DRN-5323997

The complaint

Miss R is being represented by solicitors. She's complaining about Monzo Bank Ltd because it declined to refund money she lost as a result of fraud.

What happened

Sadly, Miss R fell victim to a cruel job scam in 2023. At a time when she was looking for work, she was approached by someone offering online work. She was required to pay (using cryptocurrency) to access tasks for which she expected to be paid commission on completion. As the scam unfolded, Miss R says she saw her commission building up on the scammers' fake platform and it was only when she tried to withdraw her money and couldn't that she realised this was a scam. As part of the scam, Miss R made the following payments from her Monzo account using her debit card to two cryptocurrency exchanges:

No.	Date	Amount £	Recipient
1	21 Nov	280	Crypto exchange 1
2	21 Nov	584	Crypto exchange 1
3	21 Nov	1,866	Crypto exchange 1
4	22 Nov	700	Crypto exchange 1
5	27 Nov	100	Crypto exchange 2
6	27 Nov	1,664	Crypto exchange 2
7	27 Nov	1,663	Crypto exchange 2
8	27 Nov	1,582	Crypto exchange 2
9	29 Nov	3,000	Crypto exchange 2
10	29 Nov	3,000	Crypto exchange 2
11	29 Nov	1,386	Crypto exchange 2

Our investigator recommended the complaint be upheld. They felt Monzo should have questioned Miss R about the payments before releasing payment 7 and that an appropriate intervention at that stage would have uncovered the scam. They recommended Monzo should refund payments 7 to 11 with a deduction for Miss R's own contribution to her loss.

Miss R accepted the investigator's assessment. Monzo didn't and asked for the complaint to be reviewed by an ombudsman, making the following key points:

- The transactions were legitimate, with Miss R sending money to accounts in her own name and receiving the service she paid for. There's no guidance that says Monzo should reimburse Miss R when it wasn't the point of loss.

- It's required to make best efforts to prevent fraud and it has procedures in place that appropriately balance intervention with the need to process legitimate payments.

- This case falls outside both past and current guidance for reimbursement.

- It's merely the investigator's opinion that an intervention by Monzo would have stopped the scam. We can't really know if that would have been the case.

- While the investigator refers to taking account of relevant law and regulations, they didn't specify which apply to this case.

- The case of Philipp v Barclays established that banks are required to carry out payment instructions promptly and aren't required to concern themselves with the wisdom or risk of a customer's decision.

- Miss R had previously purchased cryptocurrency in 2021, albeit for lower amounts, meaning these payments weren't sufficiently out of character to warrant intervention.

- Cryptocurrency exchanges also provide warnings about the risk of fraud.

The complaint has now been referred to me for 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.

Having done so, I've reached the same overall conclusions as the investigator. In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time. I haven't necessarily commented on every single point raised but concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts.

In this case, there's no dispute that Miss R authorised the above payments.

In broad terms, the starting position at law is that a bank such as Monzo is expected to process payments a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, *'authorised'* essentially means the customer gave the business an instruction to make a payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.

And, as the Supreme Court has recently reiterated in Philipp v Barclays Bank UK PLC, subject to some limited exceptions banks 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 to their customers 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, it 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.

- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. 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 legal duty to do so.

But the ruling didn't say that a bank shouldn't refuse payments in some circumstances. Those circumstances would include complying with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I'm satisfied that paying due regard to the interests of its customers and treating them fairly meant Monzo should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks. Monzo's reference to the procedures it does have in place, albeit that those procedures weren't actioned in this instance, indicate that it accepts this point.

I must also take into account that the basis on which I'm required to decide complaints is broader than the simple application of the relevant regulations and law (including the law of contract). I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

And, I'm satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Monzo should by November 2023 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.

In reaching the view that Monzo should 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, I am mindful that in practice all banks do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments; and
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

In reaching my conclusions about what Monzo ought fairly and reasonably to have done, I am also mindful that:

- Banks are required to conduct their business with *"due skill, care and diligence"* (FCA Principle for Businesses 2), *"integrity"* (FCA Principle for Businesses 1) and a firm *"must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems"* (FCA Principle for Businesses 3).

