

The complaint

Mrs K is unhappy Monzo Bank Ltd will not refund £4,876 she lost as the result of an authorised push payment (APP) scam.

Mrs K brought her complaint to this service through a representative. For ease of reading, I will refer solely to Mrs K 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, Mrs K fell victim to a job/task scam. She was contacted unexpectedly via WhatsApp and offered the opportunity to complete online tasks, such as reviewing merchandise, in order to earn commissions. She was told that to access the tasks she first needed to buy cryptocurrency so she made five faster payments to an account she'd opened based on the scammer's instruction at Coinbase as set out below:

payment	date	time	value
1	15-Jun-24	18:00	£55
2	19-Jun-24	14:55	£360
3	19-Jun-24	15:13	£1,050
4	19-Jun-24	15:17	£10.82
5	19-Jun-24	16:05	£3,400

She realised she had been scammed when she was told to deposit a further £9,000 before she could withdraw any funds. She reported the scam to Monzo on 19 June 2024. It rejected her refund claim.

Mrs K says Monzo did not do enough to protect her money. Monzo says it followed Mrs K's payment instructions correctly, it was not the point of loss, that was Coinbase. So Mrs K should raise a claim with them.

Our investigator upheld Mrs K's complaint in part. She said Monzo ought to have provided a tailored warning at the time of payment 5. But that Mrs K should share equal liability for the loss given the circumstances of the scam.

Mrs K accepted these findings. Monzo did not. It said, in summary, that whilst payment 5 was higher than typical it cannot be expected to intervene in every higher-value payment and Coinbase is an established merchant with a good reputation. Also had Monzo asked about the payment, and had Mrs K answered honestly that it was to buy cryptocurrency, there is nothing to suggest the scam would have been uncovered.

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 to another account in Mrs K's name the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

There's no dispute that Mrs K made and authorised the payments. Mrs K knew who he was paying, and the reason why. At the stage she was making these payments, she believed she was transferring funds to buy cryptocurrency which would then allow her to access tasks she would earn commission for completing. I don't dispute Mrs K was scammed and she wasn't making payments for the reason he thought he 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 (i.e.. 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 June 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 (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.

In this context I find Monzo can be held liable in part for Mrs K's loss from payment 5. I'll explain why.

On balance, taking into account that Monzo needs to take an appropriate line between protecting against fraud and not unduly hindering legitimate transactions, I think Monzo ought to have been sufficiently concerned about payment 5 that it would be fair and reasonable to expect it to have provided warnings to Mrs K at this point. Given what Monzo knew about the destination of the payment, the higher-than-typical value for the account and the fact it was the fourth payment to Coinbase that day, I think that the circumstances should have led Monzo to consider that Mrs K was at heightened risk of financial harm from fraud.

In line with good industry practice and regulatory requirements (in particular the Consumer Duty), I am satisfied that it is fair and reasonable to conclude that Monzo should have provided a tailored warning to its customer before this payment went ahead. To be clear, I do not suggest that Monzo should provide a warning for every payment made to cryptocurrency. Instead, as I've explained, I think it was a combination of the characteristics of this payment which ought to have prompted a warning.

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Monzo's primary duty to make payments promptly. The FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

In light of the above, I think that by June 2024, when these payments took place, Monzo should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam. In this case, Monzo knew that the payments were being made to a cryptocurrency provider and its systems ought to have factored that information into the warning it gave. Monzo should also have been mindful that cryptocurrency scams have become increasingly varied over the past few years. Scammers have increasingly turned to cryptocurrency as their preferred way of receiving victim's money across a range of different scam types, including romance,

impersonation, job and investment scams.

Taking that into account, I am satisfied that, by June 2024, Monzo ought to have attempted to narrow down the potential risk. I'm satisfied that when Mrs K made the fifth payment, Monzo should have provided a scam warning tailored to the likely cryptocurrency related scam Mrs K was at risk.

If Monzo had provided a warning of the type described, would that have prevented the loss Mrs K suffered from payment 5?

I acknowledge that any such warning relies on the customer answering the questions honestly and openly. But I'm satisfied that If Monzo had asked Mrs K what payment 5 was for and the basic surrounding context through a series of interactive questions designed to establish the actual scam risk, it is likely she would have fully explained she received an unsolicited contact via WhatsApp and was sending money to a crypto wallet to allow her to buy access to online tasks. And I find it most likely an effective warning would have highlighted the risk factors of such a payment.

So I think a meaningful job/task scam warning could have broken the spell of the scam. I have seen no evidence from the correspondence between the scammer and Mrs K that she had been coached in any way to provide a cover story. And their messages show that Mrs K already had concerns about the legitimacy of the opportunity by 15 June 2024 asking *'will I definitely get my money back? Sometimes it's just worrying because a lot of companies are scamming people.'*

I've considered carefully whether Mrs K should hold some responsibility for her loss by way of contributory negligence.

I think she should. Mrs K had been contacted unexpectedly via a messaging app and then asked for money to allow her to access work. This is not normal practice for a genuine employment opportunity, and as I have noted above she already had some concerns before starting to send money – yet she went ahead. So I find it to be fair and reasonable that Mrs K is liable for half her loss from payment 5.

Could Monzo have done anything to recover Mrs K's money?

The payments were made by to an account in Mrs K's name at Coinbase. As she knows she knows she subsequently sent them on to the scammer so there was no realistic prospect that Monzo could recover funds from the recipient account. I can see nonetheless it attempted to. Overall, I find no failing on Monzo's part in this regard.

Putting things right

Monzo should refund Mrs K her losses from payment 5. I'm satisfied that both parties ought to share equal liability and therefore Monzo is entitled to make a deduction of 50% for contributory negligence.

There is no interest award as Mrs K told us, and the evidence shows, she funded payment 5 by borrowing from friends/family. As they are not party to this complaint I cannot award them compensatory interest.

I have found no grounds to award Mrs K the £300 additional compensation she requested.

My final decision

I am upholding Mrs K'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 Mrs K to accept or reject my decision before 24 June 2025.

Rebecca Connelley
Ombudsman