

The complaint

Mr E complains Monzo Bank Ltd unfairly recorded a Cifas marker against him on the national fraud database. He wants the marker removed.

What happened

Mr E is a minor and is represented by his father in bringing this complaint.

Mr E opened a Monzo account in November 2020. He says he fell victim to a scam in December 2020. He says he sent money to a person who said they were a forex trader who said he would receive a £200 return. He says he was added to an online group chat and he thought the person was legitimate based on the testimony of others in the chat.

On 27 December 2020 Mr E sent three payments to the alleged trader. After the first payment he was told he needed to pay a further fee, so he sent another two payments. He didn't receive £200 that day, so he contacted Monzo to tell them he thought he had fallen victim to a scam.

Monzo investigated what Mr E said. They requested more detail about what had happened, as well as any evidence he had to show communication with him and the alleged scammer. They decided they would not refund the payments he made, but they tried to retrieve the payments by contacting the alleged trader's bank. They were told no funds remained.

A replacement card was ordered for Mr E's account on 5 January 2021, which was activated three days later. The address the card was sent to was different to the address for Mr E's account and where he lives with his father.

On 14 January 2021 £270 credited Mr E's account and £240 of this was withdrawn at an ATM using the replacement card. Monzo were then contacted by the payer's bank who reported the payment as fraudulent. Monzo blocked Mr E's account and decided to record a Cifas marker against him. They closed the account immediately. Mr E discovered the marker when another bank declined his application to open a new account.

Mr E originally said he didn't receive a replacement card and he didn't know about the £270 payment or the £240 withdrawal. He said his account should not have been closed, and the Cifas marker shouldn't have been recorded because he was a victim of a scammer. He said he is young and was naïve about financial matters, and he didn't suspect anything was wrong when he paid the alleged trader.

Our investigator decided not to uphold the complaint. They found:

- Monzo recorded a misuse of facility Cifas marker against Mr E. To do so, they didn't need to prove Mr E was guilty of a financial crime. But they still needed to have reasonable grounds to believe that he was, and there needed to be enough clear, relevant, and rigorous evidence for them to confidently report him to the police. This is the standard of proof Cifas require.

- Mr E said he never received the replacement card, but the evidence showed he activated the replacement card using his mobile phone – the same phone he used to verify his identity when he opened the account. Also, the card was sent to his mother's address who he stays with at weekends. It was unlikely the alleged trader would have wanted the card sent there if they had ordered the card to commit fraud.
- Someone logged into Mr E's account on Mr E's mobile before and after the ATM withdrawal. Mr E hadn't said someone had taken or used his mobile, so it was likely that Mr E was looking at the activity on his account at those times. As a result, he would have been aware of both the £270 credit and the withdrawal.
- Mr E would have seen that the £270 was sent by someone else and not the alleged trader who he had paid. It would be reasonable to expect Mr E to have questioned the payment and not to have concluded it represented proceeds of an investment.
- There was enough information available to fairly conclude that the standard Cifa's required of its members to record a marker was met.

Mr E rejected the outcome. But importantly his father revealed that what Mr E had told us wasn't truthful, which he had only just discovered. What had really happened was:

- Mr E did know about the £270 and he did withdraw £240. He thought the payment was genuine and was paid because of his earlier payments to the alleged trader.
- In his excitement Mr E had told his stepbrother about the £270. His stepbrother lives at his mother's address. They asked to borrow £240, so they both went to the ATM to make the withdrawal.
- His stepbrother told him not to tell anyone. His father says Mr E's stepbrother has a controlling influence over his son and has subjected him to physical abuse in the past. So, Mr E was scared to tell the truth.
- Mr E's mum was shocked to discover what had happened and she is willing to pay back the £240.

The investigator reconsidered the complaint, but still decided it shouldn't be upheld. In addition, they said:

- Mr E had said he hadn't ordered a replacement card before, and he had always kept his card with him. But he only changed his story following the finding that the card had been ordered using his mobile. He now says his stepbrother helped him order the card. But previous account history shows he attempted to order another card earlier than January 2021 using his mobile.
- Mr E also said he hadn't used other devices on his account. But, again Monzo's evidence showed he had used at least two other devices. He had verified his identity on those devices and the evidence showed this. For one of those devices he had needed to record a short video of himself.

Mr E's father responded and said each time a replacement card was ordered Mr E's stepbrother had helped him. He said Mr E had just remembered that he had used his stepsister's device once when he couldn't access his account through his mobile. He reiterated that Mr E wasn't knowingly involved in a fraud, and it was normal to seek the help of close family members. Mr E misused his account by allowing another family member to access his account, so Monzo didn't need to reopen it, but they should still remove the Cifas marker. He asked for a final decision by an ombudsman, so the complaint was given 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've decided not to uphold Mr E's complaint, so I will not be directing Monzo to remove the Cifas. I'll explain why.

There is a difference between what is required for a firm like Monzo to record a Cifas marker, to the standard of proof required to convict someone of fraud or another financial crime. Monzo do not have to establish Mr E was guilty of fraud or a financial crime beyond a reasonable doubt. Neither does Monzo need to have contacted the police for them to carry out a criminal investigation.

