

## The complaint

Ms K complains about Monzo Bank Ltd.

She says that Monzo didn't do enough to protect her when she became the victim of a scam and would like it to refund her the money she has lost.

## What happened

Ms K was contacted by someone on Instagram about investing in Cryptocurrency.

After watching the Instagram pages and reading some positive reviews Ms K agreed to invest and made the following payments.

Date	Payee	Payment type	Amount
6 October 2023	Moonpay	Card payment	£780
8 October 2023	Moonpay	Card payment	£550
13 October 2023	Moonpay	Card payment	£2,410
13 October 2023	Moonpay	Card payment	£1,900
17 October 2023	Moonpay	Card payment	£5,000
18 October 2023	Moonpay	Card payment	£5,000
18 October 2023	Ramp Swaps	Faster payment	£3,500
		<b>Total</b>	<b>£19,140</b>

Unfortunately, Ms K had fallen victim to a scam, and lost her money.

Ms K complained to Monzo about what happened, she said that it should have done more to protect her. Monzo didn't uphold her complaint.

Ms K then brought her complaint to this Service. Our Investigator looked into things and thought that the complaint should be upheld in part.

Ms K accepted this, but Monzo did not.

In summary, it said;

- The point of loss wasn't from Monzo but from Ms K's own crypto wallet
- The payments fall out of scope of the Lending Standards Contingent Reimbursement Model (CRM) code; and
- Referred to the Supreme Court ruling, Philipp v Barclays

As no agreement could be reached, the complaint has been passed to me to make 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 done so, I've decided to uphold this complaint in part, for broadly the same reasons as our Investigator. I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Ms K authorised the payments in question here – so even though she was tricked into doing so and didn't intend for her money to end up in the hands of a scammer, she is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Monzo should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having 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, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Ms K when he authorised payments from his account or whether it could and should have done more before processing them.

In reaching my decision, I have also considered 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 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 gave it rights (but not obligations) to block payments if:

- We suspect criminal activity on your account
- We're protecting you from fraud

It explained that if it blocked a payment, it would let a customer know as soon as possible via one of its usual channels which could be the Monzo app, email phone or mail.

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 or fraud
- It had a contractual right to delay payments to make enquiries where it suspected criminal activity or fraud
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity, 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

Having considered the payments in question here, I agree with our Investigator that Monzo should have got in touch with Ms K when she made the fifth payment on 17 October 2023 - to check that everything was in order and ask Ms K about what she was doing – the intention being to uncover a potential scam and protect Ms K from financial harm, but it did not do so.

I say this because by this time, Ms K's payments to crypto were increasing rapidly – and in a manner that was very different to her usual account usage. Monzo should have been aware at this time that payments to crypto carry an elevated risk and recognised common scam patterns – so I think it should have been clear to Monzo at this point that Ms K was potentially falling victim to a scam.

I consider it should have intervened in what Ms K was doing, asked probing and appropriate questions about why she was making these payments, and provided her with effective and tailored warnings covering a range of different types of crypto scams – including crypto investment scams. Had it done so, I don't think Ms K would have withheld information from Monzo and been honest about what was happening. She wasn't provided with a cover story and was becoming increasingly upset with demands for more money to 'save' her investment – so I think an effective warning would have broken the spell at this point.

I don't agree with Monzo about the loss not occurring from Ms K's account with Monzo, so it should not be liable for the loss. Monzo should be aware that when a scam takes place, the funds are moved on very quickly from one crypto wallet to another – and as I've said above, I think it could have prevented this.

I should also say that I have not considered Monzo's point about the payments being out of scope under the CRM code, as the code doesn't apply to the type of payments Ms K made.

So, taking everything into account, I think that Monzo could have prevented the loss from payment five.

I do need to consider if Ms K should bear some responsibility for the loss – and having thought about this carefully, I agree with our Investigator that there should be no deduction for contributory negligence on Ms K's part on this occasion.

When considering contributory negligence – I take into account what a 'reasonable person' would have done, given the circumstances, and if they displayed a lack of care. The test is objective and impersonal and doesn't look at personal circumstances or vulnerabilities.

That said, there are times when personal characteristics or particular vulnerabilities come into play that are relevant to a consumer's actions and choices, that may influence what I consider to be fair and reasonable, even if these haven't previously been shared with a business.

I do think that there were a number of features of the scam which ought to have been concerning to her. However, Ms K has shared with this Service a number of upsetting personal circumstances which I consider would have impacted the choices she made and made her more vulnerable to the scam, and therefore outweigh the reasonable person test.

I will not share the full details of what Ms K has been through in a published decision, as I consider that her personal circumstances could potentially identify Ms K – and I know that she has not shared with any friends or family what has happened. But Ms K has been the victim of domestic, economic and familial abuse, and has suffered financial hardship. This has all had a huge detrimental impact on her mental health, which has further been exacerbated by the scam, which Ms K thought could relieve her of her troubles.

Our Investigator has written at length the details of what Ms K has been through, so Monzo should already understand the impact that these events have had upon her.

While I understand that the cause of the loss is the scammer, not Monzo, I think that it is fair and reasonable to take into account Ms K's vulnerabilities. And as it missed an opportunity to stop Ms K's losses, I think this is fair in the circumstances.

Finally, I have thought about if Monzo did enough to try and recover the funds – but as the funds went from one crypto wallet to another, there would have been nothing for Monzo to try and recover on behalf of Ms K, so I don't think it could have done any more to try and get her money back even if it tried to do so.

### **Putting things right**

Monzo Bank Ltd should refund Ms K the payments made from and including payment five.

I calculate this to be £13,500.

On top of this, Monzo should pay Ms K 8% simple interest from the date the payments were made until settlement (minus any lawfully deductible tax).

### **My final decision**

I uphold this complaint in part. Monzo Bank Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 16 August 2024.

Claire Pugh  
**Ombudsman**