

## The complaint

Mr R complains that Monzo Bank Ltd won't reimburse him the money he transferred to a fraudster.

## What happened

Mr R has explained that in August 2023, he was an international student and actively looking for work. Mr R received contact via an instant messaging app from an individual purporting to work for a company that she claimed was the 'world's leading safe software download platform'. Unfortunately, unknown to Mr R at the time, this individual was in fact a fraudster. Mr R has explained that he initially had concerns that the contact he'd received was a scam. However, he checked the company that the fraudster claimed to work for online and found it to be a genuine company based in Europe.

The fraudster told Mr R that he was being offered a role as a 'reviewer', whereby he would need to submit five-star reviews on 40 apps a day in order to earn daily commission. Mr R was told that occasionally he may receive 'premium reviews', where he would need to temporarily 'recharge' his account by sending funds to the firm via cryptocurrency, but that these would be refunded back within a few minutes.

Mr R was advised to open a cryptocurrency wallet and was walked through the platform used for posting reviews by a 'mentor'. Mr R then began completing work for himself. After completing tasks, he asked to withdraw the commission he'd made, but was told that he wasn't able to do so until he'd made £500. As Mr R continued working, he received a 'premium review', requiring him to recharge his account, which he did. However, as he continued to complete his tasks, Mr R kept encountering further 'premium reviews' - each time asking him to recharge a higher amount of cryptocurrency before he could continue. Mr R has explained he had suspicions about the legitimacy of what he was doing, but continued to try and recover the money he'd already sent as part of the scam.

After Mr R had used all available funds, he told the fraudster he was unable to meet the recharge requirements. The fraudster reassured Mr R that all funds would be returned once he completed his daily tasks and to ask friends or family to lend him money, which he did (and has since returned the funds to them). The fraudster also appeared to provide her own money to Mr R, further assuring Mr R that she was there to help him. Mr R made the following card payments to his cryptocurrency wallet as part of the scam:

Date	Time	Payment value
01/09/2023	19:44	£44.54
04/09/2023	14:31	£100.73
04/09/2023	17:08	£799.17
04/09/2023	19:15	£1,613.28
07/09/2023	15:08	£1,226.64
08/09/2023	16:47	£1,550.00

09/09/2023	12:46	£859.54
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After numerous recharges and a further request for an additional £21,000, Mr R realised he'd fallen victim to a scam and contacted Monzo to raise a claim.

Monzo investigated Mr R's claim and considered its obligations to provide Mr R with a refund. Monzo determined that as Mr R had sent the money to a cryptocurrency wallet in his own name, the loss to the scam didn't occur at the time he made the payments from his Monzo account and therefore didn't consider it was liable to refund him.

Unhappy with Monzo's response, Mr R referred the complaint to our service. An investigator considered Mr R's complaint and upheld it in part. He thought that Monzo should have provided more probing questions or a tailored warning by the time Mr R made the fourth payment to the scam, as by this point Mr R was making his third payment of the day, each in increasing value to a known cryptocurrency platform. The investigator considered that it was more likely than not that had Monzo done more to protect Mr R, the scam would've been uncovered, preventing further losses to Mr R. However, the investigator also considered that Mr R ought to have done more to protect himself, based on Mr R appearing to have doubts about the legitimacy of what he was doing and red flags in the information he was provided with. The investigator therefore recommended Monzo and Mr R share liability 50/50 for Mr R's losses for payment four onwards.

Mr R agreed with the investigator's findings, but Monzo didn't. It maintained that it was unable to reimburse Mr R, as the payments made from his Monzo account went on to fund an account in his own name. It also considered that, in line with the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25* and section 7 of the Payment Services Regulations 2017, Monzo did not have the right to intervene on the payments.

As Monzo disagreed with the investigator's findings, the complaint has been referred 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.

Under regulations, and in accordance with general banking terms and conditions, banks and building societies should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even if they were duped into doing so, for example as part of a scam.

However as a matter of good industry practice and longstanding regulatory requirements, where there are grounds to suspect that the payment instruction might be likely to result in financial detriment to a customer through fraud or a scam, then I'd expect a bank to delay executing the instruction until the bank can reassure itself that such harm will not result.

The payments were made using Mr R's debit card and there's no dispute here that he authorised them. Mr R is therefore liable for payments unless there is evidence that Monzo could and should have done more to protect him, which is the issue I've considered.