- Over the years, the FCA, and its predecessor the FSA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by firms to counter financial crime, including various iterations of the *"Financial crime: a guide for firms".*

- Regulated firms 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). I do not suggest that Monzo ought to have had concerns about money laundering or financing terrorism here, but I nevertheless consider these requirements to be relevant to the consideration of its obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code[1], 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 the standards and expectations it referred to represented 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 (regardless of the fact the BSI was withdrawn in 2022).

- Since 31 July 2023, under the FCA's Consumer Duty[2], regulated firms 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"*[3]

- Monzo should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name.

- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Monzo to decline card payments where it suspected fraud.

---

[1] BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

[2] 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.

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

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in November 2023 that Monzo should:

- 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 been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene;
- 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; and
- 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.

Taking these points into account, I need to decide whether Monzo acted fairly and reasonably in its dealings with Miss R.

Should Monzo have recognised that Miss R was at risk of financial harm from fraud?

Payments 1 to 6

As Monzo has pointed out, I must take into account that many similar payment instructions it receives will be entirely legitimate. And based on what it knew about these payments, I'm not persuaded it ought to have been particularly concerned about them. The payments were relatively low in value and there weren't so many that a pattern associated with many types of fraud had been established. So, I can't say Monzo was at fault for processing the payments in line with Miss R's instructions.

Payment 7

In my view, it was when it received the instruction for payment 7 that Monzo should have begun to suspect Miss R may be at risk of harm from fraud. It knew she was purchasing cryptocurrency. Losses to cryptocurrency fraud reached record levels in 2022 and, by the end of that year, many high street banks had placed restrictions or additional friction on cryptocurrency purchases owing to the elevated fraud risk. So, by the time these payments took place, I think that Monzo should have recognised that payments to cryptocurrency carried a higher risk of being associated with fraud.

While the purchase of cryptocurrency alone doesn't indicate fraud, payment 7 was the third such payment on 27 November 2023 (with a combined value of more than £3,000) and the seventh in the space of less than a week (with a combined value approaching £7,000). While Monzo says Miss R had purchased cryptocurrency before, it's also said this was more than two years earlier and, by its own admission for lower amounts. So I think these payments were out of character with recent account activity. Furthermore, a pattern of multiple payments in a short space of time is a common feature of many common types of scam.

Taking all of these points into account, I think this was the point when Monzo should have begun to suspect there could be fraudulent activity. But I understand no intervention was attempted in respect of this or any of the later payments.

What kind of warning should Monzo have provided?

Having thought carefully about the risk payment 7 presented, particularly in view of the number and value of payments that had already been made in such a short period of time, I think a proportionate response to that risk would have been for Monzo to have attempted to establish the circumstances surrounding the payment before allowing it to debit Miss R's account. I think it should have done this by, for example, speaking to her on the phone or directing her to its in-app chat to discuss the payment further.

If Monzo had provided a warning of the type described, would that have prevented the losses Miss R suffered from payment 7?

Speaking to Miss R in this way would have allowed Monzo to ask open and probing questions about the purpose of the payment and the surrounding circumstances. From the information provided, including her chats with the scammers, I've seen nothing to make me think Miss R wouldn't have been honest with her answers to any such questions.

With appropriate questioning, I think a skilled agent should have been able to establish that Miss R was paying money to obtain online work and identify that her circumstances bore many of the hallmarks of a job scam. They could then have provided a tailored warning setting out many of the common features of this type of scam, for example that victims are often approached online and guided through the process by someone they've never met, are required to pay to access tasks using cryptocurrency, and are consistently asked to pay more money without receiving anything in return.

I can't know for certain how Miss R would have responded to such a warning. But on the balance of probabilities, I think it's likely that she would have recognised her own situation and the warning would therefore have resonated with her. And that she would then have decided not to proceed with the payment.

I think it follows that if the scam had been uncovered at the point of payment 7, payments 8 to 11 would also have been prevented.

Is it fair and reasonable for Monzo to be held responsible for some of Miss R's loss?

In reaching my decision about what's fair and reasonable, I have taken into account that Miss R paid money using her Monzo account to another account in her own name, rather than directly to the scammer, so she remained in control of the money after she made the payments, and there were further steps before the money was lost to the scammer.

