

The complaint

Mr Y complains that Monzo Bank Ltd didn't do enough to protect him from the financial harm caused by an investment scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr Y was the victim of a job scam. He was contact by someone who I'll refer to as "the scammer", who told him about an employment opportunity with a company I'll refer to as "B" which required him to complete tasks in return for commission. He was added to a WhatsApp group with others who were performing the same role and guided to create accounts with B.

The scammer asked him to first purchase cryptocurrency via a payments platform I'll refer to as "S" and then load it to an online wallet. Between 10 March 2023 and 12 March 2023, he transferred six payments from his Monzo account to S totalling £6,414.

Mr Y complained to Monzo when he realised he'd been scammed. It apologised for the time he'd had to wait while it was investigating the claim and for the delay in providing the outcome of the claim in writing by email, but it said it was unable to uphold the complaint. It explained the scam happened after the payments were sent to S, so he should discuss the case directly with S.

Mr Y wasn't satisfied and so he complained to this service. Responding to the complaint, Wise said it did attempt to recover the funds, but no funds remained and it said the payments weren't covered under the Contingent Reimbursement Model ("CRM") code because he had sent the funds to an account in his own name and control. It argued Mr Y failed to undertake any due diligence and should have been concerned that he hadn't received any documents and thought twice before making so many payments in such a short space of time.

Our investigator thought the complaint should be upheld. He didn't think payments 1-3 were out of character for the account. But by payment 4, he commented that Mr Y had made three transactions in the same day to a cryptocurrency merchant, totalling £3,651. He thought this was out of character and it would have been reasonable for Monzo to have contacted him to ask him some questions about the payments. He explained that as he hadn't seen any evidence Mr Y had been coached to lie, he thought he'd have said he was approached on social media and asked to send cryptocurrency to an employer, which would have alerted Monzo to the fact he was being scammed.

He noted payment 4 had been returned and so he recommended Monzo should refund payments 5 and 6 because its failure to intervene when he made payment 4 represented a missed opportunity to prevent his loss. However he didn't think it was reasonable that Mr Y believed a legitimate firm would conduct recruitment via social media and a simple search

would have shown many articles with information about job scams, so he was satisfied Mr Y had failed to do any due diligence. He also noted he wasn't given an employment contract and he felt he should have questioned why he was being asked to pay for tasks for which he was expecting to be paid. So he thought the settlement should be reduced by 50% for contributory negligence.

Monzo asked for the complaint to be reviewed by an Ombudsman arguing it wouldn't have been appropriate to intervene because Mr Y was paying an account in his own name and from there the funds were withdrawn to an external platform. It also said that in line with Phillips v Barclays the regulator and the court have upheld that they expect banks to carry out customers wishes and it's inappropriate for it to decline to do so. And there's no way to determine whether Mr Y would have been honest had it intervened.

My provisional findings

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mr Y says they've fallen victim to, in all but a limited number of circumstances. But the code didn't apply to these payments because Mr Y was paying an account in his own name.

I was satisfied Mr Y 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr Y is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr Y didn't intend his money to go to scammers, he did authorise the disputed payments. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

I explained the starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr Y's account is that he is responsible for payments he's authorised himself. And, as the Supreme Court has recently reiterated in Philipp v Page 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 gave it rights to block payments where it suspects criminal activity on the account.

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.

Prevention

Monzo was an emoney/money remittance provider and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the FCA's Principles for Businesses and BCOBS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a legitimate merchant. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mr Y when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Mr Y from financial harm due to fraud.

The payments didn't flag as suspicious on Monzo's systems. I considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr Y normally ran his account and I didn't think they were. All the payments were to an account in Mr Y's own name with a legitimate payments platform, and it wouldn't have been apparent that he was buying cryptocurrency. Further, the individual payments were relatively low value and, even though the account had previously been used for low-value spending, the payments weren't high enough to have triggered Monzo's fraud systems based on their value alone.

Our investigator said the cumulative spend for the day on 11 March 2023 was £4051.89, so even though Mr Y was paying an account in his own name, there was a pattern of spending which ought to have raised concerns. But I disagreed. This is because, as Mr Y was paying an account in his own name and it wouldn't have been obvious that he was buying cryptocurrency, even though the cumulative spend for the day was high for the account, I didn't think it was so high that Monzo needed to intervene.

Overall, I was satisfied Monzo took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I explained I was sorry to hear Mr Y has lost money and the effect this had on him. But I explained, I wasn't minded to

conclude that Monzo was to blame for this and so I couldn't fairly tell it to do anything further to resolve the complaint.

Compensation

Monzo had apologised for some delays in its handling of the claim. I was satisfied that's fair and reasonable and I didn't think Mr Y was entitled to any compensation.

Recovery

Mr Y had described that he paid an account in his own name and from there the funds were moved to an online wallet in the scammer's control, so I was satisfied there was no prospect of a successful recovery.

Developments

Mr Y has responded to my provisional decision, but he hasn't made any further arguments or produced any additional evidence in support of his complaint.

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.

Because neither party has made any further arguments or produced any additional evidence for me to consider, the findings in my final decision will be the same as the findings in my provisional decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 17 May 2024.

Carolyn Bonnell
Ombudsman