

## Complaint

Mr S is unhappy that Monzo Bank Ltd didn't reimburse him after he fell victim to a scam.

## Background

Mr S had been looking for work and had applied for various roles online. He was contacted by someone who claimed to be recruiting for a role. The role was apparently with a data consultancy firm based in the United States. Unfortunately, Mr S hadn't been contacted by a genuine employee of that firm, 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 would be responsible for *"purchasing products and orders for the merchant ... by purchasing and submitting these products, they would be advertised and promoted to a larger pool of consumers."*

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 used his Monzo account to make the payments in the table below. Payee A refers to an account in his own name with a different firm. His funds were subsequently transferred on from that account into the control of the fraudsters.

	Date	Payee	Value
1	5 October 2023	A	£1,500
2	5 October 2023	B	£550
3	5 October 2023	C	£3,100
4	6 October 2023	D	£4,150
5	6 October 2023	D	£1,500
6	6 October 2023	D	£3,280
7	6 October 2023	A	£2,500

Shortly after sending payment 3, Mr S messaged Monzo and said:

*"Can you please null this transaction? The recipient said it never reached him and I think he is trying to scam me."*

Monzo responded and asked him several questions about the payment. It sent that message to him at 11:45pm and he didn't respond until 1:29pm the following day. However, in that period between those messages, Mr S took out a £5,000 loan with Monzo. He transferred the proceeds of that loan when he authorised payments 4 and 5.

Once he realised that he'd fallen victim to a scam, Mr S complained to Monzo through his professional representatives. He alleged that Monzo should've done more to protect him from the scam. As far as I can see, Monzo didn't respond to the substantive complaint and so it was eventually referred to this service.

It was looked at by an Investigator who upheld it in part. She thought that Monzo ought to have been concerned at the point Mr S asked it to make payment 4. She said that a proportionate response would've been to contact Mr S to ask him about the payment. If it had done so, she was persuaded it would've been able to stop his subsequent losses.

However, she also thought it was fair and reasonable for it to deduct 50% from any settlement payable to Mr S to take into account his partial responsibility for his own losses. She recommended it refund 50% of the payments Mr S made from payment 4 onwards. She also pointed out that, if Monzo had prevented the scam at that point, Mr S wouldn't have kept the loan. She recommended that it be restructured to remove any interest and/or charges that had been applied.

Monzo disagreed with the Investigator's opinion. It said:

- The message Mr S sent on 5 October wasn't enough for it to know that a scam was taking place.
- Regulation 82 of the Payment Services Regulations 2017 prevented it from refusing to carry out the customer's instructions.
- It's likely that, even if it had intervened, Mr S would've gone ahead anyway.
- It shouldn't be liable because it was not the point of loss. Mr S made these payments to accounts in his own name and further steps were necessary before his funds were lost to the fraudsters.
- It can't write off interest on the loan.

As Monzo disagreed with the Investigator's view, the case 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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that Monzo be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to warn its customer about the risk of proceeding. In some instances, it may be proportionate for Monzo to temporarily pause the payment to enable it to make enquiries with the customer to satisfy itself that they're not at risk of financial harm due to fraud.

The Investigator concluded that the fourth payment in the table above was the point at which those concerns should've resulted in Monzo intervening and I'd agree with that conclusion. Mr S was making a payment to a fourth new payee in a brief period and the payment values were escalating. This was in keeping with the pattern of payments seen in scams of this type. Furthermore, he'd already shared with Monzo his concern that he might be falling victim to a scam, and he'd just been granted a £5,000 loan – another commonly occurring

aspect in scams of this type. The combination of these factors ought to have been a concern to Monzo. It shouldn't have processed payment 4 until, at the very least, Mr S had responded to its queries about the previous payment and, if necessary, asked him further questions about the payment he was trying to make.

I've considered Monzo's 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've also 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 S'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 conduct fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded it from carrying out 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. I say that because it doesn't appear that the scammers told Mr S to mislead the bank if it asked him questions about the activity on his account. The messages he exchanged with Monzo showed that he responded to its questions openly and honestly. If it had queried this activity with him, I think it's likely that he'd have explained he was making the payments in connection with an employment opportunity. Monzo could, in response, have explained that such opportunities that require customers to put funds in are almost certainly fraudulent.

If it had done this, I can't see any reason why he would've continued to make the payments. It also would've prevented him from transferring the proceeds of the loan application to the scammers. Mr S had a statutory right to withdraw from the credit agreement within 14 days of the day on which the agreement was made. In other words, if Monzo had done what I think it ought to have done here, Mr S would not now be liable for interest, charges or repayments on the loan.

However, I've also considered whether it would be fair and reasonable for Mr S to bear some responsibility for his own losses. 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.

Mr S clearly had concerns about whether the company was legitimate before payment 4. He acted against his better judgement by continuing to make the payments. This was rather more in hope than in expectation. He recognised the risk that this opportunity might not be a legitimate one but proceeded anyway. 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 S doesn't appear to have asked about it. I think he ought to have proceeded only with great caution. Overall, in view of these factors, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to him.

I've also taken into account that the loss he suffered didn't occur from the Monzo account. 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 acted as I've found it should've done.

## **Final decision**

For the reasons I've explained above, I uphold this complaint. If Mr S accepts my final decision, Monzo needs to:

- Refund 50% of the payments Mr S made from payment 4 onwards, less the amount it was able to recover from the receiving account.
- Refund any payments Mr S made to the loan account.
- Restructure the loan account to remove any interest or charges.
- Remove any adverse information from Mr S's credit file regarding the loan.

The loan will remain in force and Mr S is free to use the redress he is paid as a result of this complaint to reduce the balance, should he choose to do so.

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

James Kimmitt  
**Ombudsman**