

## The complaint

Ms D complains that Monzo Bank Ltd did not refund a series of payments she lost to a scam.

## What happened

Ms D had been searching for a job and had signed up to a few job sites. She was contacted via a messaging service about a remote job for a few hours a week. The recruiter said she could earn up to 3,000 USDT a month and it was completely remote. She looked up the name of the company and they appeared to be legitimate, so she agreed. Ms D would have to complete a certain amount of tasks and had to fund these via cryptocurrency, and at the end of a set of tasks she would receive commission. Ms D made the following payments from her Monzo account to a crypto wallet in her name:

- 1 Feb 2023: £1,320
- 1 Feb 2023: £3,250
- 1 Feb 2023: £4,500
- 1 Feb 2023: 51p

Ms D could not afford to fund the final task but was told she had to pay before she could access the commission she had earned. Shortly after this, she realised she had been the victim of a scam.

Ms D made a scam claim with Monzo, but they explained that as she had sent funds to an account in her own name before passing them onto the scammer, the loss did not originate from them and directed her to complain to the crypto exchange. They attempted to recover any remaining funds but as these had been forwarded onto the scammer, they were unsuccessful.

Ms D referred the complaint to our service and our Investigator looked into it. They felt that Monzo bank should have intervened by the payment of £3,250, as it was a large payment going to cryptocurrency which holds a higher risk. And they felt that if Monzo had intervened, the scam would have been revealed. So, they recommended a refund of the transactions from the £3,250 payment onwards, plus 8% simple interest. But they also felt Ms D could have done more to protect herself from the scam, so recommended a reduction in the redress of 50% to account for this.

Ms D eventually accepted the findings, but Monzo did not. They mentioned the Supreme Court Judgement in the case of Philipp vs Barclays Bank Plc UK [2023] UKSC 25 which confirmed that where a bank receives instruction from a customer which is clear and leaves no room for interpretation and the customer's account is in credit, the bank's primary duty is to execute the payment instruction. So, they felt it would be inappropriate for them to decline Ms D's instruction. And they said that as the payments were going to an account in Ms D's name, any intervention would not have revealed the scam as there was nothing to suggest the payments weren't legitimate.

As an informal agreement could not be reached, the complaint has been passed 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.

Having reviewed the evidence, I'm satisfied that Ms D has been the victim of a scam. What's left to decide is if Monzo should reasonably have done more to prevent it.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Ms D authorised the payments in question as she believed they were part of a genuine job opportunity. So, while I recognise that she didn't intend the money to go to scammers, the starting position in law is that Monzo was obliged to follow Ms D's instruction and process the payments. Because of this, she is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Monzo did enough to try to keep Ms D's account safe.

I've reviewed Ms D's statements to see if the payments in question were out of character when compared with her genuine account activity. Ms D used her Monzo account for everyday payments and most transactions were only a few hundred pounds. There are two slightly larger payments in the months prior. One of £725 going to an existing account in Ms D's name and £978 in September 2022 going to what appears to be a fashion retailer. So, I do think the transactions in question were larger than the usual spend on the account.

Ms D made multiple payments on the same day to a cryptocurrency wallet, which was again unusual account activity for her. I think that by February 2023, Monzo should reasonably have been on the lookout for suspicious transactions related to cryptocurrency, due to the increased level of risk and scams associated with them. And I think that by the second payment on 1 Feb of £3,250 that was identifiably going to cryptocurrency, they should have had concerns about the payments and flagged them for additional checks.

In reaching my decision that Monzo should have made further enquires, I have taken into account the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023]*.

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 December 2021 terms and conditions (applicable at the time of the payments) gave them rights (but not obligations) 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
- They had a contractual right not to make payments where they suspected criminal activity
- They could therefore block payments, or make enquiries, where they suspected criminal activity, but they were 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 them 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.

In this case for the reasons I have explained, I am satisfied they should have intervened. And if they had, I think it is more likely the scam would have been revealed. Monzo has said intervention would not have made a difference as the funds were going to a crypto account in Ms D's name. But this was not obvious from the payment itself, so I think Monzo would have needed to ask further questions to know the purpose of the payment. I see no reason why Ms D would not have been honest and explained they were payments for a remote job she had signed up to. Job scams are well known to Monzo, so they would have been able to educate Ms D about the scam and prevent her from making further payment.

With this in mind, I think it is reasonable for Monzo to refund the payments from the £3,250 transaction onwards, as I think they missed an opportunity to reveal the scam. And they should apply 8% simple interest from the date of the transactions to the date of settlement.

I also have to consider whether there should be a reduction in the redress by 50% to account for Ms D's contribution to the loss. This would be applied where Ms D has not protected herself against the scam as a reasonable person would. Ms D has already accepted the reduction as a finding and, in summary, I also agree that a reduction is fair in

this case, as Ms D agreed to send crypto for a job with pay that could have been seen as 'too good to be true' and with seemingly no application or interview process. As all parties are in agreement, I see no reason to discuss this issue any further.

I agree that Monzo should have intervened at the £3,250 payment and that if it had done, the scam would most likely have been revealed. So, I think there should be a refund of the payments from the £3,250 transaction onwards and 8% simple interest should be added to this from the date of the transactions to the date of settlement. I also agree that a reduction in the redress of 50% is fair to account for Ms D's contribution to the loss.

If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms D how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold Ms D's complaint in part and recommend Monzo Bank Ltd pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 12 June 2024.

Rebecca Norris  
**Ombudsman**