

The complaint

Miss D complains that Monzo Bank Ltd won't refund her after she fell victim to a scam.

What happened

Both parties are aware of the circumstances of the complaint so I won't repeat them in full here. But briefly, Miss D has explained that in June 2023, she realised she had lost her card and logged it as lost on her Monzo banking app. 15 minutes later, Miss D received a call on a withheld number from an individual purporting to be from Monzo, but who was in fact a fraudster. The fraudster advised her that there was suspicious activity on her account and that her account needed to be secured.

Miss D was told to open an account with another banking provider, who she was told Monzo works with and will be transferring its customers across to soon. The fraudster directed Miss D on the value of payments to make. Overall, Miss D made the following payment transfers to her newly set up account:

Date	Time	Payment value
27/06/2023	11:12	£30
27/06/2023	11:13	£480
27/06/2023	11:14	£600
27/06/2023	11:14	£670
27/06/2023	11:15	£700
27/06/2023	11:15	£218.95

These transactions left Miss D's Monzo account with a zero balance. From Miss D's newly set up account, Miss D was then directed to transfer her funds to another account, which the fraudster told her was her new, secure Monzo account, but was in fact an account controlled by the fraudster. Once all transfers were complete, the fraudster told Miss D it would complete her new account setup and ended the call. When this didn't happen, Miss D realised she'd been the victim of a scam and contacted Monzo to raise a claim the same day.

Monzo considered Miss D's complaint but didn't uphold it. In short, it said that while it recognised that Miss D had been scammed, payments made from her Monzo account were authorised and were sent to a bank account in her own name, which she has access to. It therefore considered that liability to investigate and refund (where appropriate) laid with the banking provider that Miss D sent her funds to.

Miss D remained unhappy and so referred the complaint to our service. An investigator considered the complaint and upheld it in part. She thought that Monzo ought to have had concerns about Miss D's account use when she attempted to make the fourth payment (for £670) as this was the fourth payment being made within just two minutes. She considered that Monzo could have intervened at this point and had it done so, the scam would've been

uncovered. She therefore considered Monzo should be held liable for payments four, five and six.

However she also considered there were warning signs that ought reasonably to have caused Miss D to question whether she was genuinely speaking to Monzo - and so thought that Miss D should also share liability for her losses on these payments, with Monzo therefore refunding her 50% of payments four to six.

Monzo disagreed with the investigator's view. It maintained that liability for Miss D's losses should be with the account held in her own name where she initially sent her funds. It also considered that, in line with the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25* and the terms and conditions of Miss D's account, Monzo did not have the right to intervene on the payments, as there was no suspicion of fraud.

As Monzo disagreed, the complaint has been referred 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.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Miss D's account is that she is responsible for payments she's authorised herself. The Contingent Reimbursement Model (CRM) Code can provide additional protection for the victims of APP scams such as this was. However, payments made to another account belonging to the scam victim are not within the scope of the CRM Code. So I cannot fairly apply the terms of the CRM code to any of the payments Miss D has made.

In reaching my decision, 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 and 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 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.

Having considered the scam payments against Miss D's usual spending patterns, while the value of the transactions she was making weren't unusual for her account, I agree that the pattern of payments *were* unusual and indicative of potential fraud. Whilst I accept that Miss D was making payments to an account in her own name, this would have still been a new payee for her Monzo account. She then made a total of six payments, that wiped the balance from all her Monzo 'pots' she held within the space of three minutes, with payments values increasing each time, except the final payment which emptied the account. I think these factors combined were sufficient to have indicated to Monzo that Miss D was at risk of financial harm from fraud and I agree with the investigator that intervention was warranted by payment four.

Had Monzo intervened, I see no reason why Miss D wouldn't have been honest about what she was doing and the scam would've been uncovered. Even if the fraudster had told Miss D to lie to Monzo, I think Miss D already had notable suspicions about the fraudster and this additional request would most likely have ended her trust in what she was being told to do.

I'm also satisfied that Monzo can fairly and reasonably be held liable for Miss D's losses, despite her moving funds to an account in her own name before sending them to the fraudster. I say this because the potential for multi-stage scams such as this ought to have been well known to Monzo at the time and Monzo therefore ought reasonably to have been alert to payments presenting an additional scam risk, including the hallmarks of a multi-stage scam where payments to accounts in a customer's name are more commonplace.

I've therefore gone on to consider whether Miss D should also be held partially responsible for her losses on payments four to six. Miss D has acknowledged that she had suspicions about the individual calling her, and did in fact hang up on the fraudster on a few occasions but they called her back. Miss D was eventually brought around to trusting the fraudster, as he sent her a verification code which appeared to be from her bank and also appeared to

know personal information about her – but I still think there were enough warning signs here that Miss D ought to have had concerns about the legitimacy of the caller.

For example, Miss D identified that the caller rang on a withheld number, rather than Monzo's directly. While she's explained the verification code from Monzo gave her confidence in who she was speaking to, it appears from the timeline of events that she still hung up on the fraudster after receiving this code. So I think Miss D still had doubts even after receiving this. I think there are also some elements of the scam which didn't quite add up – for example, Miss D was told all Monzo accounts would soon move across to another banking provider so it seems unclear why Miss D couldn't leave her funds securely in the account she herself created (and where they would apparently soon transfer to anyway) rather than move the funds back to Monzo. Miss D was told that the new Monzo account was in a computer-generated false name, and yet there was no requirement for the same to be done on the other account she created herself.

Additionally, when sending funds to her new account, Monzo provided a general warning that included guidance to stop if 'you were told your account is at risk, to make an unexpected payment, or to take out a loan.' Miss D explains she did see this warning, but was reassured by the fraudster to proceed.

While I appreciate these points in isolation may not be enough to break the spell of a scam, particularly in cases such as this where there is a high-pressure scenario and funds appear to be at risk, I think the combination of these points ought to have caused Miss D to question what she was being told. I therefore think it's fair and reasonable that she also shares liability for her losses on the final three payments.

Lastly, I've considered whether Monzo did all it could to recover Miss D's funds once it was made aware of the scam. Given Miss D made the payments to her own account held with another firm, I'm not persuaded there's anything Monzo could have done to recover her funds as this would require Monzo to raise a fraudulent claim against Miss D's own accounts.

My final decision

For the reasons I've explained, my final decision is that I uphold Miss D's complaint against Monzo Bank Ltd in part.

I require Monzo Bank Ltd to:

- Refund 50% of payments four, five and six that she made from her Monzo account (i.e 50% of £1,588.95)
- Apply 8% simple interest, from the date Miss D made the payments until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 21 May 2024.

Kirsty Upton

Ombudsman