DRN-5241970

The complaint

Mr F complains that Monzo Bank Ltd won't refund him the money he lost after he fell victim to an Authorised Push Payment (APP) scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In or around March 2024, Mr F came across a job opportunity. He was told the job involved promoting movies online to increase their rating, for which he would earn commission. Believing everything to be genuine Mr F proceeded, but unknown to him at the time, he had been contacted by fraudsters. The fraudsters then persuaded Mr F to pay his own money in order to proceed with the work.

Mr F made payments to accounts he set up with third-party cryptocurrency platforms. His payments were then converted into cryptocurrency and then transferred into the control of the fraudsters. He used his Monzo card to make the following successful payments, totalling £11,033.09 (a further payment was made on 25 March 2024, for £1,328.64, but this was reversed by the merchant);

	Date	Time	Payee	Amount
1	21 March 2024	20:38	Cryptocurrency Wallet 1	£35
2	23 March 2024	13:54	Cryptocurrency Wallet 1	£75
3	25 March 2024	12:00	Cryptocurrency Wallet 2	£483.09
4	26 March 2024	17:06	Cryptocurrency Wallet 1	£1,340
5	27 March 2024	09:18	Cryptocurrency Wallet 1	£1,300
6	27 March 2024	09:44	Cryptocurrency Wallet 1	£1,300
7	27 March 2024	10:07	Cryptocurrency Wallet 1	£1,300
8	27 March 2024	15:09	Cryptocurrency Wallet 1	£1,000
9	27 March 2024	15:10	Cryptocurrency Wallet 1	£1,000
10	27 March 2024	20:03	Cryptocurrency Wallet 1	£1,300
11	27 March 2024	20:04	Cryptocurrency Wallet 1	£1,300
12	27 March 2024	19:09	Cryptocurrency Wallet 2	£600
				£11,033.09

Mr F realised he'd been scammed when he was asked to pay increasingly larger sums, and he was unable to withdraw money he'd already deposited or supposedly earned.

Mr F raised a fraud claim with Monzo, but it didn't agree to reimburse him. In summary, this was because it didn't think it was liable as the money sent from Monzo were not the scam payments; the loss had been suffered from Mr F's own cryptocurrency wallets. Alongside this, Monzo didn't think it would have had an opportunity to recover the money that Mr F had lost.

Unhappy with Monzo's response, Mr F brought his complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, our Investigator thought Monzo ought to have intervened at the point Mr F made the seventh payment, in the table above, to the fraudsters (the payment for £1,300 that was made on 27 March 2024 at 10:07). It was our Investigator's view that had Monzo intervened at this point and warned Mr F, it would have made a difference, and he wouldn't have gone ahead with this payment or the ones that followed.

But our Investigator also thought Mr F should bear some responsibility for his loss. In summary, this was because he thought there was enough going on that ought to have led him to have some concerns about the legitimacy of the job.

Mr F agreed with our Investigator's view. But Monzo disagreed, in summary it said it was common for it to see increases in payments to crypto merchants and if it were to stop all customers when making larger crypto payments, it would be stopping too many payments. Alongside this it didn't agree that an intervention would have prevented the scam and that it could equally be argued that the scam wouldn't have been uncovered.

As agreement couldn't be reached, the complaint 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.

It isn't in dispute that Mr F authorised the payments he made to the scammers. And the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made. There are though some circumstances in which a bank may still be reasonably expected to reimburse a customer for payments made to a scam.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions, both to Monzo and published on our website. But as a reminder for Monzo, I'll set them out again here.

The starting point under the relevant regulations (in this case, the Payment Services Regulations 2017) and the terms of Mr F's account is that Mr F is responsible for payments he authorised. And, as the Supreme Court has reiterated in Philipp v Barclays Bank UK PLC, which Monzo has referred to in its submissions, 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 November 2023 terms and conditions gave it rights (but not obligations) to:

- Refuse to make a payment if it suspects criminal activity on a customer's account. It explains if it blocks a payment, it will let its customer know as soon as possible, using one of its usual channels (via its app, email, phone or by post).

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.

- It could therefore block payments, or make enquiries, where it suspected criminal activity, but it was not under a contractual duty to do either of those things.

It is not clear from this set of terms and conditions whether suspecting a payment may relate to fraud (including authorised push payment fraud) is encompassed within Monzo's definition of criminal activity. But in any event, 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.

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)[1].
- 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".*[2].

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[1] Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.
[2] For example, both the FSA's Financial Crime Guide at 4.2.5G and the FCA's 2015 "Financial crime: a guide for firms" gave examples of good practice in relation to investment fraud saying:

- 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 represent 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.
- Since 31 July 2023, under the FCA's Consumer Duty[3], regulated firms (like Monzo) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *"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"*[4].
- 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 circumstances (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.

Overall, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Monzo should fairly and reasonably:

"A bank regularly assesses the risk to itself and its customers of losses from fraud, including investment fraud, in accordance with their established risk management framework. The risk assessment does not only cover situations where the bank could cover losses, but also where customers could lose and not be reimbursed by the bank. Resource allocation and mitigation measures are informed by this assessment.

A bank contacts customers if it suspects a payment is being made to an investment fraudster.

