

## The complaint

Mr C complains that Monzo Bank Ltd (“Monzo”) won’t refund the money he lost as a result of an employment scam.

He’s being supported by a representative. To keep things simple, I’ll refer to Mr C throughout this decision.

## What happened

The background to this complaint is known to both parties, so I won’t repeat all the details here. In summary, Mr C says:

- He was looking for work and, in September 2023, he was contacted by a person claiming to be from a well-known recruitment company. He was then referred on to someone he believed would be his ‘supervisor’ at a company for which he’d be working, and it was explained that his role would involve completing certain ‘tasks’ to help improve apps and sales data to increase the company’s online metrics.
- He was led to believe that to start work he needed to buy cryptocurrency and deposit this cryptocurrency from his crypto-wallet into a ‘work-wallet’. He was told he’d be able to withdraw his money and commission once he’d completed the set tasks. And he was given access to an online platform where he could see his tasks and deposits. He was also able to speak regularly with his ‘supervisor’ and was added to a separate group chat with other ‘employees’ for support through the process.
- A number of payments were initially made from an account he held with another bank. But the two disputed payments from his Monzo account were made when he was told he needed to deposit more funds in order to clear his ‘negative’ balance before he could withdraw funds. He realised he’d been scammed when, having deposited more funds, he was still unable to make a withdrawal and was instead given more tasks to finish.

I’ve listed below the payments I’ve considered as part of this complaint. To note, some of the money sent from the Monzo account was borrowed from family and friends and repaid by Mr C by the end of September 2023. And, as part of the scam, Mr C also received a credit into his account with his other bank in connection with payments made from that account, adding to the legitimacy of the opportunity.

|   | Date      | Amount | Type           | Payee          |
|---|-----------|--------|----------------|----------------|
| 1 | 10-Sep-23 | £1,947 | Card payment   | Bitget MultiEx |
| 2 | 11-Sep-23 | £3,244 | Faster Payment | ZenoFi UAB     |

The scam was reported to Monzo in September 2023, on the same day the final payment (payment 2 above) was made. A complaint was also raised and later referred to our Service. Our Investigator considered it and upheld it. In summary, she thought Monzo should have identified a risk with the final payment and provided an effective warning – and that, if it had, then the scam would have likely been unravelled. She also thought Mr C should bear equal liability for his losses and so the refund payable by Monzo should be reduced by 50%.

Mr C accepted that outcome. Mozo did not. In its submissions it said, in summary:

- It didn't have the right to intervene in line with *Philipp v Barclays Bank* and the account terms as the payments were legitimate and in exchange for goods and services Mr C received as expected. Mr C wasn't at risk of fraud directly from his Monzo account and it'd be inappropriate for it to apply friction each time a customer pays a crypto-exchange.
- It has systems in place to look out for suspicious payments and the right balance in approach to protect its customers and not to disrupt legitimate transactions.
- Under the Payment Services Regulations (PSRs) it must provide a factual reason for refusing to make a payment, and these can only be for factual matters. It had no factual reason to suspect these payments or look to delay them in proceeding here.
- It routinely sees customers making several cryptocurrency payments on a daily basis which aren't related to scams in any way. There are legitimate reasons for this, such as taking advantage of fluctuations in currency rates which can change very quickly.

### **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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. Having done so, I've decided to uphold this complaint for broadly the same reasons as the Investigator.

The starting point under the relevant regulations (the Payment Services Regulations 2017) and the terms of Mr C's account is that he's liable for payments he's authorised. And as the Supreme Court 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's 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 current account terms and conditions gave it rights (but not obligations) to:

- Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
- Refuse to make a payment if it suspects the customer is a victim of fraud.

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

The account terms didn't oblige Monzo to make fraud checks, but I don't 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 wasn't required under the contract to make checks, I'm satisfied, taking into account longstanding regulatory expectations and requirements – including the Financial Conduct Authority's (FCA) "Consumer Duty" and what I consider to have been good practice at the time – that Monzo should fairly and reasonably have been on the look-out for the possibility of fraud and taken additional steps, or made additional checks, before processing payments in some circumstances. In practice, this is something all banks, including Monzo, do.

Our Service has issued previous final decisions setting out the relevant considerations we take into account when deciding what's fair and reasonable in these types of cases. I don't consider it necessary to repeat them all again here, though Monzo will be able to review these through past decisions on our website if it wishes to do so.

