

## The complaint

Mr G complains that Monzo Bank Ltd won't refund over £22,000 he lost to a scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. In brief, Mr G fell victim to a fake job scam after he was contacted on a messaging app – I will call the scammer 'O'. O told Mr G that he would be paid for completing a number of tasks, but he would have to pay in funds to the task platform first using cryptocurrency. So, over three days, Mr G made card payments and transfers totalling over £22,000 towards the scam. Mr G realised he had been scammed when O continued to pressure him to pay more into the scam without allowing him to withdraw any profits.

Our investigator upheld the complaint in part. They thought that Monzo ought to have questioned Mr G about the fourth payment he made to the scam. The investigator thought that, had that happened, the scam would likely have been stopped. So, the investigator said that Monzo should refund the money Mr G had lost from this payment onwards, less a deduction of 50% in recognition of Mr G's own contributory negligence.

Monzo disagreed, so the matter has been escalated to me to determine.

## 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.

It isn't in dispute that Mr G has fallen victim to a scam here, nor that he authorised the payments that are the subject of this complaint. And the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr G's account is that Mr G is responsible for payments he has authorised himself. In reaching my decision I have also 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.

So, with this in mind, I've considered whether Monzo should have done more to prevent Mr G from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular payment. For example, if it was particularly out of character for that account holder.

The investigator considered that the fourth payment made by Mr G on 8 June 2023, for £3,469.55, ought to have been regarded as unusual, and I agree. This was the fourth payment made by Mr G within a few hours, for increasingly large amounts, to a cryptocurrency provider. This was a significant increase in his spending on the account, and by this stage a trend was starting to emerge that had some of the hallmarks of cryptocurrency scams. In my view this really should have been flagged by Monzo as being unusual account activity.

Monzo would have known that multiple payments, of increasing value, being made to the same payee in quick succession can often be an indication of fraudulent activity. So I'm satisfied this payment ought reasonably to have been considered as unusual and triggered an intervention by Monzo. Given the volume of payments in such a short period of time, I think a reasonable intervention at this stage would have been direct contact with Mr G – via the chat function of the app or on the phone – to ask Mr G some open questions about what he was making the payments for.

Mr G doesn't appear to have been given any cover story by the scammers, so if Monzo had questioned him about these payments, I think it's likely he would have been honest about what they were for and how he had come across the job opportunity. So Monzo would have likely discovered that he had been contacted via a messaging app by a company offering to pay him for completing tasks, but that Mr G had been told that he would first have to pay money into the scheme using cryptocurrency.

This is not how companies normally operate and it has all the hallmarks of a cryptocurrency scam. I consider there would have been reasonable grounds for suspicion here. And Monzo would have been able to clearly identify the significant risk that these payments were part of a scam and could have made that clear to Mr G. I consider it likely that Mr G would have acted on any such warning.

Monzo does not believe it is liable for Mr G's loss, as it said it occurred from his cryptocurrency account rather than his Monzo account. However, just because a payment is to an account in the customer's own name that does not mean it bears no risk, and I would still expect Monzo to keep an eye out for payments that bore hallmarks of potential fraud, even if those payments were made to another account belonging to their customer.

I say this because this kind of payment journey – where payments are made from an account with one bank, to accounts in the same consumer's name at other banks or e-money providers, and then on to buy cryptocurrency – is increasingly a feature of several types of scams. And I would expect Monzo to have an awareness of how these scams operate and be aware of what it should be looking out for to help protect its customers. In any case, from the fifth payment onwards Mr G does not appear to have been paying his own cryptocurrency account, but instead was sending funds to a third party.

In light of this, I think Mr G's losses were foreseeable to Monzo. And I'm satisfied that, had Monzo asked relevant questions of Mr G it would have been apparent that he was falling victim to a scam and Monzo would have been able to provide an appropriate warning which would likely have prevented Mr G from making any further payments to the scammers.

As a result, I believe Monzo should refund the payments Mr G lost to the scam from and including the fourth payment made to the scam on 8 June 2023.

I've also thought about whether Mr G did enough to protect himself from the scam, and, having thought carefully about this, I don't think he did. I think he ought reasonably to have had concerns about the legitimacy of the job offered given, amongst other things, the requirement to send funds to acquire the profits he'd supposedly earned. I also think receiving an unsolicited job offer, via a mobile messaging service app, should've been seen as unusual to Mr G, and so should have led to him looking more deeply into this job he was apparently being offered. Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributory negligence in the circumstances of this complaint.

I've also thought about whether Monzo could have done more to attempt to recover the payments after Mr G reported the fraud. But I'm satisfied that Monzo would not have been able to recover the payments that Mr G sent given the nature of the payments.

### **Putting things right**

To resolve this complaint Monzo Bank Ltd should:

- Refund the payments Mr G lost to the scam from and including the fourth payment made on 8 June 2023 onwards, less a deduction of 50% in recognition of Mr G's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

**My final decision**

I uphold this complaint in part. Monzo Bank Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 2 May 2024.

Sophie Mitchell  
**Ombudsman**