

The complaint

Mr and Mrs S complain that Monzo Bank Ltd won't refund the money they lost when they were the victims of a scam.

What happened

In August 2023, Mr S received a phone call from someone who said they worked for Monzo and told him fraudulent payments had been attempted on his account. The caller sent Mr S a code via text message and knew details of his phone number, email address, location and joint account with his wife – which they used to verify his identity. The caller then told Mr S he should apply for a loan and an overdraft, and send the money in his account to a new account they asked him to open with another bank, and then on to a 'safe' account they had opened for him.

As Mr S believed the caller was from Monzo, he followed their instructions and made a number of payments out of his Monzo account, which I've set out below. The first three payments made were card payments. The next two payments were made to a joint account Mr S holds with his wife, Mrs S, before being sent to the scammers from there. And the remaining payments were sent to the new account Mr S was told to open with the other bank, before being sent on to the scammers.

Date	Details	Amount
25 August 2023	Card payment	£4,700
25 August 2023	Card payment	£4,700
25 August 2023	Card payment	£550
25 August 2023	To joint account	£5,000
25 August 2023	To joint account	£5,000
25 August 2023		£750
25 August 2023		£850
25 August 2023		£875
25 August 2023		£890
25 August 2023		£910
25 August 2023		£920
25 August 2023		£920
25 August 2023		£850
25 August 2023		£860
25 August 2023		£860
25 August 2023		£870
25 August 2023		£840
25 August 2023		£525
25 August 2023		£500
25 August 2023		£550
25 August 2023		£720
25 August 2023		£760
25 August 2023		£775
25 August 2023		£780

25 August 2023		£810
25 August 2023		£810
25 August 2023		£805.65
25 August 2023		£950
25 August 2023		£900
25 August 2023		£150

While the payments were made from Mr S's account, Mrs S has been added to the complaint as some of the money went through the joint account she holds with Mr S and so some of the loss is also hers.

Unfortunately, we now know the caller was a scammer. After the scam was uncovered, Mr S reported the payments he had made to Monzo and asked it to refund the money he had lost.

Monzo investigated, but said the payments made out of his Monzo account weren't the scam payments and the loss actually occurred from Mr S's account with the other bank, from which the payments were sent to the scammer's 'safe' account. Monzo did offer Mr S £50 compensation for delays in responding to his claim, but it didn't agree to refund any of the payments he made. Mr S wasn't satisfied with Monzo's response, so referred a complaint to our service.

I sent Mr and Mrs S and Monzo a provisional decision on 16 August 2024, setting out why I intended to uphold this complaint. An extract from my provisional decision is set out below:

"Monzo has already offered to refund the three card payments Mr S made, and so I haven't considered whether Monzo should refund these and have focused on the payments Monzo hasn't agreed to refund.

Did Monzo do enough to protect Mr S?

Banks are expected to make payments in line with their customers' instructions. And Mr S accepts he made the payments here. So while I recognise he didn't intend for the money to ultimately go to scammers, he did authorise the payments. And so the starting position in law is that Monzo was obliged to follow his instructions and make the payments. So Mr S isn't automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think 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.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

And so I've also considered whether Monzo should have identified that Mr S was potentially at risk of financial harm from fraud as a result of any of these payments.

By the time Mr S made the third card payment of £550 on 25 August 2023 he had tried to make three payments totalling nearly £10,000, over a short period of time, and to the same new beneficiary he doesn't appear to have paid before. The first two card payments particularly were larger than most payments usually made out of Mr S's account, and they totalled significantly more than usually moved through Mr S's account in a single day.

So I think Monzo should have identified that Mr S was potentially at risk of financial harm as a result of these first three payments, and taken additional steps to identify and address this risk before allowing any further activity on his account.

It's not for our service to dictate the checks Monzo should do or the questions it should ask. But banks should take steps designed to protect their customers from the risk of financial harm. And, in these circumstances and given the risk I think it should have identified, I think it would be reasonable to expect those checks to include a human intervention with questions about the purpose of the payments and then relevant follow-up questions based on the information it was given.

