

The complaint

Ms D is unhappy Monzo Bank Ltd will not refund £6,588 she lost as the result of a scam.

Ms D brought her complaint to this service through a representative. For ease of reading, I will refer solely to Ms D in this decision.

What happened

As both parties are aware of the details of the scam I will not repeat them in full here. In summary, Ms D fell victim to a job/task scam. He was contacted via WhatsApp and offered the opportunity to complete tasks (rating and reviewing IT hardware) to earn commission. She was told that to access the tasks she first needed to make deposits onto various accounts. She made the following payments by debit card to two personal overseas accounts via a money transfer service as directed by the scammer:

payment	date	time	value
1	17/05/2024	1.40pm	£397
2	17/05/2024	2.12pm	£1,148
3	17/05/2024	3.15pm	£1,900
4	17/05/2024	3.17pm	£680
5	17/05/2024	6.17pm	£1,800
6	17/05/2024	6.18pm	£663

She realised she had been scammed when the scammer ceased contact after payment 6. She reported this to Monzo the same day.

Ms D says Monzo did not do enough to protect her and so should be liable for her loss. She seeks a full refund, with interest, and £300 compensation.

Monzo says Ms D authorised the payments using 3DS verification. It said Ms D had not taken enough steps to check who she was paying and what for. It didn't raise a chargeback to try to recover the money as the merchant (here the money transfer service) had made no error.

Our investigator upheld Ms D's complaint in part. He found Monzo ought to have intervened and provided a tailored warning at the time of payment 3. He said by then a pattern had emerged that was out of character for the account and typical of fraudulent activity. He felt however that Ms D should share responsibility for her loss as she ignored certain red flags and so recommended a 50% refund of payments 3 to 6, plus interest.

Ms D accepted this assessment. Monzo disagreed. It said, in summary, the payments were not out of character for the account - neither the value nor the type of recipient. It gave specific examples of similar payments. It also said the payments did not increase in value. It referenced the ruling in the Philipp v Barclays case saying this supports the argument that is not plausible that Monzo can prevent or apply friction to every payment that the customer

makes, but also that it has no legal right to do so. It added that the CRM (Contingent Reimbursement Model) code excludes payments made without a reasonable basis for belief which is the case here.

Our investigator responded to these points but an agreement could not be reached and Monzo asked for an ombudsman's review.

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.

To note, as the payments were made by debit card the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

There's no dispute that Ms D made and authorised the payments. Ms D knew who she was paying, and the reason why. At the stage she was making these payments, she believed she was transferring funds to allow her to access tasks she would earn commission for completing. I don't dispute Ms D was scammed and she wasn't making payments for the reason she thought she was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

And (as Monzo has referenced) the Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions – as Monzo did in this case.

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, 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. 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 v Barclays*, 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.

Monzo's terms and conditions in place at the time said:

We may refuse to make a payment, or reject an incoming one if: we suspect you're a victim of fraud.

and

We're responsible to you for any foreseeable loss and damage which we cause. When we say 'foreseeable', this means we could or should have expected those losses. This includes if we breach the terms of this contract or fail to use reasonable care or skill providing services to you.

So in accordance with Monzo's own terms and conditions it could therefore refuse payments, or make enquiries (ie. use reasonable care and skill), where it suspected fraud. And it says it will refund money that is lost if it should've done more to prevent the loss. 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

This means, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that by May 2024 Monzo should fairly and reasonably have:

- have been monitoring accounts and any payments made or received to counter various risks, including 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;
- 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;
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving and the different risks these can present to consumers, when deciding whether to intervene.

In this context I find Monzo can be held liable in part for Ms D's losses from payment 3 onwards. I'll explain why.

By payment 3 I think there were enough characteristics of potential fraud that Monzo needed to make an intervention and provide Ms D with a tailored warning. I say this as the funds were being sent to a new payee; the value of payments 1 to 3 increased in value each time; and they were made in rapid succession. Monzo argues the payments were not out of character and has given examples of similar payments – but these were not made in rapid succession. It also said the payment did not increase in value but it has misunderstood the analysis by this service as payments 1 to 3 did increase each time. And payment 3 is where I have identified the point of intervention should have been.

This means I need to decide what the impact of a proportionate intervention would most likely have been.

Since 31 July 2023, when the FCA's new Consumer Duty came into force, there has been an obligation on firms to avoid foreseeable harm to customers. The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23) gives an example of foreseeable harm:

“consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers”

This means a proportionate warning should ask a series of questions in order to try and establish the actual scam risk. And by May 2024 given the prevalence of job/task scams we'd expect a firm to have both questions and warnings tailored towards the key risks of those scams. Indeed I can see the warning 'Things to look out for with remote jobs' that Monzo sent to Ms D after the event referenced many of the issues I would have expected a proportionate warning to cover in advance – for example: lucrative pay in exchange for little work; the recruiter may say they found the customer via a well-known job search website that many people use; being directed to a well-designed but fake website; scammers sometimes use oddly formal language and/or poor grammar, spelling, and punctuation; and/or the 'employer' asks for upfront payment; and/or 'training' is done on a WhatsApp group with other more experienced 'employees'. And this scam had almost all of these characteristics.

Had Monzo provided a tailored warning that highlighted these traits, then on balance, I think Ms D would most likely not have progressed with payment 3 and the subsequent payments. I say this as there is no evidence she had been provided with a cover story by the scammer, or told not to be transparent about the income opportunity she was pursuing. She had been looking for jobs at the time so I think it is most likely she would have honestly disclosed the reason for the payment(s) to Monzo, thus allowing it to identify the scam risk, warn her and prevent the scam progressing. I also think the messages with the scammer's 'customer service' team show as the scam progressed, and Ms D was told to send more funds to access tasks, she became increasingly concerned about her money. So I find she would have taken a warning from Monzo seriously.

This means I find it is fair to hold Monzo liable for the loss from payment 3 onwards.

Should Ms D bear some responsibility for the overall loss?

I've considered carefully whether Ms D should hold some responsibility for her loss by way of contributory negligence. Accepting that she is not the fraud expert - that is the role of Monzo, I do think she missed some clear signs that the opportunity might not be legitimate. Having to pay money upfront to do a paid job is unusual and should have raised Ms D's suspicions, particularly as it seems Ms D had no contractual terms of employment to review and accept, nor was there any documentation setting out the terms of the upfront payments. And to have to make such payments via a money transfer service to two different named individuals in two different countries should also have been a red flag.

In the round, I have not seen that Ms D carried out an adequate level of independent checks to address these anomalies before going ahead. It follows I think the parties are equally liable.

I am therefore instructing Monzo to refund 50% of Ms D's losses from payment 3 to 6.

Did Monzo do what it should to try to recover Ms D's money?

As the payments were made by debit card the opportunity to recover the funds would be through the chargeback scheme. But I don't consider that any chargeback claims would have had any prospect of success. There would have been no valid chargeback right given there was no dispute that the money transfer service provided the service it 'sold' to Ms D. The funds were sent on to the beneficiary accounts as she instructed so she had no dispute with the money transfer service. This means I can't say there was any failing in this regard on Monzo's part.

Putting things right

Monzo must:

- Refund 50% of £5,043 (so £2,521.50); and
- Pay interest on the above amount at the rate of 8% simple per year from the date of each payment to the date of settlement.*

*If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms D how much it has taken off. It should also give Ms D a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I have found no grounds to make the additional compensatory award of £300 that Ms D asked for.

My final decision

I am upholding Ms D's complaint in part. Monzo Bank Ltd must put things right as set out above..

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 24 April 2025.

Rebecca Connelley
Ombudsman