

Complaint

Mr G is unhappy that Monzo Bank Ltd didn't refund him after he told it he'd fallen victim to a scam.

Background

In late 2023, Mr G received a message from someone who claimed to be a recruiter. She told Mr G that she had an opportunity for a role that involved working remotely. Unfortunately, he hadn't been contacted by a legitimate recruiter, but a fraudster.

He was told that he'd need to complete tasks on an online platform. He was added to a messaging group apparently with many other people carrying out the same work. The scammers told him that he was required to purchase items through their platform and that this would simulate demand for those products. This would lead to better marketability for those products through online advertising.

He was told that, for every group of tasks he completed, he could earn commission. However, he needed to fund his account by making deposits. He made payments to a third-party cryptocurrency platform. His cash payments were then converted into cryptocurrency which was transferred into the control of the fraudsters.

He used his Monzo account to make the following payments to three different cryptocurrency platforms:

	Date	Value
1	6 November 2023	£20
2	6 November 2023	£18
3	6 November 2023	£25
4	7 November 2023	£100
5	7 November 2023	£120
6	8 November 2023	£25
7	9 November 2023	£300
8	9 November 2023	£300
9	9 November 2023	£400
10	9 November 2023	£2,000

11	9 November 2023	£8,100
12	10 November 2023	£2,000
13	10 November 2023	£8,000
14	11 November 2023	£4,000
15	11 November 2023	£4,000
16	11 November 2023	£2,000
17	12 November 2023	£4,000
18	12 November 2023	£4,050

Once he realised he'd fallen victim to a scam, he notified Monzo. It didn't agree to reimburse him. He wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part.

The Investigator said Monzo was expected to be on the lookout for account activity that was unusual or out of character to the extent that it might have suggested a fraud risk. In his view, Monzo should've taken action in connection with payment 11 in the table above. If it had done so, he was persuaded that it would've been able to prevent that payment and Mr G's subsequent losses to the scam. However, he also thought that it was fair and reasonable for Mr G to bear partial responsibility for his own losses by way of contributory negligence. He recommended Monzo refund 50% of his losses from payment 11 onwards with interest.

Monzo didn't agree with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. Monzo has agreed to follow the terms of the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. However, the Code doesn't cover these payments.

They were payments used to purchase of cryptocurrency. As a result of the transactions, Mr G did take ownership of the underlying cryptoassets, albeit briefly. In other words, the transactions that left his Monzo account were legitimate purchases of cryptocurrency. In summary, the CRM Code requires that she *"transferred funds to another person for what [he] believed were legitimate purposes but which were in fact fraudulent."* The fact that she later transferred the cryptocurrency to a blockchain address controlled by the fraudster doesn't mean that these initial payments weren't for legitimate purposes.

Although the CRM Code doesn't apply to these transactions, good industry practice required that Monzo be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified. The Investigator thought Monzo

should've acted in connection with the payment 11 in the table above and I'd agree with that conclusion.

In itself, the payment was fairly large and the largest payment Mr G had made from his account in the twelve months prior to the scam taking place. It was also the third payment he'd made that day to a cryptocurrency platform. Finally, he'd taken out a loan for the same value the same day and immediately paid those funds to a cryptocurrency platform. I've considered Monzo's comments about legitimate crypto investment payments being typically larger in its experience. Nonetheless, all of the other factors taken together clearly suggested a greater than normal risk of fraud. Monzo shouldn't have processed that payment without first making enquiries with Mr G to satisfy itself that he wasn't at risk of financial harm due to fraud.

I've also considered its comments regarding Regulation 82 of the Payment Services Regulations 2017. This regulation sets out what steps a payment service provider (PSP) should take when it chooses not to process a customer's payment and the information it should make available to that customer. It doesn't set any limits or restrictions on how a PSP might exercise its discretion to decline to make a payment. Overall, I'm not persuaded it's relevant to the outcome here.

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 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, the terms and conditions applicable to Mr G's Monzo account conferred on it rights (but not obligations) 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.

The starting position at law, therefore, 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 it from making fraud checks before making a payment.

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 carried out additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

In this case for the reasons I have explained, I am satisfied it should have intervened. And if it had, I think it's more likely than not that it would've been able to prevent the subsequent losses to the scam. There's no good reason to think Mr G wouldn't have responded to the bank's queries openly and honestly. I've seen the communications between him and the scammer. There's nothing there that suggests he was told that he'd need to mislead the bank if it asked him questions about the payments. This is a very commonly occurring scam type and I don't think it would've been particularly difficult for the bank to have uncovered what was going on and explained things to him.

I've also considered whether it would be fair and reasonable for him to bear some responsibility for his own losses here. In doing so, I've considered what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. I've considered the evidence carefully and, while I accept Mr G did genuinely believe that these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one. From the evidence I've seen, there was no formalisation of the arrangement between him and the employer – for example, there was no written contract and indeed no clear setting out of the terms of his employment.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement and Mr G doesn't appear to have asked about it. I think she ought to have proceeded only with great caution. Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable.

I've also taken into account that the loss he suffered didn't occur from the Monzo account. He did genuinely make purchases of cryptocurrency and took ownership of the underlying assets. It was only when he transferred that cryptocurrency on to the fraudster that he sustained any loss. Nonetheless, Monzo ought to have been aware of the risk of multi-stage scams involving cryptocurrency. Such scams 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 have continued to increase since. Overall, I am satisfied that it could have prevented the losses he suffered if it had as I've found it should've done.

For completeness, I've also considered whether Monzo did everything it should've done once it became aware that a scam had taken place. But given that these payments were in relation to genuine purchases of cryptocurrency, any recovery of funds wouldn't have been possible.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mr G accepts my final decision,

Monzo Bank Ltd should refund 50% of the funds he lost to the scam from payment 11 onwards. It should add 8% simple interest per annum calculated to run from the date those payments left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 August 2024.

James Kimmitt
Ombudsman