

## **The complaint**

Mr B complains that Monzo Bank Ltd ('Monzo') hasn't refunded him the money he lost as part of a scam.

## **What happened**

I'm not going to cover all the points raised in detail. The view of 21 December 2023 covered the details of Mr B's testimony and the timeline of the transactions. But briefly Mr B says he believed he'd found an opportunity to obtain a bank refund from dormant bank accounts through someone who was following him/he was following on social media. He thought by paying a deposit to 'secure a slot', he'd get back five times the deposit paid from these dormant bank accounts.

Monzo considered Mr B's complaint. It didn't agree to reimburse Mr B. Mr B was unhappy with Monzo's response and brought a complaint to our service. He said Monzo should have done more to protect him from the scam.

Our investigator upheld the complaint in part. She thought Monzo ought to have been concerned by the time Mr B made the £2,300 payment on 19 July 2023 and should refund this and the transactions that followed. However, she also considered Mr B should share in the responsibility for his losses so she felt the refund should be reduced by 50%.

Mr B accepted the view. Monzo disagreed. It said:

- Mr B made payments to legitimate cryptocurrency platforms and sent money to accounts in his own name.
- It didn't have concerns about Mr B's payments, so shouldn't be held liable for not intervening.
- It raised the recent court case of Philipp v Barclays as to its duty to process payments.
- It disagrees that, had it intervened and questioned Mr B, the scam would have come to light/been exposed.

I issued my provisional decision on 16 May 2024, explaining why I was intending on reaching a different conclusion to the investigator.

Monzo didn't provide any further submissions. Mr B didn't agree with my conclusion. He feels the bank could have spotted the pattern of spending and put an end to it. He was desperately chasing his losses, desperately trying to get his money back. He questioned why I would be so confident he wouldn't have taken any advice from the bank if it had intervened as I'd said it should.

## 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 have considered Mr B's response to my provisional decision.

There is no dispute that Mr B has been a victim of a scam and I am deeply sorry for that, but it doesn't automatically mean Monzo (which was not party to the scam itself) is liable for some or all of his losses. As I said in my provisional decision, the relevant regulations (and the terms of his account) make him responsible for payments he's made himself in the first instance.

My intention is not to further Mr B's distress where he's already been a victim of a cruel fraud. But merely to highlight that in this case I don't think Monzo is responsible for those losses.

I can't know for certain what would have happened if Monzo had intervened. But as I said in my provisional decision, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances. It's not a decision I've made lightly – but for the reasons I highlighted within my provisional decision, it leads me to the conclusion it is more likely than not that Mr B would not have disclosed the real reason for the transactions to the bank. In particular his initial concerns about the 'scheme' and being 'caught' by the bank. It therefore follows that I don't think better intervention would have made a difference in this case.

Having reconsidered everything in light of Mr B's comments, I see no reason to depart from the conclusions set out in my provisional decision. I have concluded that the fair and reasonable outcome, in all the circumstances, would be not to uphold this complaint. For completeness, I have set this out below.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

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.

### Transactions 1-3

As the investigator outlined the first three payments are covered by the Contingent Reimbursement Model (CRM) Code.

Monzo has also argued that it shouldn't intervene in legitimate transactions without good reason and referred to the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*. And I appreciate that the court in that case said, among other things, that the starting position is that there is an implied term in any current account contract that a bank must carry out a customer's instructions promptly. But, apart from any implied duty it is under, Monzo has said it is committed to applying the principles set out in the CRM code. And it is these obligations under the principles of this code, rather than any other duty or form of good practice, that are relevant to the first three transactions.

That said, I don't think Monzo failed in its obligations under the CRM Code in relation to the first three transactions. And broadly for the same reasons as the investigator outlined – I agree Monzo can fairly rely on the exception to reimbursement that Mr B *made the payment without a reasonable basis for believing that the payee was the person they were expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*

I say this because the opportunity arose from an individual who started following Mr B on social media out of the blue. It's clear Mr B had concerns about the legality of the opportunity, and I think it was evident that the opportunity itself was too good to be true (by simply paying a deposit to get five times your money back the next day). When asked for further monies Mr B said "so this is a scam right" - so he recognised the risk involved with making another payment. Mr B didn't do any research into the company involved and a quick internet search indicates that this was a scam.

### Transactions 4-11

The other transactions are not covered by the CRM Code because the Code only covers transactions between GBP-denominated UK-domiciled accounts and to 'another person'. But Monzo still had wider obligations outside the Code.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr B's account is that Mr B is responsible for payments Mr B'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 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 (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.

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 Monzo's current account terms don't oblige it 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 (authorised push payment) 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) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Monzo have fairly and reasonably have done more before it processed Mr B's payments?*

I note Monzo considers it isn't liable because Mr B bought genuine cryptocurrency and/or the money went to an account in his own name. I appreciate the losses did not occur directly from Mr B's Monzo account, but I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account/an account in Mr B's own name 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.

*Would better intervention have made a difference?*

That said, even if Monzo had done more here, I am not persuaded it would have made a difference in this case. For example, I think the fourth transaction for £3,000 (going to a cryptocurrency platform) - was a transaction that Monzo ought to have identified as going to cryptocurrency and provided a tailored warning around cryptocurrency investment scams. But of course, that wasn't what was happening here – so I don't think such a warning would have made a difference or stopped Mr B from proceeding with the payment in this case.

And whilst I agree with the investigator that the pattern of activity became significantly out of character and Monzo should have been concerned (and admittedly there was an opportunity to ask further questions during the chat on 22 July 2023) I don't think it would have made a difference in this case.

The investigator concluded she could see no reason why Mr B would not have been honest if Monzo had asked further questions about the transactions. She based this on the chat conversation that took place on 22 July 2023. Whilst I accept Mr B was open about the fact the money was going to cryptocurrency (something that was identifiable to Monzo anyway), I am not persuaded Mr B would have gone on beyond that to explain the 'bank refund' he was expecting. I say this because:

- Mr B clearly had concerns from the outset about the legality of the scheme. He said to the scammer *"I don't understand how this is legit. How will I not get caught for such a large deposit into the account"*. His concerns regarding the bank catching him out – mean I am not persuaded he would have disclosed the real reason for the payments to the bank.
- By his own admission, Mr B borrowed money from his brother to fund one of the later payments and *'had to lie'* to him about the real reason for needing to borrow the money. He said he told his brother he needed the money to help a friend.
- On the Monzo loan application form (a loan Mr B took out to fund some of the later payments) he indicated he was making a one-off purchase. I appreciate there may not have been an accurate alternative option for the real reason he needed the money – but I do note that 'something else' was an option which was a better fitting description in my view – given the list of alternatives.

I appreciate there may be some explanations around each of these points, but when taken holistically they lead me to the conclusion (on the balance of probabilities) it is more likely than not that Mr B would not have disclosed the real reason for the transactions to the bank. It therefore follows that I don't think better intervention would have made a difference in this case.

I realise my decision will be a significant disappointment to Mr B, especially as it differs to the investigator's assessment. I sympathise with his circumstances, and I am sorry he has fallen victim to a scam. But having considered all the evidence and arguments, whilst I accept there may have been some failing on Monzo's part – for the reasons explained above - I don't think better intervention would have made a difference. So, I don't find Monzo can be fairly held liable for Mr B's losses.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 July 2024.

Kathryn Milne  
**Ombudsman**