

The complaint

Mr A complains that Monzo Bank Ltd didn't do enough to protect him from the financial harm caused by an advance fee scam, or to help him recover the money once he'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

On 25 May 2023, Mr A came across an advert on social media that had been posted by someone I'll refer to as "the scammer" who was looking for transport during her trip to the UK (to attend meetings, events, and sightseeing). Mr A responded to the advert, telling the scammer he was a taxi driver. They communicated using WhatsApp and arranged for Mr A to collect her from the airport.

The scammer told Mr A she worked in e-commerce and that he too could earn extra income by opening an online store. She told him he would buy items from "Company A", and then set up an online store from which to sell the items online, adding 30% - 35% to the sale price. She told Mr A that to buy the items, he'd have to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet.

Between 30 July 2023 and 26 August 2023, he made 17 faster payments to C, and three card payments to K totalling £12,315.43. He bought and sold items in his online store, and believing he'd made a good profit, he decided to request a withdrawal. But he realised he'd been scammed when the scammer told him he'd have to pay tax as well as a security deposit as a penalty for having increased the price of an item in his store.

Mr A complained to this service with the assistance of a representative. He explained the scammer had invested £6,700 into his e-commerce account and he'd believed she was genuine because she seemed professional, and the returns were plausible. He also had access to the platform using his own login details, which allowed him to view what he thought were his profits.

His representative said Monzo should have intervened because there were large sums of money being transferred to a new payee which was unusual because the account had previously been used to send low value payments to friends and between his own accounts. Responding to the complaint, Monzo accepted there had been failings in its customer service when Mr A reported the scam and offered £50 compensation for the distress and inconvenience he'd experienced as a result.

It confirmed the payments had been made through its mobile app and there were no warnings. It said Mr A had sent money to his own cryptocurrency wallets and then onto a scammer, so the fraud didn't take place from Monzo.

It said Mr A had previously made faster payments of a similar value, so the activity wasn't out of character. It also cited the case of Philipp V Barclays where the Supreme Court held

that 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.

Our investigator didn't think the complaint should be upheld. She didn't think the first five payments were unusual or suspicious in appearance considering Mr A's normal account activity. But she noted that Monzo would have known that payment six was going to a cryptocurrency merchant and so it should have identified the payment as unusual and suspicious and provided a 'better automated warning'.

She noted Mr A had described that he'd built up a friendship with the scammer and that they were planning to meet once the scammer had obtained her Visa documents. Further, the messages between Mr A and the scammer showed he had suspicions a few days before he made the first payment, having received warnings from his other bank about payments he was making from that account. She noted that Mr A had told the scammer about the warnings and had accepted her explanation of why he should continue with the venture. The following day he shared his concerns with his sister following a failed confirmation of payee warning from his other bank and, even though she worked in banking, he decided to go ahead.

Our investigator said that given Mr A was engaging in a business venture and sharing funds and account details with the scammer, he clearly believed the venture was genuine. So, while she thought Monzo should have done more to establish the circumstances surrounding the payments, she didn't think it would have stopped the scam.

Finally, she explained the faster payments were sent to an account in Mr A's name, so she wouldn't expect Monzo to initiate a recovery. And there was no prospect of a successful chargeback.

Mr A has asked for the complaint to be review by an Ombudsman.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr A has been the victim of a cruel scam. I know he feels strongly about this complaint, and this will come as a disappointment to him, so I'll explain why.

I'm satisfied Mr A 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although he didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr A is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mr A didn't intend his money to go to scammers, he did authorise the disputed payments. Monzo is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr A's account is that he is responsible for payments he's authorised himself. 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 25 April 2023 terms and conditions gave it rights to block payments where it suspects criminal activity on the account.

So, the starting position at law is 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 didn'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 was not required or obliged under the contract to make checks, I was 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances — as in practice all banks, including Monzo do.

Prevention

I've thought about whether Monzo could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to a genuine cryptocurrency exchange company. However, Monzo ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr A when he tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Monzo to intervene with a view to protecting Mr A from financial harm due to fraud.

The payments didn't flag as suspicious on Monzo's systems. I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Mr A normally ran his account and based on the value of the payments, I don't think the first five payments were unusual or suspicious, even though they were identifiably linked to cryptocurrency. However, the sixth payment was for £3,000 and even though the recipient

was no longer a new payee, it was a high-risk cryptocurrency merchant and I agree with our investigator that Monzo ought to have intervened.

I've thought carefully about what a proportionate warning would be in these circumstances, and I think that by August 2023, Monzo should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments.

Monzo knew that the payment was being made to a cryptocurrency provider and I am satisfied that, by August 2023, it ought to have attempted to narrow down the potential risk further by asking a series of automated questions designed to narrow down the type of cryptocurrency related scam risk associated with the payment Mr A was making and provided a scam warning tailored to the likely cryptocurrency related scam.

In this case, Mr A was falling victim to an 'advance fee scam' – as such, I'd have expected Monzo to have asked a series of simple questions to establish that this was the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Mr A gave. I'd expect any such warning to have covered off key features of such a scam.

I acknowledge that any such warning relies on the customer answering questions honestly and openly, but even though Mr A was in close contact with the scammer, I haven't seen any evidence that he was coached to lie, and I'm satisfied he thought the business venture was genuine, so I think he'd have disclosed that he was engaged in a business venture to sell products online. I would then expect Monzo to have given him a written warning tailored to advance fee scams.

I've thought carefully about whether a specific warning covering off the key features of advance fee scams would have likely prevented any further loss in this case. And on the balance of probabilities, I don't think it would have. There were some red flags present including the fact Mr A met the scammer via an advert on social media and he was using cryptocurrency to buy the product. But there are several factors which lead me to believe that he had developed a closeness of relationship with the scammer that Monzo would have found difficult to counter through a warning.

It's significant to his mindset that he had contacted the scammer and not the other way round. And it's not unusual to have to buy products before selling them on. Further, it's clear that he believed he was engaged in a business venture with someone he found to be professional and knowledgeable, that she had invested her own funds in the venture, and that the concept and profits were plausible.

Mr A didn't start to seriously question what he was being asked to do until he was unable to withdraw his profits and as our investigator has explained, the messages he had with the scammer showed that he was in close contact with her throughout, and that he consulted her about warnings he'd received from his other bank. So, I think he'd have done the same if he'd been given a written warning by Monzo and she would easily have convinced him the warning didn't apply to their situation.

So, while I accept that Monzo ought to have asked questions to identify the scam risk before presenting a tailored written warning, I don't think this would have been impactful enough alert Mr A that he was being scammed. Consequently, while I accept Monzo missed an opportunity to intervene, I don't think this represented a missed opportunity to prevent his loss. And I don't think there were any further missed opportunities to intervene.

Recovery

I don't think there was a realistic prospect of a successful recovery because Mr A paid an account in his own name and moved the funds onwards from there.

Mr A's own testimony supports that he used cryptocurrency exchanges to facilitate the transfers. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchange would have been able to evidence they'd done what was asked of them. That is, in exchange for the card payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that Monzo's decision not to raise a chargeback request was fair.

Compensation

Monzo has accepted there were failings in its investigation to the extent that it offered £50 compensation for any distress and inconvenience this may have caused. Given the main cause for the upset was the scammer who persuaded Mr A to part with his funds, I'm satisfied that's fair.

I'm sorry to hear Mr A has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Monzo is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 16 February 2025.

Carolyn Bonnell
Ombudsman