

The complaint

Mr M complains that Monzo Bank Ltd won't refund the money he lost when he was the victim of a scam.

What happened

In October 2022, Mr M received a text message which said it was from a data company offering a part-time job. Mr M was interested, so replied and was told the job involved completing a number of tasks which would help the company collect data and increase sales on a variety of products. He was shown how to set up an account on the data company's platform and buy cryptocurrency, which he'd use to pay for the tasks he was to complete.

Mr M then made a number of payments from his Monzo account to purchase cryptocurrency, which was then sent on to wallet details he was given for the data company. And he was able to log on to his account on the company's platform, use the cryptocurrency to purchase tasks, and then see the commission it said he was earning after he completed the tasks.

But the tasks Mr M had to pay for became more and more expensive. And when he ultimately asked to withdraw the money the platform said he had made, he was given a number of reasons why he needed to pay more money in before he could withdraw – including fines, taxes, fees and payments to increase his credit points. Mr M then made a number of further payments to purchase cryptocurrency to make these payments.

I've set out all the payments Mr M made from his Monzo account as part of this scam, on the attached spreadsheet.

Unfortunately, we now know the data company was a scam. The scam was uncovered after Mr M's son spoke to him about the company and suggested he stop contacting them. Mr M then reported the payments he had made to Monzo and asked it to refund the money he had lost.

Monzo investigated but said it had made the payments in line with Mr M's instructions, and correctly followed its internal procedures and legal and regulatory obligations. It also said it had been unable to recover the payments from the banks they were sent to. So it didn't agree to refund the money Mr M had lost. Mr M wasn't satisfied with Monzo's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Monzo should have had concerns and intervened before the thirteenth payment Mr M made as a result of the scam and that, if it had done so, the scam would've been uncovered at that point. They also thought it would be fair for Mr M to bear some responsibility for his loss. So they recommended Monzo refund 50% of the money Mr M lost, from the thirteenth payment onwards. Monzo disagreed with our investigator, so the complaint has been passed to me.

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 Mr M's account is that customers are responsible for payments they authorised themselves. And, as the Supreme Court has recently reiterated in the case of *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with their 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 customer'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 to:

- Block payments if it suspects criminal activity on the customer's account.

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 refuse 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.

So overall, taking into account relevant law and regulations, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that from October 2022 Monzo should:

- 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 firms 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 firms do.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape and the different risks these can present to customers, when deciding whether to intervene.

And so I've considered whether Monzo should have identified that Mr M was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

Should Monzo have made further enquiries before it processed any of Mr M's payments?

The first payments Mr M made as a result of the scam weren't for what I'd consider to be particularly large amounts, or for amounts where I'd expect Monzo to have identified a risk of financial harm based on their size alone. The payments were relatively spread out over a number of days. And they didn't leave the balance of the account at particularly unusual levels. So I wouldn't have expected Monzo to identify that Mr M could be at risk of financial harm as a result of these first payments and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing them to go through.

But when Mr M tried to make the thirteenth payment here, for £1,600 on 24 November 2022, I think Monzo should have identified that he could be at risk of financial harm. This payment was the third payment of a significant amount Mr M had tried to make on the same day, and meant that the total amount he'd tried to pay out of his account on that day was over £5,000 – which was more than he'd ever paid out of the account on a single day before. This payment was also to a new payee he'd never sent money to before, and followed a series of payments made out of his account over the previous weeks to a number of new payees and for amounts that were steadily increasing – which matches a pattern of payments often seen when a customer is falling victim to a scam.

So I think Monzo should have identified that that this pattern of payments was suspicious and that Mr M could be at risk of financial harm. And so I think it should have intervened before this thirteenth payment and carried out additional checks before allowing it to go through.

Monzo has argued that the payments Mr M made were to purchase cryptocurrency, which he genuinely received. So it says the payments were legitimate and it shouldn't be responsible for the loss he suffered when he later sent the cryptocurrency on to the scammers.

But I don't think Monzo's responsibilities to monitor accounts and look out for signs that its customers may be at risk of fraud stop just because the payments are being made to genuinely purchase cryptocurrency. I think Monzo should still have had concerns about the payments Mr M was making, and I don't think the fact the payments were being used to purchase cryptocurrency was enough to satisfy the concerns I think Monzo should have had.

So I still think Monzo should have carried out additional checks before allowing this payment to go through.

