

The complaint

Mr A complains that Monzo Bank Ltd ('Monzo') hasn't refunded him the money he lost in a scam.

What happened

I'm not going to cover all the points raised in detail. The view of 8 October 2024 covered the details of Mr A's testimony and timeline of the transactions. But briefly Mr A says he was contacted by someone about a remote job opportunity. The job involved completing tasks to simulate purchasing items through the job platform to help with the merchant with the marketing of those items.

Between 23 January 2023 and the 25 January 2023 Mr A made a series of card and faster payments for cryptocurrency totalling £12,930. The payments were either made to purchase genuine cryptocurrency (C) or made to third party individuals to buy cryptocurrency on the Peer-to-Peer market. The cryptocurrency was then sent to the scammer's wallet. Ultimately Mr A was unable to withdraw his earnings and soon after realised he'd fallen victim to a scam.

Monzo considered Mr A's complaint. It didn't agree to reimburse Mr A. Mr A was unhappy with Monzo's response and brought a complaint to our service. He said Monzo should have done more to protect him from the scam.

Our investigator upheld the complaint in part. She thought Monzo ought to have been concerned by the time Mr A made the £4,000 payment on 24 January 2023 and should refund this and the transactions that followed. However, she also considered Mr A should share in the responsibility for his losses so she felt the refund should be reduced by 50%.

Mr A accepted the view. Monzo disagreed. It said:

- Mr A made payments to purchase cryptocurrency. The cryptocurrency was then sent to the scammers. So it is not liable.
- It didn't have concerns about Mr A's payments, so shouldn't be held liable for not intervening.
- It raised the recent court case of Philips v Barclays as to its duty to process payments.

I issued my provisional decision on 17 January 2025 explaining why I was thinking of reaching the same outcome as the investigator, but my reasoning differed.

Mr A accepted my decision, but Monzo didn't agree. It said it acted correctly and considers it reached the right outcome in regard to this being a liability shift but had no further comments to add.

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 continues to argue it has no liability but hasn't provided any further arguments or evidence around this. My provisional decision explained in considerable detail the reasons why I don't agree with that position. As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator concluded the last two payments (made by faster payment) were covered by the Contingent Reimbursement Model (CRM) Code, but that it isn't correct. I understand that the last two payments were made to third parties for the genuine purchase of cryptocurrency on the Peer-to-Peer market. Whilst the Code covers faster payments, these were genuine transactions for the purchase of cryptocurrency. The subsequent payment to the scammer is not a faster payment between UK accounts denominated in pound sterling – which the Code requires.

So, 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 Mr A is responsible for payments Mr A'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 December 2021 terms and conditions gave it rights (but not obligations) to:

Block payments 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 fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

The detailed reasoning for this has been set out in substantial detail in recent decisions to Monzo, so I don't intend to repeat it here. But in summary, overall, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider 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, 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 including the use of cryptocurrency accounts) 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 A's payments?

In the six months before the scam, the account was generally used to receive and transfer funds. Whilst Mr A made payments to various payees regularly, the transactions on the account were of relatively low value and there were no payments over £1,000.

I am also mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

The initial two payments were still relatively low in value. In my view, there was nothing about the payments that ought reasonably to have led Monzo to have any concerns for the initial two payments.

But Monzo did in fact pause the third payment for £2,450 for investigation and it noted that payments were going to cryptocurrency. This was the third payment in one day and the amount was over £4,000. I think at this point Monzo ought to have provided a tailored written warning relevant to cryptocurrency investment scams highlighting some of the key features of cryptocurrency scams.

But Mr A wasn't sending payments in connection with an investment opportunity. So, I'm not convinced that a written warning relating to cryptocurrency investment scams would have resonated with Mr A and the circumstances he found himself in. I think it's likely that Mr A would have seen a warning about investment scams involving cryptocurrency and disregarded it, as he wasn't making an investment, and proceed with the £2,450 payment.

But by the fourth payment (and the first payment on 24 January 2023), Mr A had made three payments to cryptocurrency and they were increasing significantly in size. A pattern of scam payments was emerging that I think Monzo reasonably ought to have been concerned about and intervened before processing the payment. This pattern was certainly different to how the account had previously been used.

I think Monzo should have asked Mr A some further questions about the fourth payment before processing it.

I've gone on to consider what I think would have happened if Monzo had intervened. Mr A wasn't provided with a cover story, so I think he'd have been honest about the reason for the payment and explained that he was buying cryptocurrency. Given the reason for the payment, I consider Monzo ought to have probed further and established why Mr A was buying cryptocurrency. I'm satisfied that his response is likely to have been concerning given that Mr A thought he was buying cryptocurrency to release tasks to make an additional income. Monzo ought reasonably to have been aware of task-based scams of this nature and to have recognised the warning signs. So I believe that if Monzo had asked the kind of questions it ought to have asked the scam would have been uncovered and Mr A's loss on the last three transactions could have been prevented.

I note Monzo considers it isn't liable because Mr A bought genuine cryptocurrency. I appreciate the losses did not occur directly from Mr A's Monzo account but I don't agree that Monzo is not liable simply because the money was transferred to a cryptocurrency account and the fraud then happened from there.

Monzo had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022.

As a financial services professional, I think Monzo would have been aware at the time that fraudsters use genuine firms (or individuals in the peer-to-peer market) offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account. So if Monzo had intervened and questioned Mr A more about the payment as I've outlined above – I think it would have been concerned about the reasons for Mr A's cryptocurrency purchase.

Should Mr A share in the responsibility for his loss?

As well as Monzo's obligations I've also thought about whether Mr A should share in the responsibility for his loss. I won't go into detail here – as Mr A accepted the investigator's view but for completeness, I agree with the investigator broadly for the same reasons.

Certainly, by the time the three payments I'm asking Monzo to refund come into question, I think Mr A should have had concerns about the legitimacy of the task-based job he was involved in. The initial contact was made on a social media messaging platform and looking through the messages, the scammer's behaviour appeared inconsistent with how a legitimate employer would operate. There was no contract or paperwork about the job opportunity and Mr A needed to place ever increasing deposits in order to get paid. I think the premise on which the job was based warranted further scrutiny. Towards the end, Mr A was borrowing money from friends and family to finance the 'job opportunity'.

Putting things right

In order to put things right for Mr A, Monzo Bank Ltd should:

Refund 50% of the last three transactions.

Because Mr A has been deprived of this money, I consider it fairest that Monzo add 8% simple interest to the above from the date of the transactions to the date of settlement.

If Monzo is legally required to deduct tax from the interest it should send Mr A a tax deduction certificate so he can claim it back from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint in part, and I require Monzo Bank Ltd to put things right for Mr A as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 February 2025.

Kathryn Milne
Ombudsman