

The complaint

Mr M complains about Monzo Bank Ltd.

He says that Monzo didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he lost.

What happened

The details of what happened should be familiar to both parties, so I won't repeat them in detail here. In summary, Mr M unfortunately fell victim to a task-based job scam involving cryptocurrency.

He made the following payments as part of the scam. Mr M also received funds back from the scammer (a common tactic to encourage the customers belief in the scam).

| Payment | Date | Payee | Payment type | Amount |
|---------|------------|---------------|--------------|---------------|
| 1 | 02/07/2023 | Skrill | Card | £33 |
| 2 | 03/07/2023 | Skrill | Card | £212 |
| 3 | 04/07/2023 | Skrill | Card | £100 |
| 4 | 04/07/2023 | Skrill | Card | £98 |
| 5 | 04/07/2023 | Skrill | Card | £113 |
| 6 | 04/07/2023 | Skrill | Card | £113 |
| 7 | 04/07/2023 | Skrill | Card | £113 |
| 8 | 04/07/2023 | Skrill | Card | £113 |
| 9 | 04/07/2023 | Skrill | Card | £5 |
| 10 | 04/07/2023 | Skrill | Card | £70 |
| 11 | 05/07/2023 | Skrill | Card | £300 |
| 12 | 05/07/2023 | Skrill | Card | £5 |
| 13 | 05/07/2023 | Skrill | Card | £510 |
| 14 | 05/07/2023 | Skrill | Card | £3 |
| 15 | 06/07/2023 | Skrill | Card | £1,507 |
| 16 | 06/07/2023 | Skrill | Card | £22 |
| 17 | 06/07/2023 | Skrill | Card | £1,920 |
| 18 | 06/07/2023 | Nevadaex | Card | £1,451 |
| 19 | 13/07/2023 | Nobel Trading | Card | £3,000 |
| | | | Total | £9,688 |

Between 2 and 4 July, Mr M received a total of £862.64 back from the scammer.

Mr M realised he had been scammed when he attempted to withdraw the funds he thought he had earned in commission, but was pressured to pay £11,000 for a 'premium task' and wasn't able to make a further withdrawal.

He complained to Monzo about what had happened, but it didn't uphold his complaint. He then brought his complaint to this Service and our Investigator looked into things.

Although it was asked for its file, Monzo didn't provide one, so our Investigator provided an answer on the information they had. They said that Mr M's complaint should be upheld in part. Mr M agreed with this outcome, but again Monzo did not respond. The Investigator then told Monzo in February 2024 that the case would be passed to an Ombudsman, but Monzo still didn't reply.

As no resolution could be reached, the complaint has been passed to me to make a final 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.

Having done so I'm upholding it in part.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority (FCA) Handbook – that we may give case-management directions and fix or extend deadlines; and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a response from Monzo to the investigator's initial assessment, it is fair and reasonable to proceed on the basis of the evidence we already have and/or to take account of Monzo's failure to reply to the investigator's opinion.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Mr M authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Monzo should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Mr M when he authorised payments from his account or whether it could and should have done more before processing them.

In reaching my decision, I have also considered 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 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:

- We suspect criminal activity on your account
- We're protecting you from fraud

It explained that if it blocked a payment, it would let a customer know as soon as possible via one of its usual channels which could be the Monzo app, email phone or mail.

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 or if it was protecting a customer from fraud.
- It had a contractual right to delay payments to make enquiries where it suspected criminal activity or fraud.
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity or 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 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

As Monzo hasn't provided its file or responded to a view from our Investigator or the notice that explained the case was being escalated to an Ombudsman, I'm unable to say if it intervened in any of the payments Mr M made.

But having considered the payments in question here, I agree with our Investigator that Monzo should have got in touch with Mr M when he made the 18th payment - to check that everything was in order and ask Mr M about what he was doing – the intention being to uncover a potential scam and protect Mr M from financial harm. By this point, Mr M's payments were increasing in value, and he had spent almost just over £4,000 to known crypto providers in the last 24 hours, which Monzo should have been aware carried an elevated risk of fraud.

Had it got in touch with Mr M, I would have expected Monzo to ask him questions about the payments he was making and their intended purpose – and I haven't seen anything to suggest Mr M wouldn't have told it the truth here.

I'm satisfied that the explanation provided would have given Monzo enough to deduce that Mr M was likely being scammed – and provided him a warning about this – and as I'm unable to say that it did so, I think that it missed an opportunity to prevent the loss.

I do need to consider if Mr M should bear some responsibility for the loss – and having thought about this carefully, I agree with our Investigator that responsibility for the loss should be shared between Mr M and Monzo from the time I think Monzo should have intervened.

I say this because I don't think that Mr M was as careful as he should have been before parting with his money. He was contacted out of the blue and offered a job he didn't apply for or have to undertake any kind of onboarding measures with the promise of unrealistic returns. He should also have had concerns about having to part with money in order to earn money – and in large amounts. Mr M also doesn't appear to have done any research into what he was doing – and although he began to have concerns about what was going on, he continued to make the payments in an attempt to recover his funds.

Finally, I have considered if Monzo took any steps to try and recover Mr M's money when he made his complaint. I am not aware that it took any steps to do so, but even if it had, I think it would be unlikely it could have recovered the funds given that the payments were made to a genuine crypto provider, which provided the service asked of it, and then transferred on down the chain.

Putting things right

Monzo Bank Ltd should refund Mr M 50% of the last two payments made.

I make no deduction for the funds Mr M received back from the scammer as these were

received prior to the point I think it should have intervened.

I calculate this to be £2,225. On top of this, it should also pay Mr M 8% simple interest from the date of the payments until settlement (less any lawfully deductible tax).

My final decision

I uphold this complaint in part. Monzo Bank Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 September 2024.

Claire Pugh
Ombudsman