

The complaint

Mr P has complained that Monzo Bank Ltd won't refund the money he lost after falling victim to a scam.

What happened

In autumn 2023, Mr P was cold-contacted on a messaging app. He was offered a fully remote job completing relatively simple tasks in exchange for substantial pay and commission. But the employers were actually scammers.

The scammers persuaded Mr P to pay in his own cryptocurrency to clear negative balances on his account and earn extra commission. Over the course of a few days, Mr P sent the scammers over £5,000 in crypto, by making card payments from his Monzo account to his crypto account, then sending it on to the scammers. The scammers told Mr P to pay them another £28,000 to release his profits, and he realised he'd been scammed.

Monzo was not in a position to recover the money, and it didn't think it was otherwise liable for Mr P's loss.

Our Investigator looked into things independently and partially upheld the complaint. Monzo didn't agree, so the complaint'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.

There's no dispute that Mr P authorised the payments involved, even if he didn't intend for the money to go to scammers. So under the Payment Services Regulations and the terms of his account, Mr P is liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice, its obligation to avoid foreseeable harm for its customer, and what I consider to have been good industry practice at the time, I consider that Monzo should have fairly and reasonably:

- Monitored accounts and payments to counter risks such as fraud and scams;
- Had systems in place to look out for particularly unusual transactions or other signs its customers were at risk of fraud;
- In some circumstances, taken further steps or made further checks before a payment went out, or even blocked it, to help protect customers – irrespective of the type of payment involved.

Like our investigator, I find that Monzo should have intervened at the point of the final payment of £3,500. This was a substantial payment on its own, was notably larger than Mr P's previous largest payment in the months before, and it meant that – combined with the spending which preceded it – Mr P had spent a notably large amount across relatively rapid payments. The final payment used up the bulk of the account's balance, and it went to a recently new payee, which was a crypto site. By this point, the Financial Conduct Authority (FCA) and Action Fraud had warned about cryptocurrency scams, there was wide media coverage, and other leading firms had restricted such payments, so Monzo should've been aware of the heightened risk of these scams. And while I acknowledge Mr P had used other crypto sites in years prior, in the months leading up to this scam there was no comparable activity – certainly not of the size and frequency involved here. I think the final payment stood out as being remarkable, so I think it should've prompted Monzo to intervene.

In reaching my decision that Monzo should have made further enquiries, I've 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. In summary, among other things, it said:

- 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 terms and conditions gave it rights to block payments or cards where it suspects criminal activity on the account or where it is concerned about the customer being a victim of fraud, and to contact the customer about this.

So the starting position in 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, even if it was not under a contractual duty to do either of those things.

While the account's terms did not oblige Monzo to do fraud checks, I do not consider that any of these things (including the implied basic duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And while Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements, its obligation to avoid foreseeable harm for its customer, and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the lookout for the possibility of fraud, and should have taken additional steps – or made additional checks – before processing payments in some cases, such as in the circumstances of this case.

So for the reasons I've explained, I find that Monzo should have intervened in this case.

Had Monzo asked Mr P reasonable questions about the payment and provided tailored warnings to him, it seems most likely that it could have uncovered the scam and stopped any further loss. I've seen nothing to suggest Mr P would not have been honest about why he was spending this money – not least as the scammers hadn't told him to lie if questioned. And I've found no reason why Mr P would not have listened to Monzo – it is a well-known name in banking. I'm also conscious that this is a relatively prominent type of scam, so I think Monzo would have been able to identify what was happening and prevent it.

Monzo argued that it should not be held liable for the payment, because it went to a crypto account in Mr P's control. But as Monzo should well know, it should have fairly and reasonably been on the lookout for potentially fraudulent payments, even if the payments were going to another account in the customer's name. There are prominent scams which involve paying an account in one's own name. And identifying and preventing such scam payments would still have the effect of preventing a loss to its customer. So Monzo can still be held liable for a loss which resulted from its failure to intervene – which is what I've found to have most likely been the case here.

So I think that Monzo bears some responsibility for the final £3,500 payment.

I've also thought carefully about Mr P's role in what happened. I can understand why Mr P might have felt reassured by the website and mentor, and I appreciate that because the scammers had impersonated a genuine company his search results might not have looked very suspicious. However, I'm afraid I think Mr P ought to have had more concerns along the way about what he was being asked to do. The reasons given for him needing to pay his own crypto in don't seem to have made much sense, and it's difficult to see that he had a reasonable basis to believe what the scammers were telling him. He was cold-contacted on a messaging app, doesn't appear to have had any real interview or paperwork, and the pay and conditions offered were much too good to be true for this kind of work. And it looks like an internet search for the recruitment company would've likely brought up some scam warnings from before the payments.

So I don't think I can hold Monzo solely responsible for Mr P's loss from the final £3,500 payment. I think Mr P should also bear some responsibility for that loss.

Putting things right

Monzo Bank Ltd should:

- Refund 50% of the loss from the final £3,500 payment; and-
- Add simple interest at the rate of 8% simple per year onto the refund, payable from the date the partially-refunded payment debited until the date of the refund.

If Monzo considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mr P how much tax it's taken off. It should also give Mr P a tax deduction certificate if he asks for one. Mr P may be able to reclaim the tax from HMRC if he doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold Mr P's complaint in part, and direct Monzo Bank Ltd to put things right by doing what I've said above.

If Mr P accepts the final decision, Monzo Bank Ltd must pay him within 28 days of the date our service notifies it of the acceptance.

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

Adam Charles
Ombudsman