To summarise, however, 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, I consider Monzo should fairly and reasonably:

- have been monitoring accounts and any payments made or received to counter various risks, including 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 firms are generally more familiar with than the average customer;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams;
- 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;
- have been mindful of (among other things) common scam scenarios, how fraudulent practices are evolving (including, for example, the common use of multi-stage fraud by scammers, the use of payments to cryptocurrency accounts as a step to defraud) and the different risks these can present to consumers, when deciding whether to intervene.

#### *Should Monzo have recognised Mr C was at risk of financial harm?*

It isn't in dispute Mr C was scammed and that he authorised the payments from his account for the purchase of cryptocurrency that was then sent to the fraudster. I recognise Monzo wasn't the point of loss and it took further steps before the money was lost to the scam.

But it's also important to consider that by September 2023, when the payments were made, Monzo ought to have been aware of the risk of multi-stage fraud involving cryptocurrency for some 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.

In addition, by the end of 2022, many high-street banks had taken steps to limit their customer's ability to buy cryptocurrency using their accounts or increase friction in relation to such payments, owing to the elevated risk associated with these transactions. Further restrictions were in place by the time of these payments in September 2023.

So, talking all this into account, as well as Monzo's comments that many cryptocurrency purchases will be legitimate and that a lot of its customers choose Monzo because many other banks don't allow these investments, I'm satisfied that, by September 2023, it ought to *fairly and reasonably* have recognised its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that a payment would often be made to an account in the consumer's name. And, 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 processing such payments.

The introduction of the FCA's Consumer Duty, in July 2023, further supports this view. It requires Monzo to avoid causing foreseeable harm to its customers by, among other things, having adequate systems in place to detect and prevent scams. And in light of the increase in multi-stage fraud, involving cryptocurrency, I'm not convinced the fact that payments went to accounts in a customer's name should have led Monzo to think there was no scam risk.

I've therefore gone on to consider, taking account of what Monzo knew about the payments, at what point, if any, it ought to have identified Mr C might be at a heightened risk of fraud.

The first payment was to a cryptocurrency provider and this is a factor which added to its risk level. But given its relatively low value, that this was a newly opened account (so Monzo wouldn't have known how Mr C usually transacted), and acknowledging the need for Monzo to strike a balance between identifying payments that may be made as a result of a scam and ensuring minimal disruption to legitimate ones, I don't think it ought to have appeared suspicious to the extent that Monzo should have provided Mr C with a warning at that time.

The final payment, however, was again to a cryptocurrency provider. It was notably higher in value than the first, to a new payee, and for a significant amount, again leaving a relatively small balance on the account. And, in my view, there was enough about the characteristics of this transaction and the activity on the account that ought to have been concerning such that Monzo should have issued a warning at that time.

#### *What kind of warning should Monzo have provided?*

I've thought about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I recognise many payments that look similar to this one will be genuine and I've given due consideration to Monzo's primary duty to make payments promptly, as well as what I consider to have been good industry practice at the time.

As above, the FCA's Consumer Duty was in force when these payments came about and requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. This, in practice, involves maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warnings for customers. I'm also mindful firms like Monzo have had warnings in place for some time and have developed those warnings to recognise the importance of identifying both the specific scam risk in a payment journey and ensuring consumers interact with the warning.

The upshot of all this is that, by the time the payments were made, I think Monzo should have had systems in place to identify, as far as possible, the *actual* scam that might be taking place to then enable it to provide more tailored warnings relevant to that scam.

In this case, Monzo ought to have known the final payment was to a cryptocurrency provider and its systems ought to have factored that in. It should also have known cryptocurrency scams have become increasingly varied over the past few years, where fraudsters have progressively turned to this as their preferred way of receiving a victim's money across a range of different scam-types – including 'romance', 'impersonation', and 'investment' scams. And, with all this in mind, I think that by September 2023 it ought to have attempted to pinpoint the potential risk further by, for example, asking a series of questions designed to narrow down the type of crypto-related scam risk associated with the payment.

We know here that Mr C was falling victim to a 'job scam'. He believed he needed to make payments in order to receive an income. As such, I'd have expected Monzo to have asked a series of simple automated questions to establish this was the risk the payment presented.

