

The complaint

Mrs K complains that Monzo Bank Ltd ('Monzo') hasn't refunded her the money she lost in a scam.

What happened

I'm not going to cover all the points raised in detail. The view of 16 August 2024 covered the details of Mrs K's testimony. But briefly Mrs K says she was contacted on a social media messaging platform by someone offering a remote job opportunity. The job involved completing tasks to boost products online.

Between 3 September 2023 and 6 September 2023 Mrs K made 11 card payments to cryptocurrency. She received some credits back as part of the scam.

Date	Debit	Credit	Payee
03/09/2023	£100.00		Cryptocurrency O
05/09/2023	£100.00		Cryptocurrency O
05/09/2023	£100.00		Cryptocurrency O
05/09/2023	£100.00		Cryptocurrency O
05/09/2023		£130.20	
05/09/2023		£621.00	
06/09/2023	£100.00		Cryptocurrency O
06/09/2023	£200.00		Cryptocurrency O
06/09/2023	£300.00		Cryptocurrency O
06/09/2023	£1,300.00		Cryptocurrency O
06/09/2023	£2,200.00		Cryptocurrency O
06/09/2023	£28.00		Cryptocurrency O
06/09/2023		£70.00	
06/09/2023	£70.00		Cryptocurrency O
06/09/2023		£141.84	

Mrs K signed up to the job platform where she would complete tasks and could see her commission building up. Tasks were 'normal' or 'combined' – the latter earning her more commission. However, Mrs K needed to pay to clear negative balances on the account before completing new tasks. She did this by way of a deposit (in cryptocurrency) in order to unlock orders and then earn the commission.

In order to make the deposits on the job platform, Mrs K was required to transfer funds to a legitimate cryptocurrency exchange. From there, she purchased cryptocurrency and moved those funds into her cryptocurrency wallet and from there she transferred the cryptocurrency to what she thought was the job platform (but unbeknown to her at the time was a scammer). The deposit amounts required began to increase in size and Mrs K was told that she'd need to add funds each time to complete the orders before earning commission. Mrs K followed

the instructions of the scammer until the deposit amounts became too high for her to afford. Ultimately Mrs K was unable to withdraw her earnings and soon after realised she'd fallen victim to a scam.

Monzo considered Mrs K's complaint. It didn't agree to reimburse Mrs K. Mrs K was unhappy with Monzo's response and brought a complaint to our service. She said Monzo should have done more to protect her from the scam.

Our investigator upheld the complaint in part. He thought Monzo ought to have been concerned by the time Mrs K made the £2,200 payment on 6 September 2023 and recommended it should refund this payment and the transactions that followed. However, he also considered Mrs K should share in the responsibility for her losses so he felt the refund should be reduced by 50%.

Mrs K accepted the view. Monzo disagreed. It said:

- The payments are outside the scope of the Contingent Reimbursement Model (CRM) Code as Mrs K made payments to purchase cryptocurrency. The cryptocurrency was then sent to the scammers. So the fraud happened there.
- £2,200 isn't an unusual or extraordinary amount. It didn't have concerns about Mrs K's payments, so shouldn't be held liable for not intervening.
- It raised the recent court case of Philips v Barclays as to its duty to process payments.
- It offered £75 for the shortfall in customer service.

As the case could not be resolved informally, it has been passed to me for a decision.

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.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mrs K's account is that Mrs K is responsible for payments Mrs K's authorised herself. And, as the Supreme Court has recently 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 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 April 2023 terms and conditions gave 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.

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 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 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 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 made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Monzo, so I don't intend to repeat it here. But in summary, overall, taking into account the law, regulatory 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 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.
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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 including the use of cryptocurrency accounts) and the different risks these can present to consumers, when deciding whether to intervene.

Should Monzo have fairly and reasonably made further enquiries before it processed Mrs K's payments?

In the six months before the scam, the account was generally used to receive and transfer funds. Whilst Mrs K made payments to various payees regularly, the transactions on the account were of relatively low value and there were no payments over £1,000.

I am also mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

The individual payments - whilst unusual for Mrs K - were initially still relatively low in value. In my view, there was nothing about the payments that ought reasonably to have led Monzo to have any concerns for the initial seven payments.

But by the eighth payment for £2,200, Mrs K had made three payments to cryptocurrency that day and the payments were increasing in size. A pattern of scam payments was emerging that I think Monzo reasonably ought to have been concerned about and intervened before processing the payment for £2,200. This pattern was certainly different to how the account had previously been used.

I note Monzo considers it isn't liable because Mrs K bought genuine cryptocurrency. I appreciate the losses did not occur directly from Mrs K's Monzo account but I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account and the fraud then happened from there.

Monzo had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency 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 scams have continued to increase since. They reached record levels in 2022.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account.

I think Monzo would have been able to see the payments were going to cryptocurrency. It ought to have recognised that payments to cryptocurrency carry an elevated risk of fraud. And with cryptocurrency scams becoming increasingly diverse, by September 2023 it ought to have attempted to narrow down the risks further by asking a series of questions (during the in app verification process) in order to try and establish the actual scam risk. Given the prevalence of job scams by the time of these transactions, I'd have expected any questions and tailored warnings to cover the key risks of this type of scam.

Mrs K wasn't provided with a cover story, so I think she'd have been honest about the reason for the payments and explained that she was buying cryptocurrency for a task-based job she was employed in – which Monzo ought to have found concerning. So I believe

that if Monzo had asked the kind of questions it ought to have asked the scam would have been uncovered and Mrs K's loss on the last three transactions could have been prevented.

Should Mrs K share in the responsibility for her loss?

As well as Monzo's obligations I've also thought about whether Mrs K should share in the responsibility for her loss. I won't go into detail here – as Mrs K accepted the investigator's view but for completeness, I agree with the investigator broadly for the same reasons.

The initial contact was made on a social media messaging platform. There was no contract or paperwork about the job opportunity and Mrs K needed to place ever increasing deposits in order to get paid. I think the premise on which the job was based warranted further scrutiny. Looking at the message Mrs K had with the scammer, certainly, by the time the three payments I'm asking Monzo to refund come into question, I think Mrs K did have, and ought reasonably to have had, concerns about the legitimacy of the task-based job she was involved in.

Putting things right

In order to put things right for Mrs K, Monzo Bank Ltd should:

- Refund £2,298 minus any credits received from the scammers *after* the £2,200 payment was made.
- Reduce the refund above by 50%.

Because Mrs K has been deprived of this money, I consider it fairest that Monzo add 8% simple interest to the above from the date of the transactions to the date of settlement

If Monzo is legally required to deduct tax from the interest it should send Mrs K a tax deduction certificate so she can claim it back from HMRC if appropriate.

- Pay the £75 it has offered for trouble and upset.

My final decision

My final decision is that I uphold this complaint in part, and I require Monzo Bank Ltd to put things right for Mrs K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 3 February 2025.

Kathryn Milne
Ombudsman