A bank has transaction monitoring rules designed to detect specific types of investment fraud. Investment fraud subject matter experts help set these rules."

[3] Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

[4] The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

- 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, 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) 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 Mr F's payments?

To decide this, I've reviewed the activity on Mr F's account statements, from which the payments were made, for the months leading up to the scam. This is often a finely balanced matter, and Monzo has a difficult balance to strike in how it configures its systems to detect unusual activity or activity that might otherwise indicate a higher than usual risk of fraud.

Having considered the first six payments of the scam (in the table above), on balance, I can't fairly say they were so unusual or suspicious, that they ought to have alerted Monzo that Mr F may have been at risk of financial harm. The payments weren't dissimilar in value to other payments that Mr F had made previously and I don't think they ought to have stood out.

However, there were elements here of a pattern starting to emerge – with payments being made over a relatively short period of time, for increasing values, to new payees that were identifiably related to cryptocurrency. With this in mind, by the time Mr F was making the payment for £1,300, on 27 March 2024 at 10:07, I'm persuaded Monzo ought reasonably to have had some concerns and made further enquiries before allowing the payment to be processed. I say this because, by this point, along with the trends that had started to emerge that I have mentioned, this was the third payment in just under an hour – and Monzo will be aware that multiple escalating payments being made in quick succession can be indicative of financial harm. By the time he was making this payment of £1,300 Mr F would have cumulatively paid over £5,000, within the space of a few days.

As mentioned above, the sequence here included payments which were identifiably linked to cryptocurrency. And while there of course can be legitimate payments made for the purchase of cryptocurrency, payments such as this can be indicative of a higher degree of risk of fraud. There doesn't appear to have been these sorts of payments being made from Mr F's account previously and on balance, I think the payments were becoming out of character compared to the typical sort of spending associated with Mr F's account. While there have been other larger payments on his account, I'm not persuaded that this, in and of itself, deflects from the pattern that has emerged with these scam payments.

Given the above, I'm persuaded Monzo ought to have intervened at this point and asked a series of questions in order to try and establish the actual scam risk. Of course, I can't know for sure what would have happened had Monzo intervened further on these payments. So I have to base my findings on the balance of probabilities – that is, what I think is more likely than not to have happened, taking into account what I know. Had such an intervention occurred, with proportionate questioning, I'm persuaded it's more likely than not Mr F would have explained to Monzo what he was doing and why, and it would have come to light that Mr F was making payments to cryptocurrency wallets in order to facilitate payments for employment purposes.

By March 2024, given the prevalence of job/task scams, I'd expect a firm to have both questions and warnings tailored towards the key risks of those scams. So I think it's fair and reasonable to have expected Monzo at this point to have given Mr F a tailored warning around these types of scams, covering off the key features. There's no evidence to suggest Mr F wouldn't have been honest with Monzo, or wouldn't have heeded its warnings. Indeed, from looking at the evidence of the conversations Mr F had with the scammer, he had his own concerns and I don't think it would have taken much for Monzo, as professionals in these matters, to persuade Mr F that he was falling victim to a scam.

It is the case that, from the point of the seventh payment in the table above, Mr F's loss was both reasonably foreseeable to Monzo and that it could have been prevented, even though the funds were ultimately lost from the cryptocurrency wallets.

Monzo has argued that the payments from Mr F's Monzo account were made to another account in his name, so it cannot be considered the point of loss and so it cannot be held liable. But as Monzo ought to be aware, and as has been set out in previous decisions from this service to Monzo, the potential for multi-stage scams ought to have been well known to it at the time. And as a matter of good practice Monzo should fairly and reasonably have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.

And so, all things considered, I'm persuaded it is fair and reasonable that Monzo, at least in part, bears some responsibility for Mr F's loss.

Did Mr F act reasonably in the circumstances?

Mr F has already accepted the Investigator's opinion that any refund provided should be reduced to account for his own actions as part of the scam, and as I agree with this point, I won't dwell on it, except to say that I think there were a number of things that ought to have led Mr F to proceed with more caution than he did.

While I accept Mr F believed that these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one. There was no formalisation of the arrangement between him and the employer – for example, there was no written contract and indeed no clear setting out of the terms of his employment.

In addition to that, the arrangement was an inversion of the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. As far as I can see, there wasn't really any attempt to explain this uncommon arrangement. I also think the level of salary and commission being offered seemed inflated, considering the nature of the work that was being carried out.

Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable to him.

Recovering Mr F's money

I've also thought about whether Monzo could have done more to attempt to recover the payments after Mr F reported the fraud. However, as part of the scam, the funds were forwarded on to the fraudsters from the crypto exchanges to which they were sent. So once Mr F had done that, which it seems he did so as soon as the money reached his crypto wallet, there was then no money to recover.

I also don't consider Monzo ought to have attempted a chargeback claim, as Mr F made payments to get crypto and he seems to have received this before he forwarded it on to the fraudster. He therefore received the service paid for and there wouldn't have been a reasonable prospect of success with a chargeback claim.

Putting things right

For reasons explained above, Monzo Bank Ltd should now:

- Refund Mr F £3,250 (being 50% of £6,500 - the value of the final six payments made to the fraudster).

- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 3 July 2025.

Stephen Wise
Ombudsman