

The complaint

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

She’s being represented by a firm of solicitors. To keep things simple, I’ll refer to Miss A 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, Miss A says:

- In September 2023, she was looking for part-time work and applying for multiple jobs. She was then contacted on her messaging app by an individual (the scammer) claiming to be an agent of a legitimate media company about a job opportunity. This opportunity appealed to her as it would allow her to earn money around her existing commitments.
- For the job itself, it was explained her role was to increase traffic and optimize apps on the company platform by giving them ratings and that she’d earn salary and commission after completing sets of ‘tasks’ randomly assigned by the system. She was given access to a fake ‘work’ account which allowed her to see her ‘tasks’ and earnings – and seemed genuine. To make the scam more convincing she was also added to a ‘customer service’ group and a group chat with other ‘members’ for support during the process if needed.
- She was told that, as part of the process, she had to deposit her own funds to keep her ‘work’ account in a ‘positive balance’ but that these would be paid back to her at the end of the day. Her deposits were paid in cryptocurrency (which she purchased through her account with a legitimate crypto-platform she’d been told to open by the scammer). It was this cryptocurrency that was then sent from her crypto-platform and lost to the scam.
- She started with small payments to fund the ‘work’ account initially. But when she was repeatedly allocated ‘tasks’ which put her work account into a negative balance, she was persuaded by the scammer to continue paying significantly higher deposits on the basis that these would be repaid to her and she’d earn higher commission. She realised she’d been scammed when she was unable to make a withdrawal and was instead again told she needed to deposit more funds before that could happen.

Below are the payments I’ve considered as part of this complaint. To note, part of the money (about £9,500) used to fund the scam was borrowed from family and friends. Also, a card payment of £4,000, attempted in connection to the scam, was declined by Monzo on 7 September 2023. I’ve included it in my table (*in italics*) as it’s relevant to my decision.

	Date	Time	Method	Payee	Amount
1	04-Sep-23	16:15	Card payment	Onlychain	£35
2	05-Sep-23	12:15	Card payment	Onlychain	£10
3	05-Sep-23	12:28	Card payment	Onlychain	£10
4	06-Sep-23	09:14	Card payment	Onlychain	£300
5	07-Sep-23	10:46	Card payment	Onlychain	£1,500

	07-Sep-23	11:59	<i>Declined</i>	<i>Onlychain</i>	<i>£4,000</i>
6	07-Sep-23	13:18	Card payment	Onlychain	£2,000
7	07-Sep-23	13:20	Card payment	Onlychain	£2,000
8	07-Sep-23	18:41	Card payment	Onlychain	£2,000
9	07-Sep-23	18:43	Card payment	Onlychain	£1,700
10	08-Sep-23	10:03	Card payment	Onlychain	£2,000
11	08-Sep-23	10:57	Card payment	Onlychain	£1,200

The scam was reported to Monzo in September 2023. Miss A was then informed Monzo wouldn't refund the disputed payments as the loss was from her crypto-platform. A complaint was raised and later referred to our Service. Our Investigator considered it and upheld it.

In summary, she thought there was enough about Payment 6 (as above) for Monzo to have suspected Miss A might be at risk of fraud, given it was being sent to a crypto-platform; it was the third payment (the second was declined) to the same payee on the same day; and it brought the total spending to a significant amount. She thought if Monzo had asked a series of questions to establish the risk presented and provided a warning, tailored to the risk and Miss A's answers, the scam would have been unravelled. She recommended a refund of Payments 6-11 plus interest, but that the interest on funds Miss A had borrowed should be calculated from the date those funds were repaid to her friends and family. She also found Miss A should be equally liable for her losses and reduced the refund payable by 50%.

Miss A accepted that outcome. And, in recent submissions, she's provided evidence to show most of the funds she'd borrowed from friends and family were repaid by her in instalments by December 2023. About £1,300 was repaid between January and March 2024.

