

The complaint

Mr O complains that Monzo Bank Ltd won't refund him the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

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 December 2022, Mr O was looking for a job. He had registered his interest with a number of online recruitment sites, when he was contacted about an opportunity. The job involved completing tasks, for which he would earn commission. Believing everything to be genuine Mr O proceeded, but unknown to him at the time, he was communicating with fraudsters. The fraudsters persuaded Mr O to pay his own money to proceed with the work.

Mr O was instructed to deposit funds into a cryptocurrency account. Once his money had been converted into cryptocurrency, it was then sent to accounts controlled by the fraudsters.

Detailed below are the payments Mr O sent from his Monzo account as part of the scam;

1 December 2022	£19.57
3 December 2022	£123.32
3 December 2022	£131.00
5 December 2022	£717.93
5 December 2022	£1,712.15
5 December 2022	£4,436.20
8 December 2022	£3,500
8 December 2022	£2,000

Mr O realised he'd been scammed when the fraudsters told him that he'd need to pay tax in order to be able to withdraw his money.

Mr O raised a fraud claim with Monzo, but it didn't agree to reimburse him. In summary, Monzo said it couldn't refund the money lost because the payments made from Mr O's Monzo account weren't the scam payments, rather they went to another account (a cryptocurrency account), before then being sent on to the fraudster. So the loss wasn't from Mr O's Monzo account.

Unhappy with Monzo's response, Mr O brought his complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, our Investigator thought Monzo ought to have intervened at the point Mr O made the sixth payment to the fraudster, the payment for £4,436.20 on 5 December 2022. It was our Investigator's view that had Monzo intervened, at this point, and warned Mr O, it would have made a difference and he wouldn't have gone ahead with this payment, or the ones that followed.

But our Investigator also thought Mr O should bear some responsibility for his loss. In summary this was because our Investigator thought there was enough going on that ought to have led Mr O to foresee some of the risks. Overall, our Investigator thought Monzo should refund Mr O 50% of the payments, from the point he made the payment for £4,436.20 onwards, along with interest.

Through his representatives, Mr O accepted our Investigator's view. But Monzo disagreed; in summary it didn't think it had any liability for the loss Mr O had suffered. It said that had it intervened it would have interrupted a legitimate payment journey. It added that as it had no fraud concerns, it had no reason to intervene. As well as this it said that no fraud occurred on the Monzo platform.

As agreement couldn't be reached, the case has been passed to me for 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.

It isn't in dispute that Mr O authorised the payments he made to the scammers. And the starting position is that banks ought to follow the instructions given by their customers for legitimate payments to be made. There are though some circumstances in which a bank may still be reasonably expected to reimburse a customer for payments made as part of a scam.

My fellow Ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions, both to Monzo and published on our website. But as a reminder, I'll set them out again here.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of the account is that Mr O is responsible for payments he authorised. And, as the Supreme Court has reiterated in *Philipp v Barclays Bank UK PLC*, which Monzo has referred to in its submissions, 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 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 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.

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.

- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those 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.
- Monzo has agreed to abide by the principles of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstances (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

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 Mr O's payments?

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

To decide this, I've reviewed the activity on Mr O's account statements, from which the payments were made, for the months leading up to the scam. This is often a finely balanced matter, and Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Having considered the first five payments of the scam, on balance, I can't fairly say they were so unusual or suspicious in comparison to his usual activity, that they ought to have alerted Monzo that Mr O may have been at risk of financial harm. The payments weren't so dissimilar in value to other payments that Mr O had made previously, and I don't think they ought to have stood out.

However, there were elements here of a pattern starting to emerge – with payments made in quick succession, to a payee which was identifiably related to cryptocurrency. So when, shortly after making a payment for £1,712.15, Mr O attempted to make a further payment for £4,436.20, I'm persuaded Monzo ought reasonably to have had some concerns and reached out to Mr O, for example through its in-app chat function, to make enquiries before allowing the payment to be processed.

I say this because, by this point, it was the sixth payment, within a few days, with the amount and frequency escalating – and Monzo will be aware that multiple escalating payments being made in quick succession can be indicative of financial harm. This payment for £4,436.20 represented a sharp uplift in value, when compared to the other payments Mr O had made. It was a third payment, of ever increasing value, within a couple of hours for a cumulative value of nearly £7,000.

As mentioned above, alongside this, the sequence here included payments which were identifiably linked to cryptocurrency, and while there can be legitimate payments made for the purchase of cryptocurrency, payments such as this can be indicative of a higher degree of fraud risk. There doesn't appear to have been these sorts of payments being made from Mr O's account previously and, on balance, I think the payments were becoming out of character compared to the typical sort of spending associated with Mr O's account.

For the reasons explained, I'm persuaded Monzo ought to have stepped in at this point. I've gone on to consider what I think would have happened if Monzo had intervened. Mr O wasn't provided with a cover story. So I think he'd have been honest about the reason for the payment and explained that he was buying cryptocurrency for the purpose of a job. I'm satisfied that his response is likely to have been concerning given that Mr O thought he was buying cryptocurrency to release tasks to make an additional income. So I believe that if Monzo had asked the kind of questions it ought to have asked, the scam would have been uncovered and Mr O's loss from this point on could have been prevented.

I'm persuaded that it is the case that, from the point of this payment for £4,436.20, Mr O's loss was both reasonably foreseeable to Monzo and that it could have been prevented, even though the funds were ultimately lost from the cryptocurrency wallets.

Monzo has argued that the payments from Mr O's Monzo account were made to other accounts before being sent to the fraudsters, so it cannot be considered the point of loss and so it cannot be held liable. But as Monzo ought to be aware, and as has been set out in previous decisions from this service to Monzo, the potential for multi-stage scams ought to have been well known to it at the time. And as a matter of good practice Monzo should fairly and reasonably have been on the look-out for payments presenting an additional scam risk, including those involving multi-stage scams.

And so given the circumstances, I'm persuaded it is fair and reasonable that Monzo, at least in part, bears some responsibility for Mr O's loss.

Did Mr O act reasonably in the circumstances?

As well as Monzo's obligations I've also thought about whether Mr O should share in the responsibility for his loss. I agree with the Investigator and broadly for the same reasons.

Certainly, by the time the payments I'm asking Monzo to refund come into question, I think Mr O should have had concerns about the legitimacy of the task-based job he was involved in. The scammer's behaviour appeared inconsistent with how a legitimate employer would operate. There was no contract or paperwork about the job opportunity and Mr O needed to place ever increasing deposits to get paid. I think the premise on which the job was based warranted further scrutiny.

Recovering Mr O 's money from the recipient accounts

I've also thought about whether Monzo could have done more to attempt to recover the payments after Mr O reported the fraud. In relation to attempting a chargeback Mr O was paying the crypto exchange to essentially send funds from his Monzo account to his crypto account which is what happened. So, as he got what he paid for there are no grounds for a chargeback.

Putting things right

For the reasons given above, I uphold this complaint in part and direct Monzo Bank Ltd to:

- Refund Mr O £4,468.10 (being 50% of £9,936.20 - the sum of the payments made from the payment of £4,436.20 sent on 5 December 2022 onwards)
- 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

For the reasons given above my final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 7 March 2025.

Stephen Wise
Ombudsman