

## The complaint

Mr R is unhappy Monzo Bank Ltd (“Monzo”) won’t refund the money he lost as a result of a third-party scam.

## What happened

The circumstances that led to this complaint are well known to both parties, so I won’t repeat them in detail here. But, in summary Mr R fell victim to a task-based job scam. Mr R was approached by someone who purported to have acquired his details from a well-known recruitment agency. They offered him a job opportunity completing online reviews.

As part of the process, Mr R needed a digital cryptocurrency wallet with a genuine cryptocurrency provider. He also opened an account on the fake job platform. Mr R needed to make payments into his wallet and use his cryptocurrency funds to purchase the bundles of tasks that needed to be completed in order to get paid. His account on the job platform fell into a negative balance and Mr R was required to pay funds into it to clear the account to complete tasks. When he tried to withdraw his funds, he was told he needed to pay withdrawal fees but when the scammer continued to ask for more money to release his funds, Mr R realised he’d been the victim of a scam.

As a result of the scam, Mr R made the following transactions:

Date	Amount	Payee
29/9/23	£50.00	Y
30/9/23	£288.45	C
1/10/23	£816.87	R
1/10/23	£1,705.48	R
1/10/23	£541.00	R
1/10/23	£5,909.68	L
2/10/23	£5,831.50	L

Mr R complained to Monzo as it failed to intervene or provide warnings alerting him to the possibility of him being scammed. Monzo declined to refund Mr R as the payments made from his account with Monzo weren’t fraudulent (that happened later from his cryptocurrency account). But as it didn’t meet its deadline to give Mr R a final response, it paid Mr R £125 compensation for the delay.

Given their size, the investigator didn’t uphold the first five transactions, but she upheld 50% of the last two transactions. She felt by the sixth transaction, Monzo ought to have recognised Mr R was at heightened risk of financial harm from fraud. But she also thought that Mr R should share in the responsibility of his loss.

Mr R accepted the investigator’s conclusions. Monzo didn’t agree. In summary it said it had no fraud concerns with the payments – these were legitimate businesses and well known and trusted cryptocurrency exchanges. The loss happened elsewhere.

As the complaint could not be resolved informally, it 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'm sorry to hear about this cruel scam and I've no doubt this has had a significant effect on Mr R - not just in terms of the money he has lost but also the emotional impact of the crime itself.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

It is not in dispute that Mr R was duped by the scammer into instructing the bank to transfer money to the scammer's account. The scammer deceived him into thinking he was making legitimate cryptocurrency deposits as part of the job he'd undertaken. As I understand it, payments were used to purchase genuine cryptocurrency which was then placed in a wallet in Mr R's name and from there it was moved to a wallet under the scammer's control.

The starting point under the relevant regulations (in this case, the PSRs 2017) and the terms of Mr R's account is that he is responsible for payments he's authorised himself. 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 is not the same as being under a duty to do so.

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

- The consumer's instructions are unclear
- it suspected criminal activity on the account
- it is protecting the consumer from fraud
- it is not legally allowed to make the transfer
- they go over the consumer's payment limits

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, own accounts or me-to-me transactions) and the different risks these can present to consumers, when deciding whether to intervene.

The FCA's Consumer Duty came into force on 31 July 2023, and it puts an obligation on firms to avoid foreseeable harm to customers. The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23) gives an example of foreseeable harm:

*“consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers”.*

So in addition to the points outlined above Monzo also should have:

- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams;

*Should Monzo have fairly and reasonably made further enquiries before it processed Mr R's payments?*

In the previous six months before the scam, there had been very little activity on the account and any transactions prior to that were of a very low value. I am 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. And the purchasing of cryptocurrency may be a purchase with no connection to fraud or scams.

Mr R accepted the investigator's view not to uphold the first five transactions – so I won't go into detail. But the first five transactions were relatively low in value (although I appreciate it was a lot of money to Mr R). In my view, there was nothing about the first five payments that ought reasonably to have led Monzo to have any concerns at this point. For these reasons, I wouldn't have expected Monzo to have identified a scam risk.

But the £5,909.68 transaction on 1 October 2023 was substantially higher than any other payment Mr R had made and, in my view, was significantly high enough that Monzo ought to have identified Mr R was at heightened risk of financial harm. Large credits were also entering the account. A pattern of scam payments was emerging that I think Monzo reasonably ought to have been concerned about and intervened before processing the £5,909.68 payment. This pattern was certainly different to how the account had previously been used.

