

The complaint

Mrs W is unhappy that Monzo Bank Ltd didn't reimburse her after she fell victim to a scam.

Background

In November 2023, Mrs W received an unsolicited text message offering her a remote job opportunity. At the time, Mrs W was seeking ways to increase her income, so she expressed an interest in the role. It was explained to her as a role in which she would be required to rate hotels via an online platform maintained by her employer. She was told she would earn commission for the rating tasks she carried out. However, she was also informed that, to access higher rates of commission for certain tasks, she needed to fund her account on the platform in advance. Mrs W didn't know it at the time, but this wasn't a legitimate job opportunity but a scam.

On 8 November 2023, Mrs W used her Monzo account to make two payments of £4,800 and £2,254, totaling £7,054. The funds were sent to an e-wallet in Mrs W's name with a cryptocurrency exchange. From there, they were converted into cryptocurrency and transferred into the fraudsters' control.

When Mrs W realised what had happened, she complained to Monzo. Monzo declined to refund her. It said the payments were authorised by Mrs W, and she should therefore be held liable for the losses. Monzo also explained that it had displayed a warning in its app when she made the payments.

Unhappy with this response, Mrs W brought her complaint to this service. One of our Investigators reviewed the case and upheld it in part. The Investigator concluded that Monzo should have intervened when Mrs W made the first payment, as it was out of character and carried the hallmarks of a scam. However, the Investigator also found that Mrs W should be considered partially responsible for her losses by way of contributory negligence and recommended a reduction of 50% to any compensation.

Monzo disagreed with the Investigator's conclusions. It argued that Mrs W transferred the money to an account in her own name before it was sent to the fraudsters. At the point the money left the Monzo account, Mrs W hadn't suffered any losses to fraud. As Monzo did not accept the Investigator's view, the complaint has been passed to me to make 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 Monzo should've had concerns at the time of the first payment and I'd agree with that conclusion. It shouldn't have processed this payment without first attempting to establish the surrounding circumstances. For example, Monzo could have contacted Mrs W to ask why she was making the payment. There's no evidence to suggest Mrs W was told to mislead the bank if asked about it. I think it's likely she would have explained the purpose honestly.

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 Mrs W'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, I am satisfied it should have intervened. If it had done so, I think it's more likely than not that it would've been able to prevent Mrs W's losses to the scam. As I've explained, I think it's likely that she would've responded to the bank's queries openly and honestly. Monzo could therefore have recognised that she was falling victim to a commonly occurring scam. A tailored warning highlighting the features of this type of scam (e.g., the need to pay upfront, unsolicited contact from a recruiter, limited or no formalities to accepting the role) would likely have caused Mrs W to pause and reconsider her actions. I'm satisfied she wouldn't have gone ahead with the payment if Monzo had intervened appropriately.

I've taken into account that Mrs W didn't actually experience a loss at the point the funds left her Monzo account. There were necessary steps that had to subsequently take place for the money to be directed into the hands of the fraudster. However, as I've explained, I think Monzo ought to have recognised that Mrs W might be at risk of financial harm here and in those circumstances it should have paused the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses she went on to suffer.

However, I've also considered whether Mrs W should bear some responsibility for her losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. Having done so, I think it's fair and reasonable for her to bear some responsibility here. The arrangement she was offered was unusual—it inverted the typical employer-employee relationship by requiring her to pay in advance to access work. Most people expect to be paid by their employer, rather than the other way around. From the evidence I've seen, there doesn't appear to have been an attempt to explain this unorthodox arrangement and Mrs W doesn't look to have questioned it.

Furthermore, the rates of commission she was promised were unrealistically high and the job offer followed an unsolicited approach, which should have prompted her to exercise greater caution. Taking everything into account, I think it's fair to hold Mrs W partially liable for her losses. I consider a 50% reduction in the compensation Monzo should pay her to be reasonable in the circumstances.

Final decision

For the reasons I've explained, I uphold this complaint in part.

If Mrs W accepts my final decision, Monzo Bank Ltd should refund 50% of the money she lost to the scam. It should also add 8% simple interest per annum to that amount calculated to run from the date the payments left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 January 2025.

James Kimmitt
Ombudsman