

The complaint

Miss C complains that Monzo Bank Ltd won't refund over £9,000 she lost to a scam.

Miss C is represented in this complaint by a solicitor. For simplicity I will refer to Miss C throughout this decision, even when referencing what her representatives has said on her behalf.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief, Miss C fell victim to a fake job scam after she was contacted on a messaging app – I will call the scammer 'D'. D told Miss C that she would be paid for completing a number of tasks, but she would have to pay in funds to the task platform first using cryptocurrency. So, over five days, Miss C made card payments and transfers totalling over £9,000 towards the scam, both to individual third parties and to an account she'd been told to open with a cryptocurrency exchange, from where her funds were moved on to the scammers. Miss C realised she had been scammed when D continued to pressure her to pay more into the scam without allowing her to withdraw any profits.

Our investigator upheld the complaint in part. They thought that Monzo ought to have questioned Miss C about a payment made for £2,380 on 12 June 2023, as they considered that by this payment Monzo should have been on notice that something potentially untoward was going on. The investigator thought that, had that happened, the scam would likely have been stopped. So, the investigator said that Monzo should refund the money Miss C had lost from this payment onwards, less a deduction of 50% in recognition of Miss C's own contributory negligence.

Monzo disagreed, so the matter has been escalated to me to determine.

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.

It isn't in dispute that Miss C has fallen victim to a scam here, nor that she authorised the payments that are the subject of this complaint. And the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss C's account is that she is responsible for payments she has authorised herself. In reaching my decision I have also 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 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 23 April 2023 terms and conditions gave it rights 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.

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 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 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.

So, with this in mind, I've considered whether Monzo should have done more to prevent Miss C from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular payment. For example, if it was particularly out of character for that account holder.

The investigator considered that the payment made by Miss C on 12 June 2023, for £2,380, ought to have been regarded as unusual, and I agree. This was the third payment made by Miss C to a new payee associated with cryptocurrency over a few days – and the second payment made that day within a few hours – for increasingly large amounts. This was a significant increase in Miss C's spending on the account, and by this stage I consider that a trend was starting to emerge that had some of the hallmarks of cryptocurrency scams. In my view this really should have been flagged by Monzo as being unusual account activity.

Monzo would have known that multiple payments, of increasing value, being made to the same payee in quick succession can often be an indication of fraudulent activity. So, I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by Monzo. Given the unusual (for Miss C) value of the payments in such a short period of time, and their destination, I think a reasonable intervention at this stage

would have been direct contact with Miss C – via the chat function of the app or on the phone – to ask her some open questions about what she was making the payments for.

Miss C doesn't appear to have been given any cover story by the scammers, so if Monzo had questioned her about these payments, I think it's likely she would have been honest about what they were for and how she had come across the job opportunity. So, Monzo would have likely discovered that she had been contacted via a messaging app by a company offering to pay her for completing tasks, but that Miss C had been told that she would first have to pay money into the scheme using cryptocurrency.

This is not how companies normally operate and it has all the hallmarks of a cryptocurrency scam. I consider there would have been reasonable grounds for suspicion here. And Monzo would have been able to clearly identify the significant risk that these payments were part of a scam and could have made that clear to Miss C. I consider it likely that Miss C would have acted on any such warning.

Monzo does not believe it is liable for Miss C's loss, as it said it occurred from her cryptocurrency account rather than her Monzo account. However, just because a payment is to an account in the customer's own name that does not mean it bears no risk, and I would still expect Monzo to keep an eye out for payments that bore hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey is increasingly a feature of several types of scams. And I would expect Monzo to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers.

In light of this, I think Miss C's losses were foreseeable to Monzo. And I'm satisfied that, had Monzo asked relevant questions of Miss C it would have been apparent that she was falling victim to a scam and Monzo would have been able to provide an appropriate warning which would likely have prevented Miss C from making any further payments to the scammers.

As a result, I believe Monzo should refund the payments Miss C lost to the scam from and including the payment made to the scam for £2,380 on 12 June 2023.

I've also thought about whether Miss C did enough to protect herself from the scam, and, having thought carefully about this, I don't think she did. I think she ought reasonably to have had concerns about the legitimacy of the job offered given, amongst other things, the requirement to send funds to acquire the profits she'd supposedly earned. I also think receiving an unsolicited job offer, via a mobile messaging service app, should've been seen as unusual to Miss C, and so should have led to her looking more deeply into this job she was apparently being offered. Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Monzo could have done more to attempt to recover the payments after Miss C reported the fraud. But I'm satisfied that Monzo did what it could in the circumstances of this case. Unfortunately, it was only able to recover a small amount.

Putting things right

To resolve this complaint Monzo Bank Ltd should:

- Refund the payments Miss C lost to the scam from and including the payment made for £2,380 on 12 June 2023, less any sums already recovered and returned to Miss C, and with a deduction of 50% in recognition of Miss C's own contributory negligence towards her loss.

- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

I uphold this complaint in part. Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 4 July 2024.

Sophie Mitchell
Ombudsman