DRN-4716768

The complaint

Mrs P complains that Monzo Bank Ltd hasn't refunded her after she fell victim to a scam.

What happened

The background to this complaint is well-known to all parties, and so I'll only summarise the key events here.

Mrs P was looking for job opportunities and, at the end of March 2023, came across a company advertising on social media. Mrs P reached out and was contacted by someone claiming to work for the company. But Mrs P had in fact stumbled across a scam advert, and the whole proposition was fraudulent.

Not knowing that to be the case, Mrs P listened to what the agent had to say. They explained the job on offer involved giving online reviews in return for commission. Mrs P decided to go forward and was told exactly what she'd need to do.

The scammers instructed Mrs P to set up a cryptocurrency wallet which she did and which she maintained control of. Mrs P was told she'd need to fund this cryptocurrency wallet in order to 'recharge' her trading account. And so once Mrs P started what she thought was genuine work she started to make payments at the scammer's instruction.

Between 4 & 5 April 2023 Mrs P made seven faster payments (bank transfers), to seven different payees, totalling £4,958.22. These payments were funded through Mrs P moving money from an account held with a different bank.

The money was sent mostly to individuals who would then send cryptocurrency to Mrs P's wallet. She then moved the cryptocurrency on at the instruction of the scammer, meaning it was then lost.

Mrs P realised she'd been scammed when she was told she'd need to pay almost $19,000 to release her earnings. She contacted Monzo to report what had happened. It went on to investigate and to make a decision on whether it would refund Mrs P's loss.

Monzo said Mrs P was entitled to a refund. It said it had made the payments in-line with her instructions. It also said it provided scam warnings when Mrs P was making the payments and that these had been ignored. It also pointed out that Mrs P had received a negative 'confirmation of payee' response, indicating that one of the accounts she was paying didn't bear the same name as she'd entered on her payment instruction.

Monzo also said that Mrs P hadn't acted reasonably as she'd done little to ensure the job opportunity was legitimate. It didn't think social media was a reliable source of employment and that there were other concerning features – such as a lack of interview or onboarding process – which ought to have stood out. It said the money Mrs P was promised was unrealistically high, particularly in such a short space of time.

Mrs P brought her complaint to our service as she wasn't happy with Monzo's response. One of our investigator's considered the complaint and said it should be upheld in part. She agreed that Mrs P hadn't acted reasonably and so ought to bear some responsibility for her loss.

But she also found that Monzo hadn't done enough to protect her from the scam. She said that the spending from Mrs P's account had become so unusual by the time she sent the fourth payment that Monzo ought to have been concerned she was at risk of financial harm through fraud. She said Monzo ought to have intervened at that point to ask Mrs P what was happening and to deliver tailored warnings about job scams.

Our investigator believed that, had Monzo done what it fairly and reasonably ought to have done, the scam could have been avoided. And so she recommended Monzo bear partial responsibility from the fourth payment onward, with it and Mrs P being responsible for 50% of the losses from that point.

Mrs P accepted the outcome, but Monzo didn't. It said it couldn't be expected to intervene in transactions which appeared legitimate. And it said that there hadn't been a loss from Mrs P's Monzo account as she'd paid persons for cryptocurrency and had received it. It said she'd only suffered a loss as a result of sending on the cryptocurrency from her wallet and so it shouldn't bear any responsibility.

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.

I'm upholding Mrs P's complaint in part, reaching broadly the same outcome as our investigator and for broadly the same reasons. I'll explain why.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs P's account is that she is responsible for payments she authorised herself. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, 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 6 December 2021 terms and conditions (applicable at the time Mrs P made the payments) 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 it's 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].
- 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

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[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.

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

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 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 C's payments?

I'm satisfied Monzo ought fairly and reasonably have become concerned about the activity on Mrs P's account by the time she made the fourth payment toward the scam. The written warnings it had provided no longer represented a proportional response to the scam risks that were presenting.

Whilst the individual payment values themselves were not alarming – only being between £491.40 and £869 – they had, by payment four, become equal to £2,732.80 in total value. And so the cumulative amount of the transactions had started to exceed normal volumes for Mrs P.

What's more, and is a clear and common sign of a cryptocurrency connected scam taking place, is that four new payees had been created and paid in very quick succession. The first four payments were all executed within just two hours. And I'm satisfied Monzo ought to have recognised this as one of the hallmarks of a scam, even where the payments might have been going to genuine individuals. Monzo ought to have been aware of this type of cryptocurrency scam by April 2023 and had measures in place to defend against them.

That these payments were escalating in value, and were being funded by hastily transferred funds into the account, all add to the risk factors that Monzo ought fairly and reasonably to have been on the lookout for.

It is true that Mrs P's loss crystalises at the point she sent the cryptocurrency on from her wallet. But the features of this scam, and use of peer-to-peer cryptocurrency transactions, have been common for some time now. That means there is still causation established through Monzo's failure to act, and Mrs P's losses were reasonably foreseeable at the point the funds left her Monzo account.

<u>Would intervention have made a difference here?</u>

Monzo has said that there is no evidence to suggest intervention would have made a difference and puts this forward as a reason for not refunding Mrs P's loss. But I'm not persuaded by such an argument.

There's nothing to suggest that Mrs P would have been anything other than honest if questioned about the payments. She doesn't appear to have been given a cover story. And Monzo ought to have been able to use its professional expertise and experience in identifying common scams.

I'm not persuaded Mrs P would have only told Monzo she was engaging in peer-to-peer cryptocurrency transactions and left it at that. That wasn't her full understanding of what she was doing; she believed she was carrying out work associated tasks and it seems more likely than not she would have said as much. Furthermore, I'd expect Monzo to have probed into the circumstances behind the payments, which would likely have revealed the full extent of what Mrs P believed she was doing.

It then follows that Monzo would have been very concerned about the purpose of the payments and could then have given strong, tailored warnings about proceeding. There's nothing to suggest Mrs P wouldn't have heeded those warnings, once the risks and common scam features were exposed and explained to her.

I'm then satisfied, given the findings made here around warnings and intervention, that Monzo didn't act fairly and reasonably and so ought to compensate Mrs P for her losses.

<u>Did Mrs P act reasonably in the circumstances?</u>

Mrs P has already accepted our investigator's findings on this point, where she said Mrs P ought to bear some responsibility for her loss. And Monzo has argued the same since it first responded to Mrs P's complaint. And so there is no outstanding dispute here.

I won't then go on to give detailed findings on the point. It's enough to say that I'm in agreement that Mrs P ought to have questioned what she was being told and to have been suspicious of what was on offer. And so it's fair and reasonable for her to bear some responsibility for her losses.

<u>Recovering Mrs P's money form the recipient accounts</u>

Monzo has explained that it contacted the receiving banks but couldn't recover any funds. But, even if it hadn't, it seems unlikely anything would have been recoverable. That's because Mrs P had paid for cryptocurrency and had received it. And so it seems any attempts to recover the money would always have failed.

Putting things right

On Mrs P's acceptance, Monzo should:

- Refund 50% of Mrs P's losses form payment four on (£1,547.21);

- Pay interest on that sum at 8% simple per year, calculated from the date of debit to the date of settlement.

My final decision

I uphold this complaint against Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 16 July 2024.

Ben Murray
Ombudsman