

The complaint

Mr P, Mrs B and Mr K complain that Monzo Bank Ltd ('Monzo') won't refund the money that was lost as the result of a scam.

What happened

The account is in Mr P's name and he made all of the payments to the scam. However, payment six was funded by Mrs B and payments seven and eight were funded by Mr K. For ease, I'll refer to Mr P throughout this decision.

In January 2023, Mr P was contacted by someone he didn't know through a messaging app, asking if he was interested in part time work. I'll refer to the company Mr P was told he would work for as C.

Mr P was told the job involved completing tasks which would increase the data and traffic on apps for customers of C. Mr P would receive a salary and commission for completing sets of tasks and also receive a bonus if he completed tasks on successive days, for example, five days in a row would get an extra \$800USD.

Mr P says he believed the job opportunity was genuine because:

- he had an over the phone interview and was asked about his background and other standard interview questions
- he was shown terms and conditions in relation to the job
- once he'd confirmed that he wanted the role, he was taken through professional onboarding and training on how to complete the task sets
- he was added to an online chat group with around 150 other people who he believed were doing the same job
- he was given company registration documents which said that C was the sister company of a separate company (which I'll refer to as D). D, was a genuine business, which had no connection to the scam – although Mr P didn't know this
- he researched D online and saw positive reviews as well as the website of the genuine company

Mr P was told that in order to buy the tasks, he had to send cryptocurrency to his wallet with C. Mr P already had a cryptocurrency wallet with a genuine provider, so he used his Monzo account to purchase cryptocurrency, with the cryptocurrency paid to his cryptocurrency wallet, before he transferred it to his wallet with C.

Below are the payments that Mr P made as part of the scam.

Date	Pmt	Transaction detail	Amount
15.3.2023	1	Payment to M1	£50.00
15.3.2023	2	Payment to M2	£1,000.00
15.3.2023	3	Payment to T	£1,000.00
15.3.2023	4	Payment to I	£1,000.00

15.3.2023	5	Payment to P	£50.00
15.3.2023	6	Payment to I	£1,000.00
15.3.2023	7	Payment to N (a cryptocurrency exchange)	£1,000.00
15.3.2023	8	Payment to I	£1,000.00
15.3.2023	9	Payment to M1	£60.00
		Total sent	£6,160

The task sets that were assigned to Mr P increased in value until, ultimately, he couldn't afford to buy any more. Mr P was told that without finishing the current task set, he wouldn't be able to withdraw the commission or earnings sitting in his wallet with C. At this point, Mr P realised that he had been the victim of a scam and reported it to Monzo.

Monzo raised a fraud claim for Mr P, but after investigating it declined to refund him.

Mr P wasn't happy with Monzo's response, so he brought a complaint to our service.

An investigator looked into Mr P's complaint and partially upheld it, recommending that Monzo refund payments seven, eight and nine. The investigator felt that the quick succession of the payments meant that Monzo should've identified a scam risk when Mr P made payment seven, as Mr P had set up six new payees and was transferring over £5,000 to them in less than two hours. But, the investigator felt that Mr P should've had concerns about the information he was given, so they recommended that Mr P share liability for his loss with Monzo on payments seven to nine.

Monzo disagreed with the investigator's opinion and asked for an ombudsman to review the case. Monzo raised the following points:

- The liability for the loss doesn't lie with Monzo, but with the cryptocurrency providers the funds were sent to.
- The payments are not unusual for the account and not of particularly high value, so didn't justify intervention.
- There is a legal precedent and expectation (Philipps vs Barclays UK PLC court case) that banks should carry out customers' wishes and it's inappropriate for Monzo to decline to do so.
- A customer is entitled to spend his money in the way he sees fit and Monzo has an obligation to let him do so.

Having reviewed the case, I came to the same outcome as the investigator. However, the redress wasn't clear in the investigator's view, so I wanted to share my reasoning with both parties and give them the opportunity to respond before I issued a final decision. So, I issued a provisional decision on 4 June 2024.

What I've provisionally decided – and why

In my provisional decision I said:

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

Monzo aren't a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (the CRM Code), but they've agreed to adhere to the provisions of the Code. However, the CRM Code doesn't apply to payments made for legitimate purposes. In this case, Mr P purchased cryptocurrency from genuine third parties, which he transferred into a

wallet in his own name, before passing the funds onto the scammer. So, I can't consider Mr P's case under the CRM Code.

Monzo have referred to the Philipp v Barclays UK PLC court case, saying there is a legal precedent and expectation that they should carry out a customer's payment 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 6 December 2021 terms and conditions gave it rights (but not obligations) to:

- Block payments if it suspects criminal activity on a customer's account. It explains if it blocks a payment, it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post).

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.
- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, 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 the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, 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) and the different risks these can present to consumers, when deciding whether to intervene

Should Monzo have intervened before following Mr P's payment instructions?

