Complaint

Mr C is unhappy that Monzo Bank Ltd didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In mid-2023, Mr C received a message from someone who claimed to work for a well-known recruitment agency. This person wanted to know if he was interested in a job opportunity. He was told that he'd need to carry out tasks on the company's platform that would help with *"app optimisation"* – this activity was intended to improve the ranking of certain apps on the Google Play Store or the Apple App Store. The fraudster told him he'd earn commission in exchange for carrying out these tasks. Unfortunately, this wasn't a genuine job opportunity. Mr C had been contacted by a fraudster.

In order to carry out these tasks, he needed to deposit funds into his account. He used his Monzo account to make payments to a third-party cryptocurrency platform. As I understand it, his funds were converted to cryptocurrency and then transferred into the control of the fraudsters. He made the following payments from his Monzo account:

	Date	Payment
1	25-Aug-23	£ 29.32
2	25-Aug-23	£ 5.00
3	26-Aug-23	£ 50.31
4	28-Aug-23	£ 20.60
5	28-Aug-23	£ 10.30
6	28-Aug-23	£ 77.24
7	28-Aug-23	£ 96.47
8	28-Aug-23	£ 70.00
9	29-Aug-23	£ 167.76
10	29-Aug-23	£ 185.38
11	29-Aug-23	£ 185.38
12	29-Aug-23	£ 185.38
13	29-Aug-23	£ 185.38
14	29-Aug-23	£ 185.38
15	29-Aug-23	£ 185.38
16	29-Aug-23	£ 0.10
17	29-Aug-23	£ 2,127.50
18	29-Aug-23	£ 3,682.27

Once he realised he'd fallen victim to a scam, he notified Monzo. It didn't agree to reimburse him. Mr C wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator said Monzo was expected

to be on the lookout for account activity that was unusual or out of character to the extent that it might have indicated a fraud risk. In her view, Monzo should've taken action in connection with payment 12 in the table above. If it had done so, she was persuaded that it would've been able to prevent that payment and Mr C's subsequent losses to the scam. However, she also thought that it was fair and reasonable for Mr C to bear partial responsibility for his own losses by way of contributory negligence. She recommended Monzo refund 50% of his losses from payment 12 onwards with interest.

Monzo didn't agree with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. However, good industry practice required that Monzo be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

The Investigator thought Monzo should've acted in connection with payment 12 in the table above and I'd agree with that conclusion. Mr C had made multiple payments that day and those payments had been made in quick succession. All of those payments (and the ones in the days prior) had been made to a well-known cryptocurrency intermediary. Furthermore, the fact that there were so many payments on 29 August of the same value suggested a pattern of payments consistent with what one would typically expect to see in a job scam. I don't think Monzo should've processed payment 12 without first making enquiries with Mr C to satisfy itself that he wasn't at risk of financial harm due to fraud.

I've considered Monzo's comments regarding Regulation 82 of the Payment Services Regulations 2017. This regulation sets out what steps a payment service provider (PSP) should take when it chooses not to process a customer's payment and the information it should make available to that customer. It doesn't set any limits or restrictions on how a PSP might exercise its discretion to decline to make a payment. Overall, I'm not persuaded it's relevant to the outcome here.

I've also 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 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, the terms and conditions applicable to Mr C's Monzo account conferred on it rights (but not obligations) 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. Not make a payment if it reasonably believes the payment may be connected to a scam, fraud, or other criminal activity.

The starting position at law, therefore, 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 carry out fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded it from making fraud checks before making a payment.

Whilst Monzo was not required or obliged under the contract to conduct 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 carried out additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case for the reasons I have explained, I am satisfied it should have intervened. If it had done so, I think it's more likely than not that it would've been able to prevent the subsequent losses to the scam. There's no good reason to think Mr C wouldn't have responded to the bank's queries openly and honestly. I've seen the communications between him and the scammer. There's nothing there that suggests he was told that he'd need to mislead the bank if it asked him questions about the payments. This is a very commonly occurring scam type and I don't think it would've been particularly difficult for the bank to have uncovered what was going on and explained things to him.

I've also considered whether it would be fair and reasonable for him to bear some responsibility for his own losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances.

I've considered the evidence carefully and I'm satisfied Mr C did act carelessly here. There was no formalisation of the arrangement between him and the employer – for example, there was no written contract and indeed no clear setting out of the terms of his employment. It's also quite clear from the exchange of messages he had with the fraudster that he had his doubts about the legitimacy of the arrangement very early on but went ahead with payments regardless.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement and Mr C doesn't appear to have asked about it. I think he ought to have proceeded only with great caution. Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to him.

I've also taken into account that the loss he suffered didn't occur from the Monzo account. He did genuinely make purchases of cryptocurrency and took ownership of the underlying assets, albeit briefly. It was only when he transferred that cryptocurrency on to the fraudster that he sustained any loss. Nonetheless, Monzo ought to have been aware of the risk of multi-stage scams involving cryptocurrency. Such scams 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. Overall, I am satisfied that it could have prevented the losses he suffered if it had acted as I've found it should've done.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr C accepts my final decision, Monzo Bank Ltd needs to refund 50% of the payments he made in connection with the scam from payment 12 onwards. It should add 8% simple interest per annum to this sum calculated to run from the date the payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 August 2024.

James Kimmitt
Ombudsman