DRN-3447237

Complaint

Mr S is unhappy that Monzo Bank Ltd ("Monzo") recorded a fraud prevention marker against him.

Background

In January 2021, Mr S' account received two credits of £35 and £15 from one payee and a third credit of £25 from another payee. These funds were immediately transferred to another of Mr S' account. Shortly afterwards, Monzo received a notification from the two banks, responsible for sending the payments, stating that the payees of the funds had reported being the victims of purchase scams as Mr S hadn't provided the items as agreed. Monzo decided to review Mr S' account. It decided to close to close the account and also record a fraud prevention marker against Mr S.

Mr S eventually realised that Monzo had recorded a fraud prevention marker against him and made a complaint. Monzo looked at Mr S' complaint and didn't uphold it. As Mr S remained dissatisfied he referred the matter to our service.

One of our adjudicators looked into Mr S' concerns. She didn't think that Monzo had done anything wrong or treated Mr S unfairly and so didn't recommend the complaint be upheld. Mr S 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 S is guilty of fraud or a 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 S' account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr S was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr S 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 S' complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr S' account and that his actions suggest he was complicit in this. And having considered everything, I find that although Monzo ought to have obtained more information from Mr S during the course of its investigation, nonetheless there is sufficient evidence for the fraud marker to have been recorded and for it to remain. I'd like to explain why in a little more detail.

Mr S has said that these payments were for items he sold online using two different sales platforms. He said that one of the two buyers got in touch to say that they hadn't received the items and he responded to say that he wasn't willing to issue a refund. Mr S said he believed that he sent the items using the postal service. But he didn't have any proof of postage and he could no longer access the messages or had any information about these sales. Mr S was however able to provide some records of feedback that other buyers had left for him for other sales on one of the platforms.

I've thought about what Mr S has said. But I'm mindful that two different banks reported customer not having received items they'd paid Mr S for. So the fraud marker wasn't recorded solely on the basis of what one individual had said. I'm also concerned that Mr S hasn't been able to provide any evidence of having sent the items he says he sold, any messages from the time, or anything at all relating to the sale of these items.

I know Mr S says he feels he being penalised for Monzo not asking for this information when it carried out its investigation as it he had it then, or he might have even chosen to return the funds at this point. But I have to question why Mr S wouldn't have retained any of this information given he says one of the buyers had already contacted him to dispute receiving the items. And Mr S initially complained to Monzo not too long after this all took place.

Furthermore, it's also difficult to understand how and why Mr S has been unable to provide any evidence relating to these sales when he's been able to provide evidence of sales, for other items sold, on one of one of the platforms used. Some of these records go back a number of years and there are even some from after the sale of these items. So it seems a bit odd for Mr S have records going back for an extended period yet not have any records at all for these sales.

Given the fraud reports from two different customers with two different banks and Mr S not having anything at all to corroborate his version of events, it's difficult for me to place too much weight on Mr S has said.

Overall and having considered everything, I'm satisfied that the available evidence is sufficient to conclude that Mr S was more likely than not complicit in fraudulent funds being received into his account. So I don't think that Monzo acted unfairly towards Mr S when recording a fraud marker against him and I'm not upholding this complaint.

I appreciate this will be very disappointing for Mr S – especially given what he's said about the effect the fraud marker is having on him. But even taking into account the impact he says the marker is having on him, I can't ignore the fact that Mr S appears to have been complicit in fraudulent activity. So I hope Mr S will understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Furthermore, Mr S might find that he's able to open an account with another bank as long as he applies for a Basic Bank Account, rather than a full Current Account or any such equivalent.

My final decision

For the reasons I've explained, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 May 2022.

Jeshen Narayanan
Ombudsman