I appreciate the losses did not occur directly from Mr R's Monzo account. And I also accept that buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payment was made to genuine cryptocurrency exchange companies/traders. So, the transaction (purchasing cryptocurrency) of itself is not a scam but rather a genuine transaction for the genuine purchase of cryptocurrency. The scam happened after that by moving cryptocurrency to the scammer via a cryptocurrency wallet in Mr R's own name.

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.

I am satisfied that by the end of 2022, prior to the payments Mr R made in September/October 2023, Monzo ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

In those circumstances, as a matter of what I consider to have been fair and reasonable and good practice, Monzo should have had appropriate systems for making checks and delivering warnings before it processed such payments. And, as I've set out, the introduction of the FCA's Consumer Duty, on 31 July 2023, further supports this view. The Consumer Duty requires Monzo to avoid causing foreseeable harm to its customers by, among other things, having adequate systems in place to detect and prevent scams.

Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact most of the payments in this case were going to buy genuine cryptocurrency and/or to an account held in Mr R's own name should have led Monzo to believe there wasn't a risk of fraud.

So if Monzo had intervened and questioned Mr R more about the payments (as I think it should before it processed the £5,909.68 payment) it would quickly have established the payments were going to purchase cryptocurrency (its response to the view indicates some of the payees were known cryptocurrency exchanges). But I don't think the questioning should have stopped there. Given the reason for the payment I consider Monzo ought to have probed further and established why Mr R was buying cryptocurrency. I'm satisfied that his response is likely to have been concerning given that Mr R thought he 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 Mr R's loss on the last two transactions could have been prevented.

I've read the messages between Mr R and the scammer. That conversation suggests that, prior to this payment, he already had some concerns about the scheme – he appears to have been concerned about repeatedly being assigned 'premium tasks'. He also realised that he'd been the victim of a scam very soon after making the last two payment which, I think, indicates that it wouldn't have taken much persuasion (that an intervention from Monzo could have provided) to convince him that he was falling victim to a scam prior to making those two payments.

I think intervention and probing, with warnings, from Monzo would have given the perspective Mr R needed, reinforcing his own developing concerns and he would more likely than not have concluded that the scheme was not genuine. In those circumstances I think, he's likely to have decided not to go ahead with payment, had such intervention occurred.

*Should Mr R share in the responsibility for his loss?*

As well as Monzo's obligations I've also thought about whether Mr R should share in the responsibility for his loss. I won't go into detail here – as Mr R accepted the investigator's view, but for completeness I agree with the investigator broadly for the same reasons. My intention is not to further Mr R's distress where he's already been the victim of a cruel scam. But certainly, by the time of the transactions I am upholding, I think there were signs within the messages that things weren't quite right. And it's clear by this point Mr R had his own concerns about the legitimacy of the opportunity. Given this (and my findings above that Monzo also could have done more) I think it fair both parties share in the responsibility for the loss on the last two transactions.

### *Recovery*

In this case, the transfers were made directly to purchase genuine cryptocurrency and that's what Mr R received in return – albeit this cryptocurrency subsequently went onto the scammer. So I don't think Monzo could be expected to recover these funds.

### *Distress and inconvenience*

Finally, I've considered whether Monzo should pay Mr R any further compensation for distress and inconvenience he's experienced as a result of its actions. In considering this, I've specifically thought about the impact of Monzo's actions, rather than the impact of the crime itself. Monzo paid Mr R £125 in compensation, as it took longer than it ideally would have liked to respond to Mr R's claim. I agree there were some small delays and I think £125 is fair in the circumstances. So I'm not making a further award.

### **Putting things right**

In order to put things right for Mr R, Monzo Bank Ltd should

Refund 50% of the last two transactions.

Because Mr R has been deprived of this money, I consider it fair that Monzo add 8% simple interest to the above from the date of the transaction to the date of settlement.

If Monzo is legally required to deduct tax from the interest it should also provide a tax deduction certificate if Mr R asks for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

**My final decision**

My final decision is that I uphold this complaint in part, and I require Monzo Bank Ltd to put things right for Mr R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 August 2024.

Kathryn Milne  
**Ombudsman**