

The complaint

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

What happened

In 2020, Mrs A was called by scammers posing as an investment firm. Using remote access software, they helped her set up an account. Then they pressured and persuaded her into depositing funds in cryptocurrency. She sent them around £12,000 of crypto, funded by Monzo card payments. When Mrs A wanted to withdraw her money, she was quoted prohibitive fees. She realised she'd been scammed. She didn't report this to Monzo at the time, but brought a complaint in 2023.

Monzo didn't think it was liable for Mrs A's loss, arguing that the fraud happened on the crypto platform. It felt the activity was normal, there weren't sufficient signs of a scam, it didn't have to intervene, and it was speculation to say what would've happened if it had.

Our investigator looked into things independently and partially upheld the complaint. As Monzo didn't agree, the complaint's been passed to me to decide.

I sent Mrs A and Monzo a provisional decision on 30 April 2024, to explain why I thought the complaint should be upheld in part. In that decision, I said:

There's no dispute that Mrs A 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, Mrs A 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.*

Like our investigator, I find that by the second payment of £3,000, the payments stood out as being remarkable, and should have prompted Monzo to intervene. By that payment, Mrs A had spent a large amount that day, with the two payments being just minutes apart. Her spending that day was far larger than her normal spending, and 50% larger than the most she'd ever spent in a day before. These payments rapidly drained her account, and went to a new payee. The recipient was a crypto site; and by this point, the Financial Conduct Authority (FCA) and Action Fraud had warned about cryptocurrency scams, so Monzo should've been aware of the risk of these scams.

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 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, though 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 and made person-to-person enquiries with Mrs A about the second payment of £3,000 before it processed it.

Had Monzo done so and asked reasonable questions, I think it would have most likely come to light that Mrs A was being scammed. Reasonable questioning would've revealed things like how the investment came from a cold call, that it was an unregulated cryptocurrency investment scheme, that Mrs A had been asked to install remote access software, that she was being pressured into paying, that she'd been given no proper paperwork, and so on. The matter bore many hallmarks of a prominent scam, so it's most likely Monzo would have been able to identify what was happening and prevent it.

I've seen nothing to suggest that Mrs A would not have been honest about why she was spending this money – not least as the scammer hadn't told her to lie if questioned. And I've found no reason why Mrs A would not have listened to Monzo – it is a well-known name in banking.

Monzo argued it was speculation to say that intervention would've most likely helped. But as Monzo should well know by now, in a case such as this I must determine what's most likely to have happened had things gone differently. And by definition, that will involve some degree of speculation. It would also be speculation for me to conclude that intervention would not have made a difference. I must base my decision on what I find to be most likely in the circumstances of the case. In this case, I've found it's most likely that reasonable intervention would have made a difference, for the reasons I set out above.

Monzo also argued that it should not be held liable for the payments involved, because they went to a crypto account which was – in theory – in Mrs A's control. First, it would not have known that at the time. And even if it had identified that the account was in Mrs A's name, it should have been on notice about crypto scams. As Monzo will know, it 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. 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 find that Monzo bears some liability for Mrs A's loss from the second £3,000 payment onwards.

I've also thought carefully about Mrs A's role in what happened. I do understand that she felt a rapport with the advisor, and that they were very reassuring. But I'm afraid I think Mrs A ought to have had some more concerns along the way about what she was being told and what she was being asked to do. For example, she was cold called, she was asked to give over remote access to her device, she found negative reviews about the firm alongside positive ones, the firm was not regulated, and she was not given any proper paperwork or other documentation which would reasonably have shown that the firm was authentic. So I don't think Mrs A had a reasonable basis on which to believe that the matter was legitimate.

So I don't think I can hold Monzo solely responsible for Mrs A's losses from the second £3,000 payment onwards. I think Mrs A should also bear some responsibility for that loss.

Lastly, I've considered whether Monzo should've done more to try to recover Mrs A's money once she made it aware of the scam. But as the payments went to another account in her control, and as she didn't report the scam to Monzo for about three years, there wasn't anything more that Monzo could really do in this situation.

I said I'd consider anything else anyone wanted to give me – so long as I received it before 15 May 2024. Both sides accepted the provisional 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.

Both sides accepted the provisional decision, and neither side 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 scam payments from the second £3,000 payment on 19 October 2020 onwards.
- Add simple interest at the rate of 8% simple per year onto the refunded amounts, payable from the date each amount debited until the date it's returned.

If Monzo considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Mrs A how much tax it's taken off. It should also give Mrs A a tax deduction certificate if she asks for one. Mrs A may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

My final decision

I uphold Mrs A's complaint in part, and direct Monzo Bank Ltd to put things right by doing what I've said above.

If Mrs A 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 Mrs A to accept or reject my decision before 12 June 2024.

Adam Charles
Ombudsman