Once that risk had been established, it should have provided a warning tailored to that risk and the answers Mr C gave. I'd expect such a warning to have covered key features of this type of scam, such as making payments to gain employment, being paid for 'clicks', 'likes' or 'promoting products' and having to pay increasingly large sums to be able to withdraw funds.

I'm conscious such warnings rely on the customer answering questions honestly. But, on the evidence, I'm satisfied Mr C would have likely done so here. And, in these circumstances, I think Monzo ought fairly and reasonably to have delayed the final payment to make further enquiries with a view to providing a specific scam warning, of the kind I've described.

*If Monzo had provided such a warning would that have prevented Mr C's further losses?*

I think that a warning, of the type I've described, would have likely resonated with Mr C and he'd have identified his situation closely matched this increasingly common type of scam. I note Monzo says the only warning it provided was a Confirmation of Payee check. But I don't think that was enough in the circumstances. And, as far as I'm aware, Mr C didn't receive any warnings specific to 'job scams' from any other source either.

I also note, from the messages he exchanged with the scammer, that he appears to have already had some concerns about the scheme prior to his final payment. For example, he was concerned about being repeatedly assigned combination tasks to the extent that he asked for some sort of written confirmation the situation wouldn't arise again. He also realised he'd been scammed very soon after his final payment.

I don't think it would have taken much to convince Mr C he was being scammed and it's likely a warning by Monzo covering the typical features of 'job scams' would have given him the perspective he needed. And because, on balance, I think it's unlikely he'd have gone ahead with the final payment after a warning about what his situation looked like, I'm satisfied Monzo can fairly and reasonably be held liable for this further loss in circumstances where it ought to have done more to prevent it.

*Should Mr C bear any responsibility for his losses?*

The concept of contributory negligence centres around whether or not a consumer should have done something to mitigate their losses or should share some responsibility for them. In this case, I appreciate Mr C says he was a student with limited work experience and that the contact from the scammer wasn't unexpected as he'd been looking for work earlier that year. I also note he says the scammer came across as professional and he was added to a group chat where others messaged about their successes. I realise there were relatively sophisticated aspects to this scam, including the platform which was used to manage the

apparent earnings and tasks. And I appreciate the withdrawal Mr C says he was able to make (before these disputed payments) would have added some reassurance.

But, at its heart, the scam appears to have been fairly implausible. There was no contract or paperwork about the job itself and, although Mr C may have had little experience of normal employment processes, I still think that this should have flagged as concerning. I also can't overlook that while he was offered the chance to earn money he needed to deposit money and then pay more as part of the process. I realise this was something Mr C did question the scammer about. But I don't think he was given a particularly plausible explanation as to why *he* had to finance the 'job' or why he needed to make deposits in crypto-currency either.

I also understand that the scam operated a mechanism leading Mr C to believe one more payment would allow him to get his money back. But, as indicated above, I think Mr C probably recognised (and ought to have recognised) before the final payment the dynamic that the platform could effectively prevent him from withdrawing funds by continuously granting 'tasks'. And the fact he was being encouraged to borrow money by time the final payment came into question should have further signalled something wasn't right. I'm not convinced the steps he took at that point to alleviate his concerns were enough.

I think all this would strike most people as unusual and that there were enough red flags overall that ought to have led Mr C to have acted more cautiously than he did. And because I think he played a role in what happened, I agree the amount Monzo needs to refund should fairly be reduced by 50%.

#### *Could Monzo have done anything to recover Mr C's money?*

The first payment was made by card to a legitimate cryptocurrency provider and Mr C sent that on to the scammer. There was little Monzo could have done to recover those funds and I don't think a chargeback would have had any prospect of success given Mr C would have received the products and services from the merchant as intended.

The final payment was made by transfer. I note that Monzo did attempt a recall and was told by the recipient that no funds remained. It's arguable Monzo could have acted sooner than it did. Even so, as explained by the Investigator, successful recovery was unlikely as we know Mr C had sent the funds to the scammer before the scam was reported.

#### **Putting things right**

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

- Refund 50% of the final payment made on 11 September 2023.
- Pay 8% interest on that amount from the date the payment was paid to the date of settlement less any tax lawfully deductible. Although the payment was part funded by borrowing, taking into account that the borrowing was repaid in September 2023 and the amounts involved, I consider this interest award still results in a fair outcome.

#### **My final decision**

For the reasons above, I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 August 2024.

Thomas Cardia

**Ombudsman**