

The complaint

Mr D complains about Monzo Bank Ltd.

He says that Monzo didn't do enough to protect him when he became the victim of a scam and would like it to refund him the money he has lost as a result.

What happened

The details of what happened are well known to both parties, so I won't repeat them here. In summary, Mr D unfortunately fell victim to a task-based job scam involving cryptocurrency.

He was contacted on WhatsApp by an individual offering a way to make money through a part-time job opportunity.

Mr D initially thought the opportunity presented to him was legitimate and made the following payments to purchase 'tasks' from his account with Monzo.

Date	Payee	Payment type	Amount
26/08/2023	Noble trading	Faster payment	£10
26/08/2023	Noble trading	Faster payment	£5,490
28/08/2023	Customised Trade	Faster payment	£8,980
28/08/2023	Noble trading	Faster payment	£10,000
29/08/2023	Customised trade	Faster payment	£14,500
		Total	£38,980

Mr D also received a credit from the scammer of £711.90 earlier on in the scam to his account held with another bank.

Mr D realised he had been scammed when he attempted to withdraw the funds he thought he had earned in commission, but was told that he needed to make further payments for tax, and then a 'listing fee' in order to transfer the crypto so he could withdraw it.

He complained to Monzo about what had happened, but it didn't uphold his complaint. He then brought his complaint to this Service and our Investigator looked into things.

Our Investigator said that they thought Monzo could have done more to prevent the scam – and that it should have intervened from the second payment. They said that Monzo should refund Mr D 50% of the payments made from payment two, as responsibility should be shared for the loss from this point between Mr D and Monzo.

Mr D accepted this, but Monzo did not. In response to what the investigators view, in summary, it said;

- The point of loss wasn't from Monzo but from Mr D'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*

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.

Mr D authorised the payments in question here – so even though he was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, he 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 Mr D 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 if it was protecting a customer from 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 or 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 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 Mr H when he made the second payment - to check that everything was in order and ask Mr D about what he was doing – the intention being to uncover a potential scam and protect Mr D from financial harm, but it did not do so.

I consider it should have intervened in what Mr D was doing, asked probing and appropriate questions about what he was doing, and provided him with effective and tailored warnings covering a range of different types of crypto scams, including task-based job scams (which were becoming more prevalent at this time). By this point, Mr D's payments were increasing rapidly, and going to a known crypto provider, which carried an elevated risk, which Monzo should have been aware of. And I don't think that Mr D would have ignored such a warning from his trusted bank, and I don't think he would have continued with the payments.

I don't agree with Monzo about the loss not occurring from Mr D'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 Mr D made.

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

I do need to consider if Mr D should bear some responsibility for the loss – and having thought about this carefully, I agree with our Investigator that responsibility for the loss should be shared between Mr D and Monzo from the time I think Monzo should have intervened.

I say this because I don't think that Mr D was as careful as he should have been before parting with his money. He was contacted out of the blue and offered a job he didn't apply for or have to undertake any kind of onboarding measures with the promise of unrealistic returns. He should also have had concerns about having to part with money in order to earn money – and in large amounts. Mr D also doesn't appear to have done any research into what he was doing – and although he began to have concerns about what was going on, he continued to make the payments in an attempt to recover his funds.

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 Mr D, so I don't think it could have done anything to get his money back even if it had tried to do so.

Putting things right

Monzo Bank Ltd should refund Mr D 50% of the payments from and including payment two.

I calculate this to be £19,485.

On top of this, Monzo should pay Mr D 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 Mr D to accept or reject my decision before 16 August 2024.

Claire Pugh
Ombudsman