Monzo disagreed with the Investigator's outcome. I've summarised its representations below:

- The disputed payments were within daily limits and not out of proportion when compared to Miss A's annual income. And they were not unusual considering her account history. It's not uncommon for it to see a sudden increase in the volume or value of crypto-based spending. Such investments are market based so changes in spending can be explained by changes in market conditions. For example, in favourable market conditions it expects to see increased spending.
- It was not able to provide tailored warnings as the card payments were not made through its *app*. The only way to intervene would have been to block the payments whilst a member of its scam team manually intervened. These payments didn't warrant this type of intervention. And, although some of Miss A's transactions were larger than previous payments, they weren't significant in the wider scheme of payments it sees on a regular basis. These specific payments weren't flagged under its models and rules, so it had no concerns that would have meant it should have blocked and investigated them.
- While it does proactively freeze card payments in certain high-risk situations, it needs to balance its fraud prevention with its desire to provide a reliable and efficient service. The vast majority of cryptocurrency payments it processes are legitimate. It'd be disruptive to thousands of customers to block or intervene in so many legitimate payment journeys.
- The payments didn't result in any loss from the Monzo account and are considered legitimate. They are 'me-to-me' payments. Miss A was in full control of the funds on receipt to her crypto-platform and received the cryptocurrency she paid for.
- The crypto-platform Miss A paid is known to be legitimate with robust security protocols.

For example, the platform only accepts deposits from accounts matching its account holder. It was confident the funds were being deposited into an account belonging to Miss A. And these platforms provide scam warnings on their website and *in-app*.

- The Supreme Court in *Phillips v Barclays* upheld that banks are expected to carry out a customer's wishes. It's a strict duty under a bank's contract with a customer to make payments in compliance with the customer's instructions, where the customer authorised the payment, and "*It's not for the bank to concern itself with the wisdom or risks of its customer's payment decisions*". As there was no suspicion of fraud because all payments were legitimate, it didn't have the obligation to intervene in line with *Phillip v Barclays* and its express account terms.
- Taking into account the Payment Systems Regulator's rules on APP fraud, banks are not expected to assess fraud that does not happen within their remit, and banks aren't responsible for onward loss of cryptocurrency when purchased legitimately. It's unfair for Monzo to bear the losses for scam payments that were not made from its account.
- The Financial Conduct Authority has acknowledged cryptocurrency is unprotected, regardless of the payment intention, meaning Miss A waived her rights to a refund.

As the matter couldn't be resolved informally, it's been passed to me to decide.

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 Miss A's account is that she's liable for payments she'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, it 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.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. 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 legal 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.

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 many 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's 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 that, in September 2023, 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 Miss A was at risk of financial harm?

It's not in dispute Miss A was the victim of a cruel scam, nor that she authorised the card payments to her crypto-platform from where her funds were subsequently sent and lost to the scammer.

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, taking all this into account, as well as Monzo's comments that many cryptocurrency purchases will be legitimate, 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 customer'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 persuaded the fact the payments went to an account 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 Miss A might be at a heightened risk of fraud.

The first five disputed payments were to a cryptocurrency provider and this is a factor which added to their risk level. But, given their values 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 any of them ought to have appeared suspicious to the extent that Monzo should have intervened.

Payment 6, however, was again to a cryptocurrency provider. It was the third payment (the second was an attempt to pay £4,000 which Monzo declined) to the same payee, on the same day. There had been a pattern emerging of increased cryptocurrency-related spending and a change in activity. And Payment 6 also brought the daily spend to a cryptocurrency provider to a significant level on an account that had typically been used for relatively low day-to-day spending. I note the attempted payment of £4,000 I've just referred to was not declined due to Monzo suspecting a risk of financial harm to Miss A. I also note that, in support of its view that the payments were not unusual, Monzo has pointed to a transfer of £2,800 in November 2022 and others on 2 September 2022 (over 12 months prior). But, for the reasons I've mentioned, I'm satisfied there was enough about the characteristics of Payment 6 and the activity on Miss A's account that ought to have been concerning such that Monzo should have stepped in and provided her with a warning at the 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 Payment 6 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 Miss A was falling victim to a 'job scam'. She believed she 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 if 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 Miss A 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 realise such warnings rely on the customer answering questions honestly. But, on the evidence, I'm satisfied Miss A would have likely done so here. I've seen little to indicate, in her messages with the scammer for example, that she was persuaded to ignore relevant warnings or to mislead Monzo about what she was doing. And, in these circumstances, I think Monzo ought fairly and reasonably to have made further enquiries with a view to identifying the specific scam risk and providing a warning, of the kind I've described, when Miss A attempted Payment 6.

If Monzo had provided such a warning would that have prevented Miss A's further losses?

I've thought carefully about whether a warning of the type I've described would have likely made a difference here – and on balance, I think it would have.

