

## Complaint

Miss T is unhappy that Monzo Bank Ltd didn't reimburse her after she told it she'd fallen victim to a scam.

## Background

The background to this case is well known to the parties so I don't intend to set it out in full here. What follows is a brief summary of the key facts.

In June 2023, Miss T fell victim to an investment scam. She'd been out of work and looking for opportunities to increase her income by investing her money. She spoke to someone who claimed to be an employee of a well-known cryptocurrency platform. Unfortunately, that individual wasn't a genuine employee of that firm, but a fraudster.

Miss T made a payment from her account with another bank for £600. The fraudster told her that she'd earned a significant profit. But to access it, there were various fees and charges that needed to be paid. She was encouraged to reinvest her money to earn even greater returns. As before, these significant returns then required that she pay further fees and charges.

Miss T made payments to an e-wallet in her name. Those funds were then converted into cryptocurrency and transferred to an account controlled by the fraudster. She used her Monzo account to make the following payments:

1	19 June 2023	£7,016
2	20 June 2023	£7,016
3	20 June 2023	£1,938

Once she realised she'd fallen victim to a scam, she notified Monzo. It didn't agree to refund her. It said:

*"... the payment that was sent from your Monzo account wasn't the scam payment. In this situation the fraudulent payment was sent from [the cryptocurrency platform], and as such we would expect them to investigate and refund where appropriate."*

It did, however, offer her £75 in recognition of customer service difficulties during its investigation.

Miss T was unhappy with that response and so she referred her complaint to this service. It was looked at by an Investigator who upheld it. He observed that the first payment in the table above was much larger than any of the other recent payments that had been made from Miss T's account. He thought Monzo shouldn't have processed the payment without first contacting her. If it had done so, he thought it was likely that it could've uncovered that she'd been targeted by an investment scam and therefore prevented her from making the payments. He did, however, think Miss T should be partially responsible and so he recommended the bank refund 50% of the loss.

Monzo disagreed with the Investigator's opinion. It reiterated that there was no loss to Miss T at the point the funds left her Monzo account and so it couldn't reasonably be considered liable for the loss. It also said that its decision not to intervene in connection with these payments was supported by the judgement of the Supreme Court in the case of *Philipp v Barclays Bank UK PLC*.

Because Monzo disagreed with the Investigator's opinion, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Monzo be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator thought that risk should've been apparent when Miss T asked it to make the first payment and I'd agree with that conclusion. It was significantly out of keeping with the typical payments from her account. It was around 30 times bigger than the largest payment in the six months preceding the scam. It was also being made to a new payee and one which Monzo could've identified as a well-known cryptocurrency intermediary. These factors taken together strongly suggested that there was a greater than normal risk of fraud. Monzo should have paused the first payment and made enquiries with Miss T to satisfy itself that she wasn't at risk of financial harm due to fraud.

In reaching that conclusion, I've 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 customer's instructions where it reasonably believed the payment instruction was the result of authorised push payment ("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, the terms and conditions applicable to Miss T's account gave Monzo the right to:

- Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
- Refuse to make a payment if it suspects the customer is a victim of fraud.

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 it from making fraud checks before making a payment. And whilst it 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 lookout 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 accept that Miss T was making the payment to an account in her own name. Monzo argues that it can't reasonably be considered liable for her losses given that the loss originated when the funds left an account with a different business. However, it ought to have been aware of the increasing prevalence of multi-stage scams and so I don't think it could've regarded the fact that the payment was going to her account as a basis for assuming there wasn't any meaningful risk of fraud.

For the reasons I've explained, I'm satisfied it should've intervened in this case. If it had done so, I find it more likely than not that Miss T would've given a candid description of the opportunity that had been offered to her. The facts are consistent with a commonly occurring scam type and I'd have expected an employee of the bank to recognise it. Miss T could then have been warned that the opportunity was not legitimate and that she shouldn't make any payments. If this had happened, I'm satisfied it would've prevented her from making that payment and the ones that followed.

I've also considered whether it would be fair and reasonable for Miss T to bear some responsibility for her own losses here. In doing so, I've considered what the law says about contributory negligence but also kept in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances.

Having done so, I'm satisfied that she didn't act entirely reasonably. The returns she believed that she'd earned were so extraordinary that they were simply too good to be true. Her initial investment had been turned into a six-figure sum in a very short period of time. It's also noteworthy that the scammers reassured her that there was no chance of her losing any money at all. In view of the exceptional returns she appeared to be earning, this assurance was similarly not credible.

I think she ought to have treated the promises made by the scammer with greater scepticism than she did and so I think it's fair and reasonable for a 50% deduction to be applied here.

### **Final decision**

For the reasons I've explained above, I uphold this complaint in part. If Miss T accepts my decision, Monzo Bank Ltd needs to:

- Refund 50% of the money Miss T lost to the scam.

- Add 8% simple interest per annum to that sum calculated to run from the dates the payments left her account until the date any settlement is paid.
- If it hasn't already done so, pay Miss T £75 in recognition of the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 July 2024.

James Kimmitt  
**Ombudsman**