

The complaint

Mrs K complains that Monzo Bank Ltd won't refund the money she lost when she was the victim of a scam.

What happened

In November 2023, Mrs K was looking for work and received a number of text messages from someone who said they worked for a recruitment company. The messages said they were looking for candidates for a number of roles and asked if Mrs K was interested. And when Mrs K confirmed she was, the messages said someone would contact her with the details.

Mrs K was then contacted by someone who said they worked for a marketing company and explained the job involved completing online orders to help boost exposure for online vendors. They showed her how to set up an account on the company's platform, purchase cryptocurrency, and then use that cryptocurrency to fund the orders she would complete. Mrs K then made a number of payments from her Monzo account to purchase cryptocurrency, which was then sent on to the wallet details she was given for the marketing company.

I've set out the payments Mrs K made below:

| Date | Details | Amount |
|------------------|--|--------|
| 17 November 2023 | To 1 st cryptocurrency exchange | £30 |
| 17 November 2023 | To 1 st cryptocurrency exchange | £95 |
| 17 November 2023 | To 1 st cryptocurrency exchange | £100 |
| 18 November 2023 | To 1 st cryptocurrency exchange | £95 |
| 18 November 2023 | To 2 nd cryptocurrency exchange | £100 |
| 18 November 2023 | To 2 nd cryptocurrency exchange | £117 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £180 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £500 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £650 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £50 |
| 19 November 2023 | To 1 st cryptocurrency exchange | £1,000 |
| 19 November 2023 | To 1 st cryptocurrency exchange | £1,400 |
| 19 November 2023 | To 1 st cryptocurrency exchange | £850 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £6 |
| 19 November 2023 | To 2 nd cryptocurrency exchange | £80 |

Unfortunately, we now know the marketing company was a scam. The scam was uncovered after the company told Mrs K she needed to pay more money in before she could complete the latest order she'd funded. Mrs K couldn't afford to pay the amount she was told she needed, so asked to withdraw her money but was told she couldn't. She then reported the payments she'd made to Monzo and asked it to refund the money she had lost.

Monzo investigated but said there were no signs anyone else had control of Mrs K's account at the time of the payments. So it didn't agree to refund the payments made out of her account. Mrs K 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 about the payments Mrs K was making from the twelfth payment onwards. They thought Monzo should have intervened and asked questions at this point and that, if it had done, the scam would have been uncovered. But they also thought Mrs K should bear some responsibility for her loss. So they recommended Monzo refund 50% of the payments Mrs K made, from the twelfth 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 second, third and fourth payments in the table above were all immediately returned to Mrs K's account, so she didn't suffer a loss from these. I've therefore not considered these further and have focused on the remaining payments that haven't yet been refunded or returned.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs K'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 April 2023 terms and conditions gave it rights 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 criminal activity or fraud.
- 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.

While 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 in November 2023 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 (including for example the use of multi-stage fraud by scammers) 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 Mrs K was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect her.

Should Monzo have made further enquiries before it processed any of Mrs K's payments?

The first few payments Mrs K made from her Monzo account as part of this 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 the amount alone. There had also been payments out of Mrs K's account for similar amounts previously. And the payments didn't leave the balance of her account at particularly unusual levels. So I wouldn't have expected Monzo to identify that Mrs K could be at risk of financial harm as a result of these first few 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 Mrs K tried to make the twelfth payment here, for £1,400 on 19 November 2023, I think Monzo should have identified that she could be at risk of financial harm. This payment was for a larger amount than the previous payments. At this point, Mrs K had attempted twelve payments in three days to two cryptocurrency exchanges, including six payments on this same day. And the payments were increasing in amount. So I think Monzo should have identified that this pattern of payments was similar to that often seen in scams, and so was suspicious. And so I think it should have intervened here and carried out additional checks before allowing this payment to go through.

Monzo has argued that Mrs K had made a previous genuine payment to a cryptocurrency exchange, and so these scam payments to other exchanges wouldn't have seemed unusual. But Mrs K has confirmed the previous payment Monzo mentioned was also part of this scam, she just didn't raise it as part of the scam claim as she received most of it back into her account. And, in any event the payment Monzo mentioned was made only three days earlier than the scam payments I've set out above and was for a relatively small amount. So I don't think it established a history of cryptocurrency payments to the point where future cryptocurrency payments were no longer unusual or suspicious.