For the first six payments, I wouldn't have expected Monzo to have intervened. I say this taking into account the size of the payments, Mr P's previous account use (which regularly included payments of up to £2,000 and multiple payments on the same day) and that several different payees were used. Taking all of these points into consideration, I'm not satisfied that Monzo should've had concerns or identified a scam risk.

However, when Mr P made payment seven, it was going to an identifiable cryptocurrency exchange and by March 2023 Monzo should've been aware of the prevalence of cryptocurrency scams. Also, it took the total that Mr P had transferred out of his account to over £5,000 within a couple of hours (which was unusual based on previous account use) and it was in a series of payments made in quick succession. Based on the information that Monzo had available at the point Mr P made the seventh payment, I think they should've been concerned and contacted Mr P to ask him open probing questions.

Had Monzo asked Mr P questions about the payment purpose (paying for employment), how he'd found out about the job (a cold call) and why he was buying cryptocurrency, I'm satisfied that it's more likely than not the scam would've been uncovered. I think all the information that Mr P would've given Monzo would've suggested that he was likely the victim of a job scam. I haven't seen anything that suggests Mr P was given a cover story, so I think he would've honestly answered any questions that Monzo asked. And, based on Monzo, telling Mr P about job scams and what they look like, I think it's unlikely that Mr P would've proceeded with making payments seven, eight or nine.

But I also need to consider whether Mr P should share responsibility for his loss with Monzo.

Could Mr P have mitigated his loss?

Based on the information that Mr P had at the time he made these payments, I'm not satisfied that he did sufficient checks to ensure the job opportunity was genuine. I say this because:

- Mr P says he wasn't looking for work at the time and was called out of the blue about the job opportunity. It's unclear how C would've identified Mr P, found his contact information or why they would call someone they didn't know to make a job offer.
- The job offer was too good to be true. Mr P was told that he could work part time and would earn an extra \$800USD for working 5 days in a row. The type of salary and commission that C were offering to pay, wouldn't usually require a firm to proactively seek employees in the way Mr P was contacted.
- I'm not satisfied that a genuine employer would require an employee to make payment in order to obtain a salary, in the method that was involved in this case. Especially as they required Mr P to purchase cryptocurrency.
- From what I've seen Mr P sent thousands of pounds in a short period of time to an unknown company, even borrowing money in order to make payments. No genuine employer would put an employee in a position where they had to borrow money in this way.

- While Mr P was given company registration documents which suggested that C was a sister company of a genuine business (D) – there is nothing that links the two companies online or on the genuine company's website.
- Also, while Mr P says he was given terms and conditions related to the job, I would expect a genuine firm to offer him an employment contract and I haven't seen anything to suggest that this happened.

Taking all of these points into consideration as a whole, I think a reasonable person would've been concerned about they were being told and would have completed additional checks before sending over £5,000 to a company they hadn't heard of before. On that basis, I think it's fair for Mr P to share liability for his loss with Monzo on payments seven, eight and nine. Usually, I'd expect Monzo to attempt to recover the funds, but as the funds were used to purchase cryptocurrency from genuine sellers, I wouldn't have expected Monzo to attempt recovery in this case.

Monzo have raised a concern about Mr P's loss occurring at the point he transferred funds from his cryptocurrency wallet to C. However, the complaint I have to reach an answer on is in relation to Monzo and their actions when Mr P made the payments from his Monzo account, and whether I think they can fairly be held liable for any of Mr P's loss.

My provisional decision was that I intended to uphold the complaint and ask Monzo to refund 50% of payments seven to nine inclusive and pay interest on the refund of 8% simple interest per year, calculated from the date of the payments until the date of settlement.

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.

Mr P, Mrs B, Mr K and Monzo responded to my provisional decision saying they accepted my recommendation.

As no new evidence or information has been provided, which the parties want me to consider before reaching a final decision, I see no reason to reach a different answer than in my provisional decision.

In summary

I'm not satisfied that the first six payments Mr P made were so unusual or out of character that I would've expected Monzo to have identified a scam risk or intervened. But, when Mr P made the seventh payment, based on the information Monzo had available to them, I'm satisfied that Monzo should've intervened and discussed the payment with Mr P. I think it's more likely than not intervention would've uncovered the scam and prevented any further loss, therefore Monzo should refund payments seven, eight and nine.

However, I also think Mr P should've taken steps to mitigate his loss by performing more checks based on the information he had available at the time he made the payments. On that basis, I think it's fair for him to share responsibility for the loss on payments seven, eight and nine with Monzo.

Putting things right

To put things right, I require Monzo Bank Ltd to:

- Refund 50% of payments seven to nine (inclusive)

- Pay interest on that refund at 8% simple interest per year, calculated from the date of the payments until the date of settlement*

** If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P, Mrs B and Mr K how much it's taken off. It should also give Mr P, Mrs B and Mr K a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

My final decision

My final decision is that I uphold this complaint against Monzo Bank Ltd and require them to compensate Mr P, Mrs B and Mr K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B, Mr K and Mr P to accept or reject my decision before 17 July 2024.

Lisa Lowe
Ombudsman