

## The complaint

Mr M complains that Monzo Bank Ltd won't refund the money he lost when he was the victim of a scam.

## What happened

In May 2023, Mr M received a series of text messages from someone who said they worked for a recruitment company and had a number of roles available. As Mr M was looking for work, he said he was interested and was then contacted by someone who said they worked for a data company. He was told the job involved generating reviews and orders on the company's platform, and that he would be paid commission for completing sets of tasks.

Mr M was then sent a link to register an account on the company's platform, and shown how to buy cryptocurrency which he would use to pay for the tasks he was to complete. He then made a number of payments from his Monzo account to purchase cryptocurrency, which he then sent on to wallet details he was given for the data company. He was also able to log on to his account on the company's platform, use the cryptocurrency to purchase tasks and see the commission it was he was earning after he completed the tasks.

I've set out the payments Mr M made from his Monzo account below:

Date	Details	Amount
13 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£50
15 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£90
15 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£150
15 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£10
16 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£800
16 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£1,925
16 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£4,452.28
16 May 2023	To 2 <sup>nd</sup> cryptocurrency exchange	£100
16 May 2023	To 2 <sup>nd</sup> cryptocurrency exchange	£9,000
18 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£10
18 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£90
18 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£250
22 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£20
24 May 2023	To 1 <sup>st</sup> cryptocurrency exchange	£400
24 May 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£30
24 May 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£1,220
26 May 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£250
2 June 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£50
4 June 2023	To 1 <sup>st</sup> cryptocurrency exchange	£40
4 June 2023	To 1 <sup>st</sup> cryptocurrency exchange	£45
4 June 2023	To 1 <sup>st</sup> cryptocurrency exchange	£450
4 June 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£67
4 June 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£100
5 June 2023	To 3 <sup>rd</sup> cryptocurrency exchange	£150

5 June 2023	To 1 <sup>st</sup> cryptocurrency exchange	£20
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Unfortunately, we now know the data company was a scam. The scam was uncovered after the company told Mr M he needed to pay increasingly large amounts into his account to funds the tasks he was being given. Mr M also started receiving text messages offering other jobs similar to this so became concerned, researched the company further and discovered it was a scam. He then reported the payments he had made to Monzo and asked it to refund the money he had lost.

Monzo investigated but said but said it had made the payments in line with Mr M's instructions, and correctly followed its internal procedures and legal and regulatory obligations. It also said it had been unable to recover the payments from the banks they were sent to. So it didn't agree to refund the money Mr M had lost. Mr M wasn't satisfied with Monzo's response, so referred a complaint to our service

One of our investigators looked at the complaint. They thought Monzo should have had concerns and intervened before the seventh payment Mr M made as a result of the scam and that, if it had done so, the scam would've been uncovered at that point. They also thought it would be fair for Mr M to bear some responsibility for his loss. So they recommended Monzo refund 50% of the money Mr M lost, from the seventh payment onwards. Monzo disagreed with our investigator, so the complaint has been passed to me.

### **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.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr M's account is that customers are responsible for payments they authorised themselves. And, as the Supreme Court has recently reiterated in the case of *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with their 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 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, Monzo's April 2023 terms and conditions gave it rights 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.
- It had a contractual right not to make payments 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.

While 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their “business with due skill, care and diligence” (FCA Principle for Businesses 2) and to “pay due regard to the interests of its customers” (Principle 6).
- Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.

- Monzo has agreed to abide by the principles of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstance (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

So overall, taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that in May 2023 Monzo should:

- 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 firms 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 firms 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) and the different risks these can present to customers, when deciding whether to intervene.

And so I've considered whether Monzo should have identified that Mr M was potentially at risk of financial harm from fraud as a result of any of these payments and did enough to protect him.

*Should Monzo have made further enquiries before it processed any of Mr M's payments?*

The first few payments Mr M made from his Monzo account as part of this scam weren't for what I'd consider to be particularly large amounts, or for amounts where I'd expect Monzo to have identified a risk of financial harm based on the amount alone. They didn't leave the balance of his account at particularly unusual levels. And they fluctuated up and down in amount, so I don't think they formed a particularly suspicious pattern. So I wouldn't have expected Monzo to identify that Mr M could be at risk of financial harm as a result of these first few payments and I don't think it's unreasonable that it didn't take any further steps or carry out any additional checks before allowing them to go through.

But when Mr M tried to make the seventh payment here, for £4,452.28 on 16 May 2023, I think Monzo should have identified that he could be at risk of financial harm. This payment was for a significantly larger amount than the previous payments, and for a significantly larger amount than any other payment made out of Mr M's account previously. At this point Mr M had attempted seven payments to cryptocurrency exchanges over four days, including three on this same day with the amounts increasing significantly each time – which matches a pattern of payments often seen in scams.

So I think Monzo should have identified that that this pattern of payments was suspicious and that Mr M could be at risk of financial harm. And so I think it should have intervened before this seventh payment and carried out additional checks before allowing it to go through.

Monzo has argued that the payments Mr M made were to purchase cryptocurrency, which he genuinely received. So it says the payments were legitimate and it shouldn't be responsible for the loss he suffered when he later sent the cryptocurrency on to the scammers.

