

## The complaint

Miss B has complained that Monzo Bank Ltd won't refund the money she lost after falling victim to a scam.

## What happened

In 2021, Miss B came across online scammers posing as trading brokers. They offered huge returns for small investments. Miss B submitted an enquiry, and the scammers spoke with her a lot, building a relationship. They persuaded her to send them over £11,000 in cryptocurrency over the course of several months. Miss B did this by making card payments from her Monzo account to a crypto account in her name, then sending the crypto onto the scammers. The platforms disappeared, the regulator released warnings, and Miss B realised she'd been scammed.

Monzo didn't think it was liable for Miss B's loss.

Our Investigator looked into things independently and didn't uphold the complaint. Miss B asked for an Ombudsman's decision, so the complaint's been passed to me to decide.

I sent Miss B and Monzo a provisional decision on 8 January 2025, to explain why I thought the complaint should be upheld in part. In that decision, I said:

*There's no dispute that Miss B authorised the payments involved, even if she didn't intend for the money to go to scammers. So under the Payment Services Regulations and the terms of her account, Miss B 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, 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.*

*I think Monzo should've intervened at the point of the fourth and final payment, of £5,000. This was a very substantial payment in and of itself which mostly drained the balance, and was much larger than Miss B's normal or prior spending. Monzo argued both that the previous scam payments were irrelevant so this should be viewed as a one-off, but also that the previous payments were relevant and meant the crypto exchange was an established beneficiary. But Monzo cannot have its cake and eat it too – the previous payments cannot be simultaneously relevant and irrelevant depending on what suits the bank's position. Even if we view this as a one-off payment, or a payment to a previous beneficiary, its amount stood out as being remarkable for Miss B's account. And it went to a crypto site. By this point, the Financial Conduct Authority (FCA) and Action Fraud had published warnings about cryptocurrency scams and there was wide media coverage, so Monzo should've had a good understanding of the risk of these scams and how they work. Further, it was funded by a loan, which was suspect. Consumer loans are not generally lent for high-risk unregulated investments, and that activity was consistent with scams. I think Monzo should've made person-to-person enquiries with Miss B at the point of the fourth payment.*

*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, 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 circumstances, 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 intervened and asked reasonable questions, it seems most likely that it could have uncovered the scam and stopped any further loss. I've seen nothing to suggest Miss B would not have been honest about why she was spending this money. I'm also conscious that this was a relatively prominent type of scam, so I think Monzo would have been able to quickly identify what was happening and prevent it. And I've found no reason why Miss B would not have listened to Monzo – it is a well-known name in banking.*

*Monzo argued that it should not be held liable for the loss, because the payment went to an account in Miss B's name. But Monzo 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 liability for the loss of the final £5,000 payment.*

*I've also thought carefully about Miss B's role in what happened. I do understand that the scammers and their website were convincing, that Miss B contacted them first, and that they listed a physical address. But I'm afraid I think Miss B ought to have had more concerns along the way about what she was being told and asked to do. She wasn't given any proper documentation, she doesn't seem to have checked what she was being told or sought advice, and the returns on offer were too good to be true. And by the time of the final payment, she'd already had issues with the scammers not doing what they said they would, she'd demanded a full withdrawal which they didn't do, and they were asking her to take out debt to invest.*

*So I don't think I can fairly hold Monzo solely liable for Miss B's loss. I think Miss B should also bear some liability for that loss.*

*Lastly, I've considered whether Monzo could've reasonably done more to recover Miss B's funds. But as she paid the money to her own crypto account and then sent it on, there was nothing left to recover. The payments weren't covered by the CRM Code for scams, being card payments to her own crypto account. And there was no chargeback reason which would've had a realistic prospect of success here. So there wasn't really anything more that Monzo could do to recover the funds.*

Miss B accepted the provisional decision. I'll talk about Monzo's reply below.

### **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.

Monzo pointed out that our Investigator had agreed with it. But as it knows, when a case comes to an Ombudsman we review things afresh and give an independent second opinion, which overrules what the Investigator said. I've set out why I've come to a different outcome to our Investigator.

Monzo reiterated its prior arguments that the previous payments were irrelevant and so the final one should be considered a one-off; but also that the previous payments were relevant and established this type of payment as typical for Miss B. But as I explained before, Monzo cannot have its cake and eat it too – the previous payments cannot be simultaneously relevant and irrelevant depending on what suits the bank's position. Even if we view this as a one-off payment, or a payment to a previous beneficiary, its amount stood out as being remarkable for Miss B's account. And it went to a crypto site. By this point, the Financial Conduct Authority (FCA) and Action Fraud had published warnings about cryptocurrency scams and there was wide media coverage, so Monzo should've had a good understanding of the risk of these scams and how they work. Further, it was funded by a loan, which was suspect here. Consumer loans are not generally lent for high-risk unregulated investments, and that activity was consistent with scams. And the payment mostly drained the account. So I still think Monzo should've made person-to-person enquiries with Miss B at the point of the fourth payment.

Monzo said it couldn't be expected to question customers 100% of the time when they make a slightly higher than normal payment to their own account. But I think it knows that's not a good representation of what's being said here. This was not a slight increase in spend, this payment was far larger than Miss B's normal spending, and twice as large as the most she'd ever spent in the period before. Its amount was substantial in and of itself, and certainly in relation to Miss B's particular account. It drained the bulk of her account's balance, and went to a crypto site, which Monzo was aware carried an increased risk of scams. And it was funded using a consumer loan, which was not for crypto investments, and so which indicated a risk that something untoward was going on. So I find that Monzo needed to intervene at that particular point in the particular circumstances of this individual case.

Other than that, neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

### **Putting things right**

I direct Monzo Bank Ltd to:

- Refund 50% of the loss from the final £5,000 payment; and-
- Add simple interest at the rate of 8% simple per year onto the refund, payable from the date each 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 Miss B how much tax it's taken off. It should also give Miss B a tax deduction certificate if she asks for one. Miss B may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

### **My final decision**

I uphold Miss B's complaint in part, and direct Monzo Bank Ltd to put things right in the way I set out above.

If Miss B accepts the final decision, Monzo Bank Ltd must carry out the redress 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 Miss B to accept or reject my decision before 12 February 2025.

Adam Charles  
**Ombudsman**