

The complaint

Mrs M has complained that Monzo Bank Ltd registered a marker against her at CIFAS, the national fraud database.

What happened

In January 2021, Mrs M received some payments that she then passed on. It turned out these were fraudulent funds.

Monzo closed Mrs M's account and registered a marker against her at CIFAS. It did not make any inquiries with her first, and did not give her any reason for the closure or tell her about the marker.

Mrs M later found out about the marker and complained. She explained that someone had contacted her through social media, who appeared to be a friend of a friend. They told her an elaborate and convincing story about how they were in hard times from the pandemic. They said they had problems with their account and needed Mrs M's help making some transfers. Mrs M accepts she'd been naïve, but said she was not suspicious of what was going on until it was too late. She said once she realised she was being lied to, she panicked and deleted the messages as they contained sensitive information like her bank details, and she was worried she may be hacked. She's asked for the marker to be removed.

Our investigator looked into things independently and upheld the complaint. They explained that Monzo should have investigated things with Mrs M at the time. They found that Monzo had not met the standard of proof required.

Monzo didn't agree. They felt they couldn't have discussed things with Mrs M at the time because of concerns about tipping off. They felt the fraud reports were sufficient evidence. They raised other objections, which turned out to relate to a different case. The complaint's been passed to me to decide.

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.

I need to consider whether this report to CIFAS was made fairly. On this point, Monzo needed to have more than just a suspicion or concern. They need to be able to show they had reasonable grounds to believe that fraud or a financial crime had been knowingly committed or attempted by Mrs M, backed up by evidence so rigorous that it would support this being reported to the authorities.

This case is finely balanced. Neither side have helped themselves much here – Monzo by failing to investigate things properly at the time, and Mrs M by deleting key evidence that could have shown she was innocent.

Both sides now understand that the funds were fraudulent. And Mrs M never disputed that she willingly made the transfers as she was asked to. But Mrs M explained she didn't know she was passing on fraudulent funds at the time, she just thought she was helping someone out. So the question is whether Mrs M knew she was aiding a fraudster at the time, or whether she was manipulated into aiding a fraudster unwittingly.

CIFAS has guidance for cases such as this. It says: "*given that consumers can act as a money mule unwittingly... it is required that members provide consumers the opportunity to explain the conduct before filing to the National Fraud Database.*" It goes on to say that consumers should be given sufficient time to respond before making a submission to the fraud database, and that businesses should try more than one method of contact.

Here, Monzo did not speak to Mrs M at the time or get any detailed testimony or evidence from her. This is concerning. CIFAS markers can have severe effects, and must not be added without serious consideration. Monzo have made arguments around tipping off concerns, but I do not find those arguments to be relevant here. As far as I can see, Monzo were not contacted by the relevant bodies about any such potential issues, so it was not an excuse. Monzo should know that both CIFAS and our service expected them to have investigated things with Mrs M before adding this marker.

Because Monzo didn't investigate things properly with Mrs M at the time, I don't have any contemporaneous testimony to compare her current testimony with. And relevant evidence from Mrs M's side is no longer available, partly because Monzo didn't ask her for it or explain its relevance until much later, when it was already gone. It's difficult to see how Monzo were satisfied that Mrs M intentionally aided in fraud without properly looking into the matter or trying to clarify the situation first. I also note that when it comes to evidencing their own side, Monzo has mixed up Mrs M's case with other ones, which also makes it hard for me to be confident in their investigation here. So while I accept that Monzo had grounds to be suspicious or concerned, I don't think they fulfilled the criteria of the evidence being so rigorous that Monzo could confidently report Mrs M to the authorities.

Monzo say they relied on the reports from the sending banks. But I don't think that's good enough in this case. Monzo registered this CIFAS marker, not any other banks. So Monzo needed to be satisfied of their own accord that Mrs M had *intentionally* tried to commit a crime, and that she was not an unwitting participant.

Mrs M's story has been consistent, and broadly plausible. People frequently fall for scams such as the one she's described, and for scams that are even less convincing.

From the fraud victim's report, it looks like they interacted with a man, and not Mrs M. And I have not found a link between this man and Mrs M. As far as I can see, Mrs M's account was just used to pass on the funds. She does not appear to have been involved in the scam itself. This also tends to suggest she may have been an unwitting participant.

Mrs M's account had been open for some time before this incident, and seems to have otherwise been used normally. As far as I can see, it was a genuine account, as opposed to one which had been opened for the purpose of committing fraud.

Lastly, I have not seen any other evidence which actually shows that Mrs M knew she was helping pass on the proceeds of fraud.

So I accept that Monzo had good reason to be suspicious or concerned about what happened with Mrs M's account. And I accept that I cannot categorically rule out the possibility that Mrs M was a willing participant in the fraud. But I also cannot rule out that she was simply taken advantage of. I find that Monzo did not have enough evidence to meet the bar of recording a CIFAS marker against Mrs M, not least given their lack of a proper investigation at the time. And the default position is that without such rigorous evidence, the marker should be removed. So while I am fully conscious of the possibility that Mrs M knowingly and willingly tried to aid a crime, I think the risk of Mrs M being an innocent party is too great to justify this CIFAS marker remaining.

It follows that I think the marker should now be removed. With that said, I hope Mrs M is aware of how close she came to having the marker remain for the full period, and of being reported to the authorities. I hope that she will keep this in mind and avoid any similar situations in future.

Putting things right

I direct Monzo Bank Ltd to remove the CIFAS marker in dispute.

My final decision

For the reasons I've explained, I uphold Mrs M's complaint, and direct Monzo Bank Ltd to remove the disputed marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 July 2022.

Adam Charles
Ombudsman