But I don't think Monzo's responsibilities to monitor accounts and look out for signs that its customers may be at risk of fraud stop just because the payments are being made to genuinely purchase cryptocurrency. And I think it should have been mindful of common scam scenarios and the evolving fraud landscape including, around this time, the use of cryptocurrency and multi-stage fraud. So I think Monzo should still have had concerns about the payments Mr M was making, and I don't think the fact the payments were being used to purchase cryptocurrency was enough to satisfy the concerns I think Monzo should have had. So I still think Monzo should have carried out additional checks before allowing this payment to go through.

*Did Monzo do enough to protect Mr M?*

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the risk I think it should have identified, I think it would be reasonable to expect those checks to include a human intervention with questions about the purpose of the payment and then relevant follow-up questions based on the information it was given.

Monzo has said it didn't have any concerns over this payment, so it doesn't appear to have asked Mr M any questions or provided him with any warning or information before allowing the payment to go through. So I don't think Monzo did enough to protect Mr M here.

Mr M has said that the scammers told him not to tell his bank what he was doing. But, from what I've seen of his communication with the scammers, they told him to say the payments were for travel and didn't give him any further prompting or any other cover story to tell his bank. And as he'd made a number of payments over several days, the payments he was making were increasing significantly in size, and they were being made to a cryptocurrency exchange, I don't think any attempted explanation about them being for travel would have seemed plausible or credible.

So, even if Mr M had tried to mislead it about the purpose of the payments, I think the type of questions I would've expected Monzo to ask would have unravelled any deception and uncovered either the true purpose of the payments or that Mr M was hiding the true purpose of the payments.

If Monzo had found out that Mr M was making payments for a job he'd been told about from a text message, and that he needed to pay upfront to funds the tasks he was completing, I think it should have had significant concerns that his circumstances matched those of common advance fees scams. So I think it should then have warned him he was likely the victim of a scam.

And even if Monzo had only found out Mr M was hiding the true purpose of the payments, I think it should have warned him that scammers will often ask victims to mislead their bank and that it is a scam if this happens. And as Monzo is the expert in financial matters in this

situation, I think its concerns would have carried significant weight with Mr M and I think he then likely wouldn't have made any further payments towards the data company.

So if Monzo had done more to protect Mr M before allowing this seventh payment, as I think it should have, I don't think Mr M would have lost the money from this payment or any of the later payments. And so I think it would be reasonable for Monzo to bear some responsibility for the loss Mr M suffered from this point on.

*Should Mr M bear some responsibility for his loss?*

I've also thought about whether it would be fair for Mr M to bear some responsibility for his loss. And while I appreciate that this was a sophisticated scam where he was given access to a platform which appeared to show tasks he had completed and commission he was earning, I do think there were a number of things about what was happening that should have caused him significant concern.

Mr M appears to have been contacted about this job out of the blue, and by someone he hadn't spoken to before. And I think being contacted in this way about potential work should have caused Mr M some concern.

Mr M was told he had to pay upfront to fund the work he was doing for the data company, which I think is unusual – particularly for the kind of work he thought he was doing. He was also told he had to pay and receive his commission in cryptocurrency, which I also think is unusual. And he was later unexpectedly told he had to pay in more money than he'd been initially told, in order to complete and be paid for work he had already started. And while it may have been reasonable for him to make some of the smaller initial payments, at the point I think Monzo should have intervened Mr M was sending the data company a significant amount of money. And I think being told he had pay so much to fund his work, be paid in this way, and pay before he could be paid for work he had done should have caused Mr M significant concern.

Mr M also appears to have been told he had earned a significant amount of money over a relatively short period of time. And the amounts he was told he could continue to earn were very high for what appears to be relatively little and relatively straightforward work. So I think this should have caused Mr M significant concern that what he was being told was too good to be true.

I sympathise with the position Mr M has found himself in. But I think there were a number of things here which should have caused him significant concern, and I don't think he did enough to satisfy those concerns or that the seemingly genuine parts of the scam should have been enough to overcome them. So I think it would be fair and reasonable for him to bear some responsibility for the loss he suffered.

I therefore think both Mr M and Monzo should bear some responsibility, and that it would be fair for Monzo to refund 50% of the money Mr M lost – from the seventh payment onwards.

*Did Monzo do enough to try to recover the money Mr M lost?*

We expect banks to take reasonable steps to help customers recover any money they have lost as a result of a scam, including making use of any available chargeback scheme.

A chargeback is a process by which card payments can be disputed with the merchant who took the payment – which in Mr M's case is the cryptocurrency exchanges he made the card payments to. But Mr M appears to have genuinely received the cryptocurrency he paid for, before sending it on to the scammers.

So the transactions with the cryptocurrency exchanges themselves were legitimate and were completed successfully. The exchanges don't appear to have been involved in the scam and don't appear to have done anything wrong. So I think any chargeback attempted against those exchanges was unlikely to succeed, and Monzo has acted reasonably in not agreeing to carry out a chargeback against the cryptocurrency exchanges.

Any other attempt Monzo made to recover the money from the banks it was sent to would also be made to the banks for the cryptocurrency exchanges. And as I don't think the exchanges did anything wrong, I also don't think anything else I would reasonably have expected Monzo to have done would have recovered the money Mr M lost.

### **My final decision**

For the reasons set out above, I uphold this complaint in part and require Monzo Bank Ltd to:

- Refund Mr M 50% of the money he lost as a result of this scam, from the seventh payment onwards
- Pay Mr M 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 July 2024.

Alan Millward  
**Ombudsman**