Mr E and his father may disagree Monzo should be able to record a marker based on a lesser standard of proof. But the rightfulness of fraud prevention agencies and the standard of proof they require of members is a matter for the courts or Parliament to decide. Cifas is a widely used fraud prevention agency used by many banks, and its standard of proof has existed for some time. So, my role here is not to question the rightfulness of firms being able to record fraud markers in general.

Firstly, I must make clear that I can never know fully what happened to explain why Mr E made payments to the alleged forex trader. Nor can I know fully why he withdrew money which clearly wasn't deposited by the person he paid, or whether he did so at his stepbrother's request.

So, when facts are less clear, I need to draw conclusions based on what I think is more likely than not to have happened. And one of the factors I need to account for is how credible and persuasive is Mr E's explanation for what happened when weighed against the other information and evidence available to me.

The investigator set out the standard of proof Cifas requires of its members to record a marker. So, I must consider whether the standard of evidence is enough in the circumstances of this complaint for the marker to remain. Based on all the information I have, I'm satisfied Cifas' evidential standard has been met.

Mr E's father has emphasised Mr E's youth and financial inexperience as a relevant factor. And I have considered what he has said. Being under 18 years old can mean someone is more vulnerable to a scammer, and they might also be less aware of risks or suspicious behaviour than someone who is older. But it's also important to reflect that being under 18 doesn't mean that someone can't still act dishonestly or that they should not be held responsible for their actions.

Mr E hasn't been able to demonstrate that he was convinced to make the payments to the third party because of an investment scam. In my experience as an ombudsman, this kind of evidence is often readily obtainable. So, I have placed weight on Mr E not being able to provide anything other than his own testimony to verify his version of what happened.

It strikes me as odd that Mr E appears to have received multiple payments from three different family members, including his father, the same day he made the payments to the alleged trader. While Mr E received payments from his father previously, this sudden payment activity from family members hadn't happened before, and it was these funds which were used to make the payments to the alleged trader. It's also very odd that Mr E's stepsister would pay funds to Mr E after he told her about an investment opportunity.

Mr E changed his version of events several times. His father says this was because he was scared of his stepbrother. I have considered what he's said very carefully, and I've not taken it lightly. But I have to account for the possibility that Mr E didn't admit to knowing about the

payment into the account or the ATM withdrawal for a very different reason – that being, he knew the payment was suspicious. Mr E's father's point that his son wouldn't have told his stepbrother about the payment if he thought the payment was suspicious isn't persuasive. I cannot independently verify what if any conversation took place between Mr E and his stepbrother.

The evidence shows Mr E checked his account the day the £270 was deposited. It looks like he checked the account shortly before the payment was made using a device which he used to verify his identity the day after the payment. And he then checked the account using his mobile shortly after the payment credited his account. This points to him knowing the payment would be made. So, I doubt what Mr E's father has said – that Mr E received the £270 unexpectedly – is likely. And, if it was Mr E's stepbrother who checked his account before the payment was made, this casts doubt on what Mr E said – that he told his stepbrother about the payment afterwards.

I find it would have been very clear to Mr E that the £270 he received was not from the alleged trader. The payer had a very different name and the amount was larger than the sum he expected to receive in December 2020. Also, by the time of the payment, Mr E had already reported the alleged trader to Monzo, and, according to him, the trader had blocked him. So, he should have been suspicious about any payments he thought originated from that same person.

I don't find Mr E's youth or financial inexperience fairly explains away the above circumstances. Instead, I find someone who was Mr E's age would have understood something was wrong with the payment, and that withdrawing the funds wasn't the right thing to do. I find this more likely explains why Mr E originally said he didn't know anything about the payment or the withdrawal. He may now very much regret withdrawing the money, particularly because of the impact of the Cifas marker, but this isn't a valid reason to ask Monzo to remove it. Neither is Mr E's mother's offer to repay the £240 a proper reason to remove the marker.

Mr E made statements such as not requesting a replacement card and not using other devices, which he then changed after being told of evidence which contradicted what he said. It's possible Mr E kept remembering things which were in stark contrast to what he originally said. But I must also account for him changing his version of events each time for less genuine reasons. On balance, I have reason to doubt the credibility of what he is now saying due to how much his version of events has changed.

Mr E's father made a point of saying that had Monzo asked for evidence showing Mr E's communication with the alleged trader before it was deleted, Mr E would have been able to provide it. But when Mr E reported the payments he made as fraud, Monzo asked him to provide evidence of his communication with the alleged trader. I can't see he provided it at that time. So, I find he was given a proper opportunity to provide this type of evidence.

On balance, I find Monzo had reasonable grounds to believe Mr E was knowingly involved in a fraud or financial crime. And I find there is enough evidence for Monzo to have confidently reported his conduct to the police. So, I am not going to tell Monzo to remove the Cifas marker or reopen his account. I also find Monzo were entitled to immediately close Mr E's account given their grounds for concern.

My final decision

I have decided not to uphold Mr E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 June 2022.

Liam King
Ombudsman