Did Monzo do enough to protect Mr M?

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the pattern of payments Mr M had attempted, I think it would be reasonable to expect those checks to include a human intervention with questions about the purpose of the payment and then relevant follow-up questions based on the information it was given.

Monzo's evidence shows Mr M was shown a warning before making the first few payments as a result of this scam, which said:

"Could someone be trying to scam you?"

Stop if:

- *You were told your account is at risk, to make an expected payment, or to take out a loan*
- *The offer sounds too good to be true*
- *You haven't double-checked who you're paying*
- *You were told to ignore warnings like this*

You may lose your money if this is a scam.

If you're at all unsure, stop and get advice.

We'll never call you out of the blue."

But while this warning does mention offers which sound too good to be true, the rest of what it mentions isn't relevant or tailored to Mr M's circumstances. So, even if this warning was shown before the thirteenth payment Mr M made, I don't think Monzo would have done enough to address the concerns I think it should have identified by showing this warning.

I've not seen anything to suggest Mr M would have lied or tried to mislead Monzo if he was asked about the payment. So, if Monzo has asked further questions, I think it's likely Mr M would have said the payment was to purchase cryptocurrency for a job he was doing, that he had found out about the job from a text message he received, and that he needed to pay upfront to fund the tasks he was then earning commission for completing. And as these circumstances match common advance fee scams, I think Monzo should then have had significant concerns and warned Mr M that he was likely the victim of a scam.

And as Monzo is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mr M. I think if Monzo had explained that his circumstances matched common advance fee scams and given him some steps he could take to check whether it was legitimate, such as trying to withdraw all the money he had made so far, the scam would have been uncovered and Mr M wouldn't have made any further payments towards it.

So if Monzo had done more to protect Mr M before allowing the thirteenth payment, as I think it should have, I don't think Mr M would have lost the money from this payment or any of the later payments. And so I think it would be reasonable for Monzo to bear some responsibility for the loss Mr M suffered from this point on.

Should Mr M bear some responsibility for his loss?

I've also thought about whether it would be fair for Mr M to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where he was given access to a platform which appeared to show tasks he had completed and commission he was earning, I do think there were a number of things about what was happening that should have caused him significant concern.

Mr M appears to have been contacted about this job out of the blue, and by someone he hadn't spoken to before. And I think being contacted in this way about potential work should have caused Mr M some concern.

Mr M was told he had to pay upfront to fund the work he was doing for the data company, which I think is unusual – particularly for the kind of work he thought he was doing. He was also told he had to pay and receive his commission in cryptocurrency, which I also think is unusual. And he was later unexpectedly told he had to pay in more money than he'd been initially told, in order to complete and be paid for work he had already started. And while it may have been reasonable for him to make some of the smaller initial payments, at the point I think Monzo should have intervened Mr M was sending the data company a significant amount of money. And I think being told he had pay so much to fund his work, be paid in this way, and pay before he could be paid for work he had done should have caused Mr M significant concern.

Mr M also appears to have been told he had earned a significant amount of money over a relatively short period of time. And the amounts he was told he could continue to earn were very high for what appears to be relatively little and relatively straightforward work. So I think this should have caused Mr M significant concern that what he was being told was too good to be true.

I sympathise with the position Mr M has found himself in. But I think there were a number of things here which should have caused him significant concern, and I don't think he did enough to satisfy those concerns or that the seemingly genuine parts of the scam should have been enough to overcome them. So I think it would be fair and reasonable for him to bear some responsibility for the loss he suffered.

Monzo has argued that Mr M was extremely negligent here, and so it shouldn't be liable for any of the money he lost. But while I agree Mr M should have had significant concerns and should bear some responsibility here, this was a sophisticated scam and I think certain parts of it will have reasonably felt genuine to him. So I don't think Mr M has acted so unreasonably that he should be considered grossly negligent, or that he should bear full responsibility for the money he lost. And I still think Monzo should have done more to protect him and should bear some responsibility for his loss.

I therefore think both Mr M and Monzo should bear some responsibility, and that it would be fair for Monzo to refund 50% of the money Mr M lost – from the thirteenth payment onwards.

My final decision

For the reasons set out above, I uphold this complaint in part and require Monzo bank Ltd to:

- Refund Mr M 50% of the money he lost as a result of this scam, from the thirteenth payment onwards
- Pay Mr M 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 July 2024.

Alan Millward
Ombudsman