However, for the reasons I've set out above, I'm satisfied it would be fair to hold Monzo responsible for Miss R's loss from payment 7, subject to a deduction for her own contribution towards this. As I've explained, the potential for multi-stage scams, particularly those involving cryptocurrency, ought to have been well known to Monzo. And as a matter of good practice, I consider it fair and reasonable that Monzo should have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.

I've also taken into account that other businesses were involved in the overall process that ended up with payments being made to the scammer, and that Miss R might potentially have a claim against them in in respect of their actions (although those businesses are not a party to this complaint and so I make no finding about their role here).

Should Miss R bear any responsibility for her losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

I've considered the evidence carefully and, while I accept Miss R genuinely believed these payments were being made in connection with a legitimate employment opportunity, I'm not persuaded that belief was a reasonable one.

There doesn't appear to have been any formalisation of the arrangement between Miss R and the employer – for example a written contract or clear setting out of the terms of her employment. In addition to that, the arrangement was very different to the normal employer-employee relationship. In most circumstances, people expect to be paid by their employer, rather than the other way around. Also, in this case, the promised returns should have seemed too good to be true for the amount of work the scammer said would be involved. Further, it does appear from the chats with the scammer that Miss R had begun to have reservations before the final payments were made.

In the circumstances, I think Miss R should have proceeded only with great caution. If she'd carried out any further research, for example online searches, I think she'd have discovered her circumstances were similar to those commonly associated with many job scams. Overall, I think it's fair and reasonable for Monzo to make a 50% deduction from the redress payable.

Recovery of funds

I've also looked at whether Monzo could or should have done more to try and recover Miss R's losses once it was aware that the payments were the result of fraud.

As the payments outlined above were card payments, I've considered whether Monzo should have tried to recover the money through the chargeback scheme. This is a voluntary agreement between card providers and card issuers who set the scheme rules and is not enforced by law.A chargeback isn't guaranteed to result in a refund, there needs to be a right to a chargeback under the scheme rules and under those rules the recipient of the payment can defend a chargeback if it doesn't agree with the request.

We'd only expect Monzo to have raised a chargeback claim if it was likely to be successful and it doesn't appear that would have been the case here. Miss R paid legitimate cryptocurrency exchanges and would have received a service that involved changing her money into cryptocurrency before sending it to the wallet address she supplied it with (albeit the wallet address was provided by the scammer). Miss R's disagreement is with the scammer, not the cryptocurrency exchanges and it wouldn't have been possible for Monzo to process a chargeback claim against the scammer as she didn't pay them directly.

In conclusion

For the reasons I've explained, I don't think Monzo acted fairly and reasonably in its dealings with Miss R and I'm upholding this complaint in part. While I don't think it acted incorrectly in processing payments 1 to 6 in line with Miss R's instructions, if it had carried out an appropriate intervention before payment 7 debited her account, I'm satisfied payments 7 to 11 would have been prevented.

Putting things right

The principal aim of any award I make must be to return Miss R to the position she'd now be in but for the errors or inappropriate actions of Monzo, while allowing for any responsibility she should reasonably bear. If Monzo had carried out an appropriate intervention as I've described, I'm satisfied the scam would have been stopped and Miss R would have retained the money that was lost from payment 7 onwards. As outlined above, I've applied a 50% deduction to the amounts to be refunded in recognition of Miss R's own contribution towards the loss.

To put things right, Monzo should pay Miss R compensation of A + B, where:

- A = a refund of 50% of each of payments 7 to 11 outlined above; and
- B = simple interest on each amount being refunded in A at 8% per year from the date of the corresponding payment to the date compensation is paid.

Interest is intended to compensate Miss R for the period she was unable to use this money. HM Revenue & Customs (HMRC) requires Monzo to deduct tax from any interest. It must provide Miss R with a certificate showing how much tax has been deducted if she asks for one.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

My final decision

My final decision is that I partly uphold this complaint. Subject to Miss R's acceptance, Monzo Bank Ltd should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 8 April 2025.

James Biles
Ombudsman