

## **The complaint**

Mrs A complains that Monzo Bank Ltd did not refund a series of payment she lost to a scam.

## **What happened**

Mrs A was contacted via a messaging service about a job opportunity. She was told she would need to complete a set of tasks and once a set about had been completed, she would receive commission. In order to carry out the tasks she would need to purchase cryptocurrency and transfer it to the work platform, as she had to simulate purchasing items to improve their algorithm for businesses. Mrs A made the following card payments to cryptocurrency exchanges:

- 03/05/2023 - £80
- 03/05/2023 - £180
- 05/05/2023 - £320
- 06/05/2023 - £4300
- 06/05/2023 - £3500

When she was asked to deposit even more funds before she could withdraw her commission, she realised she had been the victim of a scam. She contacted Monzo to raise a scam claim, however as the payment had been made by card to cryptocurrency wallets in her own name, before being passed onto the scammer, they were unable to recover the funds. And they said that as the loss did not originate with them, they were not responsible for reimbursing her.

Mrs A referred the complaint to our service and our investigator looked into it. They felt that there was a clear pattern of spending that matched fraud and that as these payments were identifiably going to cryptocurrency exchanges, Monzo should reasonably have flagged the payment of £4,300 for additional checks. And if they had done, the scam would most likely have been revealed. So, they thought Monzo had missed an opportunity to spot the scam and stop Mrs A from sending the final two payments. But they also felt Mrs A should bear some responsibility for the loss as she didn't look into the company in more detail before sending funds. So, they recommended a 50% reduction in the reimbursement of the final two payments, plus 8% simple interest.

Mrs A accepted the findings however Monzo did not agree with the outcome. They referred to the Supreme Court Judgement in the case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25 which confirmed that where a bank receives instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. As they felt they received a clear instruction from Mrs A to send funds, they did not agree that there was any room for interpretation from them. In addition, they reiterated Mrs A's loss did not take place from her Monzo account, so they should not be responsible for reimbursing her.

As an informal agreement could not be reached, the complaint 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.

Having done so, I agree with the investigator for largely the same reasons, and I agree there should be a partial refund in this case. I'll explain why in more detail.

I'm satisfied that Mrs A has been the victim of a scam; what's left to decide is whether Monzo should have done more to prevent it.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute that Mrs A authorised the payments outlined above, as she thought they were part of a genuine job offer. So, while I recognise that she did not intend the money to go to scammers, the starting position in law is that Monzo was obliged to follow Mrs A's instruction and process the payments. Because of this, she is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Monzo did enough to try to keep Mrs A's account safe.

I've reviewed Mrs A's statements to see if the scam payments are out of character when compared to her genuine account activity. Mrs A did not regularly use her Monzo account and when she did it was generally for low value payments of less than £100. However, from 1 May 2023 onwards her account usage increased, and I can see some other payments to the same cryptocurrency exchanges mentioned in the complaint which haven't been included in the case, though I think it's more likely they form part of the scam.

From 1 May onwards the account usage increased with the value of the payments steadily increasing. The payment of £4,300 was significantly higher than any other genuine payment in the months prior, by over £4,000. As there was a significant increase in activity and value of payments, I think this payment should have raised warning flags to Monzo. This payment went to a cryptocurrency exchange, and Mrs A had not made payments of this type prior to the scam. I do think that by May 2023, Monzo should reasonably have been aware of the scam risks associated with cryptocurrency and been on the lookout for at risk payments related to it. With all of this in mind, I do think that Monzo should have carried out further checks on the payment of £4,300.

In reaching my decision that Monzo should have made further enquires, 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 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.

In this case for the reasons I have explained, I am satisfied they should have intervened prior to processing the payment of £4,300. What's left to decide is whether the intervention would likely have revealed the scam. On balance I think that some basic questions about what the payment was for would have revealed the scam, due to the type of scam Mrs A was the victim of. Job task scams are well known and easily identifiable, and from what I've seen, Mrs A was not given any cover story or instructed not to be truthful if asked about it. So, I do think the scam could reasonably have been revealed if Monzo had carried out further checks. So, I think it follows that a refund is due in the circumstances.

Our Investigator recommended a reduction in the redress of 50% to account for Mrs A's contribution to the loss, which she has accepted. In summary, I am also in agreement that a reduction in the redress is due in the circumstances, as I don't think Mrs A acted as a reasonable person would to protect herself against the loss she suffered. As she is in agreement I see no reason to discuss this further.

### **Putting things right**

Monzo should refund the final two payments of £4,300 and £3,500. As discussed, it can

reduce this redress by 50%.

Monzo should also pay 8% simple interest from the date of the transactions to the date of payment. If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs A how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold Mrs A's complaint in part and direct Monzo Bank Ltd to pay the redress as outline above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 11 June 2024.

Rebecca Norris  
**Ombudsman**