There were several key hallmarks of common 'job scams' present in the circumstances surrounding Miss A's payments, such as being offered a significant income for essentially 'clicking' through 'tasks' online; being asked to deposit her own funds to clear a 'negative' balance; and then having to pay higher amounts during the process. In my view, a tailored warning highlighting such features would have likely resonated with Miss A. I think it's unlikely she'd have continued making payments after receiving such a warning that closely matched her situation at the time. And I've not seen anything to evidence she received or moved passed any warnings specific to 'job scams' from other sources either.

I also note, from the messages Miss A exchanged with the scammer, that she seems to have been worried prior to Payment 6 about having been given another 'combination task'

and her having to deposit more funds. I'm not suggesting she'd developed concerns that she was being scammed at that stage. But I think her circumstances were such that she'd likely have paid attention to a warning from Monzo that again covered the typical aspects of 'job scams'. I think it would have given her the perspective she needed at that point and tipped her into realising something was wrong with what she was being asked to do. And because I think it's unlikely she'd have sent more payments after a warning that was relevant to what was happening to her, I'm satisfied Monzo can fairly and reasonably be held liable for her further losses where, as I've found here, it ought to have done more to prevent them.

For completeness, I note Monzo's comments that the Payment Services Regulator's mandatory reimbursement scheme wouldn't require it to reimburse Miss A here. I also note its comments that most crypto-related activities are not regulated. But I'm not persuaded either of these things mean I shouldn't consider whether Monzo failed to act fairly and reasonably in this case. I've given my reasons for finding Monzo should have done more to protect Miss A from the risk of fraud and that, if it had, it's likely she wouldn't have lost more money. I'm satisfied it'd be fair to hold Monzo responsible for part of Miss A's losses (subject to a deduction for Miss A's contributory negligence) in those circumstances.

Should Miss A bear any responsibility for her losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

As I referred to above, the Investigator upheld Miss A's complaint and thought that Monzo should refund her from (and including) Payments 6. She also concluded the refund payable by Monzo can be reduced by 50%, as Miss A should be equally liable for her losses. Miss A accepted that outcome. I'll nevertheless explain why I too agree with this position.

I appreciate Miss A says she was looking for work and so the contact from the scammer might not have been unexpected. I note she says the scammer came across as friendly and knowledgeable. And I realise there were relatively sophisticated aspects to this scam, including the platform which was used to manage the apparent earnings and tasks and her being added to a group chat where other 'members' messaged about their successes.

But, at its heart, the scam appears to have been fairly implausible. There was no contract or paperwork about the job itself. Although Miss A has explained she thought she was doing 'freelance' work, I still think that this should have flagged as concerning. I also can't overlook that while she was offered the chance to earn money she was asked to deposit her own funds and to pay more during the process. I can't see she was given a particularly plausible explanation as to why she had to finance the 'job' or why she needed to make deposits in cryptocurrency either. I think all this would strike most people as unusual and there were enough red flags that ought to have led Miss A to have acted more cautiously than she did.

In the circumstances, weighing up the role both parties to the case played in what happened, I think liability for Miss A's losses can fairly and reasonably be shared equally and the refund payable by Monzo reduced by 50%.

Could Monzo have done anything to recover Miss A's money?

All the disputed payments were card payments to Miss A's crypto-platform. Miss A then sent and lost that cryptocurrency to the scammer. I'm satisfied there was little Monzo could have done to recover those funds. In addition, I don't consider a chargeback would have had any

prospect of success given there's no dispute Miss A's crypto-platform provided her with the cryptocurrency which she subsequently sent to the scammer.

Putting things right

For the reasons I've given, I uphold this complaint and direct Monzo Bank Ltd to:

- Refund the payments Miss A lost to the scam from (and including) Payment 6 onwards.
- Reduce this amount by 50% in recognition of Miss A's contributory negligence.
- In terms of interest, the starting position is that Monzo Bank Ltd should pay 8% simple per year on the refund above from the date of the payments to the date of settlement, minus any tax lawfully deductible. In this case, although Miss A borrowed part of the money used to fund the scam from family and friends, I think this approach still results in a fair outcome overall considering the amounts involved and the timing of when Miss A repaid most of those funds. But if Monzo Bank Ltd wishes to calculate this interest from the exact dates that the money was repaid, then it can do so and, on request, Miss A should promptly provide it with the relevant information for it to do that.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 12 March 2025.

Thomas Cardia
Ombudsman