And so I still think Monzo should have intervened before the twelfth payment here.

Did Monzo do enough to protect Mrs K?

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 Mrs K had attempted, I think it would be reasonable to expect those checks to include questions about the purpose of the payment and then relevant follow-up questions based on the information it was given.

If Monzo had asked these questions, I think it's likely Mrs K would have said the payments were for a job she was doing. I think she would have explained she had to pay money in to fund orders she had to complete, and that she was being guided through the process by someone from the company she was working for. And as these are all features of common advance fee or investment scams, I think Monzo should then have had significant concerns and warned Mrs K that she was likely the victim of a scam.

Monzo has said Mrs K gave it incorrect information about the payments when she first reported them to it, and that this suggests she wouldn't have been honest with it if it had intervened. But while Mrs K did initially say the payments had happened without her knowledge and suggested someone had accessed her account, reporting a scam can be a very stressful and emotive time for a victim. From what I've seen of Mrs K's communication with Monzo, I think her initial incorrect account of what happened was more likely the result of her panic and desperation to recover her money than of a deliberate attempt to obstruct Monzo's investigation.

I also don't think later giving an incorrect account of what happened means Mrs K wouldn't have been honest if asked about the payments at the time. I've not seen anything to suggest Mrs K was told to lie or mislead Monzo if asked about the purpose of the payments. So I still think it's likely she would have answered honestly if asked, and so the concerns I mentioned above would still have been uncovered.

And as Monzo is the expert in financial matters in this situation, I think its concerns would have carried significant weight with Mrs K. I think if Monzo had explained that her circumstances matched common advance fee or investment scams and given her some steps she could take to check whether it was legitimate, such as trying to withdraw all the

money she had paid in so far, the scam would have been uncovered and Mrs K wouldn't have made any further payments towards it.

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

Should Mrs K bear some responsibility for her loss?

I've also thought about whether it would be fair for Mrs K to bear some responsibility for her loss. And while I appreciate that this was a sophisticated scam where she was given access to a platform which appeared to show orders she was completing and commission she was earning, I do think there were a number of things about what was happening that should have caused her significant concern.

Mrs K doesn't appear to have received a contract or any other documents relating to her employment by the marketing company. And all the contact she had with both the recruitment company and the marketing company was through text message or an instant messaging service, which isn't what I'd expect from professional companies. So I think communication in this way and this lack of documentation should have caused her some concern.

Mrs K was also told she had to pay upfront to fund the work she was doing for the marketing company, which I think is unusual – particularly for the kind of work she thought she was doing. She was also told she had to pay and receive her commission in cryptocurrency, which I think is unusual. And she was later unexpectedly told she had to pay in more money than she'd been initially told, in order to complete and be paid for work she had already started. And being told she had to fund her work and be paid in this way should have caused her significant concern.

The amount Mrs K was told she could earn was also relatively high for what appears to be relatively little and relatively straightforward work, especially when there didn't appear to be any application or recruitment process necessary to get the job. So I think this should have caused Mrs K significant concern that what she was being told was too good to be true.

I sympathise with the position Mrs K has found herself in. She has been the victim of a cruel and sophisticated scam. But I think there were a number of things here which should have caused her significant concern. And I don't think she did enough, or that the seemingly genuine information she received from the marketing company should have been enough, to overcome those concerns. So I think it would be fair for her to bear some responsibility for the loss she suffered.

Summary

As I think both Mrs K and Monzo should bear some responsibility for the loss she suffered, I think it would be fair for Monzo to refund 50% of the money Mrs K lost – from the twelfth payment onwards.

My final decision

I uphold this complaint in part, and require Monzo Bank Ltd to:

- Refund Mrs K 50% of the money she lost, from the twelfth payment onwards – for a total of £1,168

- Pay Mrs K 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 Mrs K to accept or reject my decision before 7 June 2024.

Alan Millward
Ombudsman