

## The complaint

Mr A complains that Monzo Bank Ltd ('Monzo') hasn't refunded him the money he lost in a scam.

## What happened

I'm not going to cover all the points raised in detail. The view of 30 November 2023 covered the details of Mr A's testimony. But briefly Mr A says he was contacted by someone about a remote job opportunity with an organisation I will refer to as E. The job involved completing tasks to optimise merchants' digital applications.

After paying an initial deposit, Mr A was persuaded to transfer further funds to complete certain tasks. The payments (listed in the table below) were made to third party individuals to buy cryptocurrency: the cryptocurrency was then sent to the scammer's wallet through Mr A's own cryptocurrency wallet. Ultimately Mr A was unable to withdraw his earnings and soon after realised he'd fallen victim to a scam.

Table of transactions:

Date	Payment	Amount	Payee
12 April 2023, 17:21	Faster payment	£22	Payee 1
12 April 2023	Withdrawal/Return from scam	(£38)	
13 April 2023, 18:40	Faster payment	£34	Payee 2
13 April 2023, 21:42	Faster payment	£64	Payee 1
14 April 2023, 14:57	Faster payment	£165	Payee 3
15 April 2023, 15:09	Faster payment	£372	Payee 4
15 April 2023	Withdrawal/Return from scam	(£708.54)	
16 April 2023, 10:55	Faster payment	£850	Payee 5
16 April 2023, 13:25	Faster payment	£1,000	Payee 6
16 April 2023, 13:59	Faster payment	£1,420	Payee 6
17 April 2023, 8:29	Faster payment	£2,311	Payee 7
17 April 2023, 8:41	Faster payment	£900	Payee 8
17 April 2023, 10:44	Faster payment	£1,055	Payee 9
17 April 2023, 17:26	Faster payment	£1,964	Payee 10
17 April 2023, 17:51	Faster payment	£1,303	Payee 11
Total		£11,460	
Actual loss		£10,713.46	

Monzo considered Mr A's complaint. It didn't agree to reimburse Mr A. Mr A was unhappy with Monzo's response and brought a complaint to our service. He said Monzo should have done more to protect him from the scam.

Our investigator upheld the complaint in part. She thought Monzo ought to have been concerned by the time Mr A made the first payment on 17 April 2023 and should refund this and the transactions that followed. However, she also considered Mr A should share in the responsibility for his losses so she felt the refund should be reduced by 50%.

Mr A accepted the view. Monzo disagreed. It said:

- Mr A made payments to legitimate sellers to purchase cryptocurrency (known as peer to peer or P2P). The cryptocurrency was then sent to the scammers.
- It didn't have concerns about Mr A's payments, so shouldn't be held liable for not intervening.
- It raised the recent court case of *Philips v Barclays* as to its duty to process payments.
- It disagrees that, had it intervened and questioned Mr A, the scam would have come to light/been exposed.

I issued my provisional decision on 10 April 2024 explaining why I was thinking of coming to a slightly different outcome to our investigator.

Both parties accepted my provisional 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 the impact it has had on Mr A.

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 Mr A's account is that Mr A is responsible for payments Mr A's authorised himself. 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 was 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) 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 Mr A's payments?*

In the six months before the scam, the account was generally used to receive and transfer funds. Whilst Mr A made payments to various payees regularly, the transactions on the account were of relatively low value; there were no payments over £1,000 and payments to third parties didn't exceed £100.

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.

Whilst I broadly agree with the investigator (that payments were increasing in size and frequency) I think the first payment on 17 April 2023 is too early to say any pattern had emerged. The individual payments - whilst unusual for Mr A - were still relatively low in value and 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 Mr A was buying cryptocurrency, Monzo had no reason to know this because of the method used to do so (peer-to-peer). As far as Monzo was concerned, Mr A was transferring funds to different named individuals and there was nothing to link the individual payments to each other either.

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. I realise these are finely balanced decisions.

But by the fourth payment on 17 April 2023, Mr A had made three payments that were larger than usual for him to three new payees in the same day and was proposing to make a fourth payment of £1,964 to a fourth new payee. This was now £6,230 out of the account on the same day across four new payees. A pattern of scam payments was emerging that I think Monzo reasonably ought to have been concerned about and intervened before processing the payment. This pattern was certainly different to how the account had previously been used. Monzo told us that Mr A had only set up three new payees in the twelve months before the scam.

I'm aware that Monzo provided Mr A with a generalised online scam warning, but I don't think this was enough in the circumstances of this case. The warning asked if someone could be trying to scam the payer and said to stop in certain circumstances. The reasons to stop the payment included being told the account is at risk, something that is too good to be true, to double check the payee and if the payer has been told to ignore a warning. I don't believe the warning would have resonated with Mr A and it was too general to cover the circumstances he found himself in. I think Monzo should have asked Mr A some further questions about the fourth payment on 17 April 2023 before processing it.

I've gone on to consider what I think would have happened if Monzo had intervened. Mr A wasn't provided with a cover story, so I think he'd have been honest about the reason for the payment and explained that he was buying cryptocurrency. Given the reason for the payment I consider Monzo ought to have probed further and established why Mr A was buying cryptocurrency. I'm satisfied that his response is likely to have been concerning given that Mr A thought he was buying cryptocurrency to release tasks to make an additional income. Monzo ought reasonably to have been aware of task-based scams of this nature 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 Mr A's loss on the last two transactions could have been prevented.

I note Monzo considers it isn't liable because Mr A bought genuine cryptocurrency. I appreciate the losses did not occur directly from Mr A'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 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 (or individuals in the peer-to-peer market) 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 Mr A more about the payment as I've outlined above – I think it would have been concerned about the reasons for Mr A's cryptocurrency purchase.

*Should Mr A share in the responsibility for his loss?*

As well as Monzo's obligations I've also thought about whether Mr A should share in the responsibility for his loss. I won't go into detail here – as Mr A accepted the investigator's view but for completeness, I agree with the investigator broadly for the same reasons.

Certainly, by the time the two payments I'm asking Monzo to refund come into question, I think Mr A should have had concerns about the legitimacy of the task-based job he was involved in. The initial contact was made on social media and the scammer's behaviour appeared inconsistent with how a legitimate employer would operate. There was no contract or paperwork about the job opportunity and Mr A needed to place ever increasing deposits in order to get paid. I think the premise on which the job was based warranted further scrutiny. Towards the end, Mr A was borrowing money from friends and family and even took out bank loans to finance the 'job opportunity'.

### **Putting things right**

In order to put things right for Mr A, Monzo Bank Ltd should:

Refund 50% of the last two transactions.

Because Mr A has been deprived of this money, I consider it fairest that Monzo add 8% simple interest to the above from the date of the transactions to the date of settlement. If Monzo is legally required to deduct tax from the interest it should send Mr A a tax deduction certificate so he can claim it back from HMRC if appropriate.

### **My final decision**

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 May 2024.

Kathryn Milne  
**Ombudsman**