I haven't seen anything to suggest Mr S would've lied or tried to mislead Monzo if he was asked about the payments. So, if it had taken additional steps, I think Monzo would have found out that Mr S thought he was speaking to someone from Monzo and had been told to move his money to keep it safe. And as this is a well-known scam, and Monzo hadn't contacted him, I think it would then have identified that Mr S was the victim of a scam and warned him not to make any further payments. And I think Mr S would have taken account of this warning and wouldn't have made any further payments or lost any further money to the scam.

So if Monzo had identified that Mr S was at risk of harm and taken additional steps as a result of the first three card payments he made, as I think it should have done, I think the scam would have been uncovered and Mr and Mrs S wouldn't have lost the money they did from this point onwards. And so I think it would be fair for Monzo to bear some responsibility for the loss Mr and Mrs S suffered from this point onwards.

Should Mr and Mrs S bear some responsibility for the loss they suffered?

I've also thought about whether it would be fair for Mr and Mrs S to bear some responsibility for the loss they suffered.

But this was a sophisticated scam where the caller knew personal details about Mr S, including his phone number, his email address, his location, the type of device he was using and that he held a joint account with his wife. Mr S says the caller also used this information to carry out a verification procedure, which I think will have reasonably made the call feel legitimate to Mr S.

It appears the scammers got at least some of this information following a fake text message sent to Mr S a few days previously about a missed delivery. But as Mr S says he often receives deliveries, and the text message contained a link to a website that looked very similar to a genuine delivery company's website, I don't think it was unreasonable for him to have entered some of his details on that website.

The caller also sent Mr S a verification code via text message and told him to open his Monzo app and reject a payment that had been attempted, which was there to be rejected

when Mr S opened the app. And I think this will also reasonably have helped convince Mr S that the caller was legitimate.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening that could have caused Mr and Mrs S some concern. But, based on what I've seen, I don't think it was unreasonable that, at the time, they either didn't pick up on these things or weren't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say Mr and Mrs S acted unreasonably, or that they should bear some responsibility for their loss.

Customer Service

Monzo has offered to pay Mr and Mrs S £50 as compensation for the delays in dealing with their complaint. And, from what I've seen, I think this is fair and reasonable compensation for the distress and inconvenience these delays caused to Mr and Mrs S. And so I don't think it would be fair to require Monzo to pay any further compensation."

I said I'd consider anything further Mr and Mrs S and Monzo sent in following the provisional decision, provided it was received by the deadline given.

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.

Mr and Mrs S replied to the provisional decision asking, among other things, whether any compensation would be awarded for the damage the missed loan payments had on Mr S's credit file and the impact this had on his ability to use and take out credit. But it is very difficult to establish what decisions credit providers would have made if certain parts of a customer's credit file was different, as there are so many factors involved in credit decisions. So I'm not satisfied I can say for certain that Mr S would have been able to use credit in the way he intended if the missed loan payments had never been recorded on his credit file. And I think, in these circumstances, the impact on Mr S's use of credit is too far removed from the original failing I think Monzo made here of not doing more to protect him from the possibility of harm from fraud, for it to be fair to also hold it responsible for the inconvenience he suffered as a result. And so I don't think it would be fair for me to require Monzo to pay further compensation as a result of this.

Monzo replied to the provisional decision with a number of arguments, which I will respond to below.

Firstly it argued that it wasn't fair to expect it to reimburse Mr and Mrs S for 100% of the loss they suffered, when there were other financial institutions involved in the journey of the payments. And I accept that it's possible that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mr and Mrs S could instead, or in addition, have sought to complain against those firms. But Mr and Mrs S have not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Monzo.

I'm also not persuaded it would be fair to reduce Mr and Mrs S's compensation in circumstances where: they only complained about one respondent from which they are entitled to recover their losses in full; they have not complained against the other firm (and so are unlikely to recover any amounts apportioned to that firm); and it is appropriate to hold

a business such as Monzo responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me).

