

## The complaint

Ms B is unhappy that Monzo Bank Ltd (“Monzo”) won’t refund her for six payments totalling £22,500 she made as a result of a romance/investment scam.

## What happened

The circumstances that led to this complaint are well known to both parties, so I won’t repeat them in detail here. But, in summary Ms B fell victim to a romance scam which involved her investing in cryptocurrency on the premise that the individual was a cryptocurrency trader. Ms B made the following transactions as a result of the scam.

Date	Amount	Payee
12 October 2022	£1,000	Ms B
22 October 2022	£1,000	Ms B
5 November 2022	£4,500	Ms B
14 November 2022	£4,000	Ms B
28 November 2022	£5,000	Ms B
16 December 2022	£7,000	Cryptocurrency provider C

Monzo considered Ms B’s complaint, but it didn’t agree to reimburse her. It said the money was transferred to accounts in Ms B’s own name and the scam happened from there – not her Monzo account.

Our investigator upheld the complaint in part. She considered that by the third transaction Monzo should have been concerned and intervened to stop the payment. But she also felt there was enough going on that Ms B ought reasonably to have had concerns about whether this was a genuine situation – so she recommended Monzo refund 50% of the transactions from the third payment onwards.

Ms B accepted the view, but Monzo did not agree. It said:

- This is a multigenerational claim and the payments considered me-to-me.
- The payments are outside the scope of the Contingent Reimbursement Model (CRM) Code.
- It is not expected to assess fraud outside its remit and the payments in question did not result in a direct loss.
- They were legitimate payments and intervening goes against the PSR regulations and against the recent Philipp v Barclays ruling.
- There is no evidence to suggest the consumer would have been honest with Monzo if it had intercepted the payment and question her.

I issued my provisional decision on 1 May 2024. Both parties accept my 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.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

I'm sorry to hear about this cruel scam and I've no doubt this has had a significant effect on Ms B - not just in terms of the money she has lost but also the emotional impact of the crime itself. But I am limited to establishing whether Monzo did anything wrong.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Ms B's account is that Ms B is responsible for payments she's 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 as not the same as being under a duty to do so.

In this case, Monzo's December 2021 terms and conditions 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 its 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.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Monzo, so I don't intend to repeat it here. But in summary, overall, taking into account the law, regulatory 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 including the use of cryptocurrency accounts, own accounts or me-to-me transactions) 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 Ms B's payments?*

In the six months before the scam, the account was generally used to receive and transfer funds. Whilst Ms B made payments to various payees regularly, the transactions on the account were of relatively low value – although she did make a payment of £1,500 on 16 June 2022 and one of £2,500 on 7 July 2022.

I am also mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

The individual payments were initially relatively low in value and the transactions were spread out and there was no obvious link between them. In my view, there was nothing about the payments that ought reasonably to have led Monzo to have any concerns at this point. Although Ms B was buying cryptocurrency, Monzo had no reason to know this (for the first five transactions) because the money was transferred to an account in Ms B's name via open banking. As far as Monzo was concerned, Ms B was transferring funds to herself, and they didn't obviously look like payments to cryptocurrency.

Whilst the payments increased in size by transactions three, four and five, they were still relatively low (although I appreciate this was a lot of money to Ms B) and remained spread out. And I think Monzo could reasonably take some comfort from the fact that it appeared Ms B was transferring the money to her own account and by now an established payee on the account. The transactions didn't obviously look like fraud or a scam.

And Monzo did provide generalised scam warnings for the transactions (as well as a new payee warning each time one was set up) which I think was proportionate in the circumstances. As I've said above – there is a balance to be struck.

But the transaction on 16 December 2022 was to a known cryptocurrency provider and was substantially higher than any other payment Ms B had made.

I note Monzo considers it isn't liable because Ms B bought genuine cryptocurrency. I appreciate the losses did not occur directly from Ms B's Monzo account, but I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account and the fraud then happened from there. Monzo will be well aware that there are circumstances where a customer might indicate that an account is under their control, but that turns out not to be the case. It can't, fairly and reasonably, entirely rely on what its customer has told it or always take its customer's selected payment purpose at face value.

Monzo had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account. So if Monzo had intervened and questioned Ms B more about the payment, I think it would have been concerned about the reasons for Ms B's cryptocurrency purchase.

Ms B wasn't provided with a cover story, so I think if Monzo had probed further, she'd have been honest about the reason for the payment and explained that she was buying cryptocurrency as her partner was a cryptocurrency trader. Given the reason for the payment, with better questioning, I'm satisfied that her response is likely to have been concerning given that Ms B thought she was buying cryptocurrency for her partner (who she had never met in person) to trade to raise funds for their future together and for her partner's mother's surgery (the latter being a common scam story).

Monzo ought reasonably to have been aware of cryptocurrency and romance scams and to have recognised the warning signs. So I believe that if Monzo had asked the kind of questions it ought to have asked, the scam would have been uncovered and Ms B's loss on the last transaction could have been prevented.

### *Should Ms B share in the responsibility for her loss?*

As well as Monzo's obligations I've also thought about whether Ms B should share in the responsibility for her loss. I won't go into detail here – as Ms B accepted the investigator's view, but for completeness I agree with the investigator broadly for the same reasons. My intention is not to further Ms B's distress where she's already been the victim of a cruel scam. But certainly, by the time of the transaction I am upholding, I think there were signs that things weren't quite right. Ultimately Ms B placed a lot of trust in someone she'd not met in person.

I realise my decision will be a significant disappointment to Ms B especially as it differs in some respects to the investigator's conclusions but for the reasons set out above, I think Monzo did enough for all but the last transaction.

### **Putting things right**

In order to put things right for Ms B, Monzo Bank Ltd should:

Refund 50% of the last transaction.

Because Ms B has been deprived of this money, I consider it fairest that Monzo add 8% simple interest to the above from the date of the transaction to the date of settlement.

If Monzo is legally required to deduct tax from the interest it should send Ms B a tax deduction certificate so she can claim it back from HMRC if appropriate.

### **My final decision**

My final decision is that I uphold this complaint in part and require Monzo Bank Ltd to put things right for Miss B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 14 June 2024.

Kathryn Milne  
**Ombudsman**