

Complaint

Mr K is unhappy that Monzo Bank Ltd (“Monzo”) recorded a fraud prevention marker against him.

Background

In March 2021, Mr K received a number of payments into his Monzo account. Monzo subsequently received seven fraud notifications from a number of different banks saying that the customers had been scammed into making payments from their accounts to Mr K. Monzo wrote to Mr K on 5 March 2021 and informed him that it would be closing his account with immediate effect. It then went on to register a fraud prevention marker against him.

After learning that Monzo had recorded a fraud prevention marker against him, Mr K complained to Monzo. Monzo looked at Mr K’s complaint and didn’t uphold it. As Mr K remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr K’s concerns. He didn’t think that Monzo had done enough to show that Mr K was complicit in fraud and so it unfairly recorded the fraud prevention marker against Mr K. Monzo disagreed and so the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The marker that Monzo has filed is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Mr K is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that Monzo must first be able to show that fraudulent funds entered Mr K’s account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr K was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr K allowing someone else to use his account in order to receive an illegitimate payment. But a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

In order to determine Mr K's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr K's account and that he was complicit in this. It's important to note Monzo had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, there doesn't appear to be any dispute that Mr K's account was in receipt of fraudulent funds in March 2021. Monzo received seven fraud notifications and indemnity requests, from a number of different banks, explaining that customers had been scammed into sending payments to Mr K's account. So I can understand why Monzo had concerns about the usage on Mr K's account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Monzo also has to produce sufficient evidence to show Mr K was complicit in fraud. And I don't think that it has done that here.

I think it would be helpful for me to start by setting out that Monzo doesn't appear to have carried out any sort of investigation into Mr K's actions, once it received the notification from the third-party bank. It simply sent Mr K a letter saying that it would be closing his account. So Monzo didn't give Mr K any opportunity to explain his side of the story. And I have to question how it could possibly have assessed his knowledge and intention before it recorded the fraud marker against him - arguably this in itself is unfair.

Mr K has, since learning about the marker, explained that he saw an advert about learning to trade with crypto-currency posted by someone on a well-known messaging app. He said that the advert indicated that this person was involved in crypto-currency so he decided to respond to it as this was something he was interested in. Mr K says he was asked how old he was and as he was only 17, which was too young to carry out crypto-currency trading, he was told to get in contact when he turned 18 in March 2021.

Mr K says he got in contact once he turned 18 and was told to download a crypto-currency app to get started. He was also told to provide his account number and sort code to be able to make the transfers. Mr K says he provided this because he didn't think that anything could go wrong, presumably because he didn't have any funds in his account. He says that he started to get worried when a large payment for £600 arrived in his account. But he was told by the person who placed the advert to transfer the funds to another account. These transfers continued and he was told he had to pass on the funds, or reimburse the person who arranged things, himself.

Finally, Mr K says he felt had to pass on the funds because the person who placed the advert said they knew where he lived. Mr K has provided some messages from the messaging app to corroborate what he said. Our adjudicator found Mr K's version of events plausible and he thought that Mr K was unwittingly involved in fraud, rather than it being the case that he was complicit in it.

Monzo says this isn't the case because Mr K was a money mule and as a result, victims lost money. In its view, there was no evidence of impersonation. The device used to make the payments was the same as the one used to set up the account. Furthermore, it considered that as Mr K's account was dormant from opening until the reported activity, it was likely he opened this account for it to be used to receive funds that he'd then transfer on to someone else potentially for payment.

I've thought about what Monzo has said. It isn't in dispute that Mr K was used as a money mule or that there was no impersonation in this case. But the mere fact that fraudulent funds passed through an account doesn't on its own mean that it is fair and reasonable to record a fraud marker against a customer. Mr K has always said that he made the transfers from his account. So I don't think that the device used being the same as the one used when the account was opened provides anything new or anything that contradicts Mr K's version of events. Equally, Mr K has said that he was told that he had to wait until he turned 18, before he could be involved in crypto-currency trading. In my view, this accounts for the lack of activity on Mr K's account until March 2021 as this was when Mr K turned 18.

More importantly it is Monzo's responsibility to demonstrate that Mr K was knowingly part of the fraud. And I think that it has failed to do that here. Monzo needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, a reasonable suspicion that Mr K knew fraud would take place when he provided his account details to the person who placed the crypto-currency trading advert on the messaging app. Simply pointing out that fraudulent activity took place – especially where this isn't in dispute - just isn't enough to meet what is a high bar. This is especially the case seeing as the facts and circumstances of this case appear to support Mr K's version of events being plausible.

Furthermore, there isn't any evidence indicating that Mr K made a financial gain either as the fraudulent funds in question were transferred, in full, elsewhere. So I've not seen anything to suggest that Mr K benefitted from the fraudulent funds and I would question why he'd knowingly participate in a fraud (as Monzo appears to be suggesting) where he didn't stand to benefit.

Overall and having considered everything, I don't think that Monzo had sufficient evidence to meet the test for recording a fraud marker against Mr K. As this is the case, I think that it was unfair for Monzo Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding Mr K's complaint and Monzo needs to remove any fraud markers it has recorded.

My final decision

For the reasons I've explained, I'm upholding Mr K's complaint. Monzo Bank Limited should remove any fraud markers it has recorded against Mr K.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 May 2022.

Jeshen Narayanan
Ombudsman