Monzo also argued that Mr and Mrs S would not be entitled to a refund under several schemes or guidelines for the reimbursement of scam victims. But these schemes and guidelines are either not yet in force or do not cover Mr and Mrs S's circumstances – and I haven't sought to apply the standards set out in them to this case. So I don't think it's relevant whether or not Mr and Mrs S would be entitled to a refund under them. I set out the basis on which I felt it would be fair for Monzo to refund the loss Mr and Mrs S suffered in the provisional decision, and will explain it further again below.

Finally, Monzo argued that it cannot restrict a customer's account when they are requesting a transaction – particularly when the transaction is to an account in the customer's own name – and highlighted the recent court case of *Philipp v Barclays Bank UK PLC*.

In that case, the Supreme Court has reiterated that banks generally have a contractual duty to make payments in compliance with their customer's instructions. It 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 Mr and Mrs S's case, Monzo's April 2023 terms and conditions gave it rights to:

- Block payments where it suspects criminal activity on the account, or to protect the customer from fraud.
- Refuse to make a payment if it suspects the customer is a victim of 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 criminal activity or fraud.
- It could therefore refuse payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

While 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.

I am mindful in reaching my conclusions about what Monzo ought fairly and reasonably to have done that:

- FCA regulated banks are required to conduct their “business with due skill, care and diligence” (FCA Principle for Businesses 2) and to “pay due regard to the interests of its customers” (Principle 6).
- Banks have a longstanding regulatory duty “to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime” (SYSC 3.2.6R of the Financial Conduct Authority Handbook, which has applied since 2001).
- Over the years, the FSA, and its successor the FCA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime, including various iterations of the “Financial crime: a guide for firms”.
- Regulated banks are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).
- The October 2017, BSI Code, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code, but in my view the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now.
- Monzo has agreed to abide by the principles of the CRM Code. This sets out both standards for firms and situations where signatory firms will reimburse consumers. The CRM Code does not cover all authorised push payments (APP) in every circumstance (and it does not apply to the circumstances of this payment), but I consider the standards for firms around the identification of transactions presenting additional scam risks and the provision of effective warnings to consumers when that is the case, represent a fair articulation of what I consider to be good industry practice generally for payment service providers carrying out any APP transactions.

So overall, 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 still consider it fair and reasonable that in August 2023 Monzo should:

- 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 firms are generally more familiar with than the average customer.
- 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 firms 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) and the different risks these can present to customers, when deciding whether to intervene.

And as I explained in the provisional decision, when Mr S made the third card payment of £550 on 25 August 2023 he had tried to make three payments totalling nearly £10,000, over a short period of time, and to the same new beneficiary he doesn't appear to have paid before. The first two card payments particularly were larger than most payments usually made out of Mr S's account, and the three payments totalled significantly more than usually moved through Mr S's account in a single day. So I think Monzo should have identified that Mr S was potentially at risk of financial harm as a result of these first three payments, and taken additional steps to identify and address this risk before allowing any further activity on his account.

And so I still don't think Monzo did enough to protect Mr and Mrs S here and, if it had done, I don't think they would have lost the money from the third card payment onwards. So I think it would be fair for Monzo to refund the money Mr and Mrs S lost as a result of this scam, from this point onwards.

If Monzo had intervened and the scam had been uncovered at this stage, Mr S also wouldn't have taken out the £25,000 loan he subsequently took out with Monzo. And so I also think it would be fair for Monzo to refund any interest and charges Mr S has paid on the loan, waive any future interest and charges, and remove any record of the loan from Mr S's credit file.

Monzo has said it was able to recover £5.65 from one of the other banks the money was sent to. And so I think it would be fair for this amount to be deducted from the amount Mr and Mrs S lost as a result of this scam.

My final decision

For the reasons set out above, I uphold this complaint and require Monzo Bank Ltd to:

- Refund Mr and Mrs S the money they lost as a result of this scam from the third card payment onwards, minus the £5.65 already recovered – for a total of £29,425

- Pay Mr and Mrs S 8% simple interest on this refund, from the date of the payments until the date of settlement
- Refund any interest and charges on Mr S's loan, waive any future interest and charges, and remove any record of the loan from Mr S's credit file
- Pay Mr and Mrs S £50 compensation, if it has not already done so

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 17 October 2024.

Alan Millward
Ombudsman