

The complaint

Miss I complains that Monzo Bank Ltd did not refund the payments she lost to a scam.

What happened

Miss I was contacted on an employment website with a job opportunity. It was in hotel booking management and she would need to pay deposits to book hotel rooms. In order to fund this, she was instructed to send cryptocurrency to the employer's wallet. She did so using one cryptocurrency exchange and her employer reimbursed her for these payments.

She then moved onto a different cryptocurrency exchange that I'll call 'K' and made a series of transfers from her Monzo account. These were as follows:

- 14/07/2023 - £92.51
- 15/07/2023 - £90
- 15/07/2023 - £40
- 15/07/2023 - £348.28
- 15/07/2023 - £610
- 15/07/2023 - £40
- 15/07/2023 - £1,270
- 15/07/2023 - £45
- 18/07/2023 - £1,320
- 18/07/2023 - £3,000
- 18/07/2023 - £4,500
- 18/07/2023 - £600
- 18/07/2023 - £150
- 20/07/2023 - £3,560

Miss I finished the tasks required but was still unable to withdraw the commissions he had earned. It was at that point that she realised she had been the victim of a scam. She raised a scam claim with Monzo but they said the loss had not occurred with them, but instead occurred at K, so told her to raise it with them. However, they did pay her £100 for the delays in providing a response to her claim.

Miss I referred the complaint to our service and our Investigator looked into it. They initially felt that by the payment of £3,000, Monzo should have noticed the pattern of payment was suspicious and intervened, but on further reflection they amended this to the payment of £4,500. And they felt that if Monzo had intervened, it's more likely the scam would have been revealed. They also felt Miss I could have done more to protect herself from the loss, so recommended a 50% refund from the payment of £4,500 onwards, along with 8% simple interest.

Monzo disagreed with the outcome. They said, amongst other things, that the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25* meant there was no duty for them to block the payments. And at the point of the payments leaving the Monzo account, no scam had occurred as Miss I was using the funds to purchase legitimate

cryptocurrency. So, they did not agree they should have stopped these payments.

As an informal agreement could not be reached, the complaint has been passed to me for 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.

I'm satisfied that Miss I has been the victim of a particularly cruel scam that targets individuals looking for a source of income. What's left to decide is if Monzo should reasonably have done more to protect her account.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Miss I authorised the payments in question, as she believed they were part of a legitimate job opportunity. So, while I recognise that she didn't intend the money to go to scammers, the starting position in law is that Monzo was obliged to follow Miss I's instruction and process the payments. Because of this, she is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Monzo did enough to try to keep Miss I's account safe.

I've reviewed Miss I's statements and compared the scam payments to her normal account activity. I can see there had been a number of scam payments over the course of a few days, and I think the frequency of the payments should have been a concern to Monzo. The earlier payments were of a lower value and were generally typical of genuine transactions Miss I had made on the account. So, while there were a large number of them, I don't think this alone would have been enough to warrant intervention. But by 18 July 2023 the value started to increase, and it was at that point that I think Monzo should reasonably have taken additional steps.

I think that the £3,000 payment was high value enough that a tailored cryptocurrency warning should have been provided to Miss I, as I think the payment was identifiably going towards cryptocurrency. But in this case, Miss I was the victim of a job scam and not a cryptocurrency investment scam. With this in mind, I think it is unlikely that a tailored cryptocurrency scam warning would have revealed the scam at that time and stopped Miss I from making future payments. So, I don't think Monzo missed an opportunity to reveal the scam when it did not provide an appropriate warning for the £3,000 payment.

However, the following payment of £4,500 was the third higher value payment made that

day, and the pattern of payments up to that point followed that of fraud. Meaning there was a steady increase in frequency and now value of payments. So, I think there was a clear risk of financial harm, especially as the payments were identifiably going towards cryptocurrency and by July 2023 Monzo should reasonably have been aware of the risks associated with these kind of payments. So I think a staff intervention would have been a proportional response in the circumstances and Miss I should have been asked about the purpose of the payments.

In reaching my decision that Monzo should have made further enquires, I have 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 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 23 April 2023 terms and conditions gave it rights 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.

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 them 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.

In this case for the reasons I have explained, I am satisfied Monzo should have intervened.

And if it had I think it is more likely the scam would have been revealed due to the type of scam Miss I was the victim of. Had she been asked about the purpose of the payment, I think it would have quickly been revealed that she was making payments in cryptocurrency for her employment, which is a known type of scam that Monzo should have been aware of. And I haven't seen anything that suggests Miss I would not have been honest in her answers. So, I think it's more likely Monzo has missed an opportunity to reveal the scam, and reimbursement from the payment of £4,500 onwards is reasonable.

I appreciate Monzo's comments that no scam had taken place at that point as Miss I was legitimately buying cryptocurrency and the loss occurred later. However, she wasn't purchasing cryptocurrency in order to have it for personal use or gain, she was doing so because she had been coerced into buying cryptocurrency under false pretences as part of a scam.

I've already set out why I think the payment of £4,500 should have been treated as suspicious and that if Monzo had carried out further checks as a result of this, I think it would have become clear that Miss I was purchasing cryptocurrency as part of a scam, so I think any further payments could have been stopped. With this in mind, I think it is reasonable for Monzo to reimburse Miss I from the payment of £4,500 onwards.

I've finally considered whether or not Miss I should reasonably bear some responsibility for the losses as a result of any negligence in her actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether she has acted as a reasonable person would to protect herself against the loss she suffered. The test is objective but needs to take account of all the relevant circumstances.

Miss I was contacted via an employment website, so I think the initial contact would have seemed genuine. However, she was then offered employment with seemingly no application process or contract, which is unusual. And the document she has provided shows she was expecting to make around £13,000 in a relatively short period of time, which should have been seen as too good to be true. Finally, she was advised to make payments herself via cryptocurrency in order to gain commission, which I think when considered alongside the lack of any application process and the high income, should reasonably have been a sign that something was not right. I therefore think that a reduction in the redress of 50% is reasonable in the circumstances.

Putting things right

Monzo should reimburse Miss I from the payment of £4,500 on 18 July 2023 onwards. They should also add 8% simple interest from the date of the transactions to the date of settlement. Monzo is able to reduce this redress by 50% to account for Miss I's contribution to the loss.

If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss I how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Miss I's complaint in part and direct Monzo Bank Ltd to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 28 June 2024.

Rebecca Norris
Ombudsman