In reaching my decision, I have 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 and 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 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.

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However as a matter of good industry practice and longstanding regulatory requirements, where there are grounds to suspect that the payment instruction might be likely to result in financial detriment to a customer through fraud or a scam, then I'd expect a bank to delay executing the instruction until the bank can reassure itself that such harm will not result.

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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

*Should Monzo have fairly and reasonably made further enquiries before releasing Mr R's card payments?*

In this case, in September 2023 when Mr R made these payments, Monzo would have been aware of the increasing prevalence of scams using cryptocurrency as a payment channel and particularly a rise in 'job scams' such as this that Mr R fell victim to. When Mr R made these payments, Monzo would've been able to identify that the payment destination was a cryptocurrency platform. Since 31 July 2023, the Financial Conduct Authority's new Consumer Duty has also come into force, placing an obligation on firms to avoid foreseeable harm to its customers.

With this in mind, I think it's fair to say that Monzo ought to have been more alert to payments being sent by its customers to cryptocurrency platforms. In Mr R's case, while payments started lower in value, they quite significantly increased over the first four payments he made towards the scam, and by the fourth payment, Mr R had made three payments in one day to a cryptocurrency platform he'd never previously used, the latter being out of character in value compared to his usual account spending. Based on these factors, I think there was enough going on that Monzo ought to have taken proportionate intervention, such as asking specific questions about the payment in order to provide a tailored warning, prior to releasing Mr R's fourth payment.

Had Monzo asked specific questions about the payments Mr R was making, I think it would have been able to identify that Mr R was at risk of falling victim to a job scam and provided a tailored warning on this type of scam. Mr R has explained he had doubts already about the payments he was making. Had Monzo provided a warning that resonated with his circumstances I think this would've been sufficient to break the spell he was under by the fraudsters and avoid any further payments being made towards the scam.

I'm also satisfied that Monzo can fairly and reasonably be held liable for Mr R's losses, despite him paying funds to a cryptocurrency wallet in his own name before sending them to the fraudster. I say this because the potential for multi-stage scams such as this ought to have been well known to Monzo at the time and Monzo therefore ought reasonably to have been alert to payments presenting an additional scam risk, including the hallmarks of a multi-stage scam where payments to cryptocurrency accounts in a customer's name are more commonplace.

*Should Mr R bear any responsibility for his losses?*

I've therefore gone on to consider whether Mr R should also be held partially responsible for his losses on payments four to seven. Mr R has acknowledged that he had suspicions about the job opportunity and the payments he was making, but proceeded in the hope of recouping some of his funds already sent as part of the scam. I also think there were some elements of the scam that ought reasonably to have been considered red flags. For example, Mr R understood his employment to be, in essence, creating falsified reviews on apps Mr R hadn't used. I think that this is a questionable business practice for a firm that claims to be leading in its sector.

Mr R has made substantial deposits for what he believed was a job opportunity. I think Mr R ought to have been concerned at the very nature of this proposal - paying to participate in a job is a complete inversion of the employer-employee relationship and would strike most people as an unusual arrangement.

I also think the returns Mr R was being assured of in the role were unrealistic. Considering he was only required to work for less than an hour per day and the role appears to require minimal training or skill, the screenshots Mr R has provided appear to suggest he had earned several thousand within just a few days. I think this also ought to have caused concern for Mr R that this opportunity was too good to be true.

I think there were sufficient red flags here that reasonably ought to have led Mr R to have acted far more cautiously than he did. So, I think Mr R did have a role to play in what happened and I think that the amount Monzo should pay to him in compensation should fairly and reasonably be reduced by 50% to reflect that role.

*Recovery*

Finally, I've thought about whether Monzo could've done more to recover the funds after Mr R reported the fraud. Given Mr R made the payments by card, I've considered whether Monzo could have raised a successful chargeback claim. However, as the payments went to a genuine cryptocurrency account, that transferred funds as requested into cryptocurrency, I don't think a chargeback claim would have had any reasonable prospects of success – the firm who received funds having completed the service requested.

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### **My final decision**

My final decision is that I uphold Mr R's complaint about Monzo Bank Ltd in part. I require Monzo Bank Ltd to refund Mr R:

- 50% of payments four to seven made towards the scam;
- Apply 8% simple interest, from the date Mr R made the payments, until the date of settlement..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 May 2024.

Kirsty Upton  
**Ombudsman**