

## The complaint

Miss G complains that Monzo Bank Ltd ('Monzo') hasn't refunded her the money she lost in a scam.

## What happened

I'm not going to cover all the points raised in detail. But briefly Miss G fell victim to a task-based job scam in which she was required to rate products in exchange for commission. She opened an account on the fake job platform, and she was also required to open an account with a genuine cryptocurrency provider where her "commission" would be paid. Between 2 June 2023 and 20 June 2023 Miss G sent £29,090 over 17 transactions to purchase cryptocurrency (some via individuals on the peer-to-peer (P2P) market and some via cryptocurrency exchanges). This in turn enabled her to pay funds in order to release further tasks. She was told these funds would be returned to her along with her commission. But when she tried to withdraw her money, Miss G was asked for increasing amounts of money/fees. She eventually realised she'd been the victim of a scam.

Table of transactions:

Payment	Date	Time	Amount
1	2 June 2023	20:22	£200
2	3 June 2023	13:15	£1,000
3	3 June 2023	13:50	£2,000
4	4 June 2023	09:25	£2,000
5	4 June 2023	09:35	£2,000
6	4 June 2023	10:40	£2,000
7	4 June 2023	10:59	£1,800
8	5 June 2023	16:34	£1,000
9	5 June 2023	17:43	£2,000
10	7 June 2023	06:23	£2,000
11	7 June 2023	06:38	£1,700
12	7 June 2023	17:18	£3,000
13	7 June 2023	17:36	£2,300
14	8 June 2023	08:05	£2,020
15	9 June 2023	19:04	£870
16	20 June 2023	16:13	£665
17	20 June 2023	18:41	£2,535

Monzo still hadn't considered Miss G's complaint by the time she brought it to this service.

Our investigator upheld the complaint in part. She thought Monzo ought to have been concerned by the time Miss G made the seventh payment on 4 June 2023 and should refund from this point onwards. However, she also considered Miss G should share in the responsibility for her losses so she felt the refund should be reduced by 50%. She also thought Monzo should pay Miss G £100 compensation for the delays in considering her complaint.

Miss G accepted the view. Monzo disagreed. It said:

- Miss G purchased genuine cryptocurrency. The cryptocurrency was then sent to the scammers.
- It raised the recent court case of Philips v Barclays as to its duty to process payments.

Miss G accepted the investigator's conclusions, but Monzo didn't agree. So, the case has been passed to me for a 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.

I should start by saying I'm sorry to hear about this cruel scam and the impact it has had on Miss G.

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 Miss G's account is that Miss G is responsible for payments she 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 was not the same as being under a duty to do so.

In this case, Monzo's terms and conditions dated 25 April 2023 gave it rights (but not obligations) to:

- Refuse to make a payment if it suspects a customer is the victim of fraud.
- If payments are blocked, it explains that Monzo will contact the account holder using one of their usual channels – one of which I note is by phone.

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.

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 Miss G's payments?*

In the six months before the scam, the account was generally used to receive and transfer funds. Whilst Miss G made payments to various payees regularly, the transactions on the account were of very low value; there were no transfers out of the account(s) over £1,000.

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, whilst unusual for Miss G, were still relatively low in value and spread out. And certainly initially, there was no obvious link between them. I think for the first six payments it was too early to say any pattern had emerged. There was nothing about the payments that ought reasonably to have led Monzo to have any concerns at this point. Although Miss G was buying cryptocurrency, I don't think it would have been obvious through the individual P2P payments and particular exchanges involved here.

And Monzo did provide generalised scam warnings for the transactions when a new payee was set up, which I think was proportionate in the circumstances. As I've said above – there is a balance to be struck.

But by the seventh transfer (the fourth payment on the same day), Miss G had made three payments that were larger than usual for her to two new payees in the same day and was proposing to make a fourth payment of £1,800 to a third new payee. This was now £7,800 out of the account on the same day across three payees. And large transactions were entering the account at the same time. A pattern of scam payments was emerging that I think Monzo reasonably ought to have been concerned about and intervened before processing the £1,800 payment. This pattern was certainly different to how the account had previously been used.

I'm aware that Monzo provided Miss G 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 Miss G and it was too general to cover the circumstances she found herself in. I think Monzo should have asked Miss G some further questions about £1,800 payment on 4 June 2023 before processing it.

I've gone on to consider what I think would have happened if Monzo had intervened. Miss G wasn't provided with a cover story. And the evidence within the chat messages with the scammer indicates (with reference to the bank) that she *"wouldn't be able to lie about the crypto and the situation"*. So I think she'd have been honest about the reason for the payment and explained that she was buying cryptocurrency. Given the reason for the payment I consider Monzo ought to have probed further and established why Miss G was buying cryptocurrency. I'm satisfied that her response is likely to have been concerning given that Miss G thought she 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 Miss G's loss from this point on could have been prevented.

I note Monzo considers it isn't liable because Miss G bought genuine cryptocurrency. I appreciate the losses did not occur directly from Miss G'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 Miss G more about the payment as I've outlined above – I think it would have been concerned about the reasons for Miss G's cryptocurrency purchase.

*Should Miss G share in the responsibility for her loss?*

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

Certainly, by the time the payments I'm asking Monzo to refund come into question, I think Miss G should have had concerns about the legitimacy of the task-based job she was involved in. The scammer's behaviour appeared inconsistent with how a legitimate employer would operate. There was no contract or paperwork about the job opportunity and Miss G needed to place ever increasing deposits in order to get paid. I think the premise on which the job was based warranted further scrutiny. Miss G started to borrow money from friends/family and even took out bank loans to finance the 'job opportunity'. It's clear from the messages with the scammer that, as time went on, she had her own doubts about the legitimacy of the situation.

*Compensation*

Miss G complained to Monzo in August 2023 after it declined her claim (which was made at the end of June 2023). It took until December 2023 for Monzo to provide Miss G with a response on her complaint.

In considering compensation for distress and inconvenience, I've specifically thought about the impact of Monzo's actions, rather than the impact of the crime itself.

Monzo's failure to sufficiently act has had an impact on Miss G, not least because she has been facing the very real possibility that she would not get her money back. The significant delay in providing Miss G with a response has undoubtedly compounded her distress further. For these reasons, I think it's fair and reasonable for Monzo to pay £100 for the distress and inconvenience it has caused Miss G in this case.

### **Putting things right**

In order to put things right for Miss G, Monzo Bank Ltd must:

Refund 50% of the transactions from (and including) payment seven onwards.

Because Miss G 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.

Pay £100 for the distress and inconvenience caused.

If Monzo is legally required to deduct tax from the interest it should send Miss G 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 G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 25 July 2024.

Kathryn Milne  
**Ombudsman**