 50% of the final payment made in connection with the scam. It should add 8% simple interest to this sum calculated to run from the date the payment left her account until the date any settlement is paid. It should also make arrangements to pay her the £125 for distress and inconvenience, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 16 August 2024.

James Kimmitt
Ombudsman