

Complaint

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

Background

Mr A opened an account with Monzo in October 2020. Between November 2020 and January 2021, Mr A’s account received credits from a number of different accounts. Most of these payments were transferred on to a third-party.

In January 2021 and February 2021, Monzo received notifications from more than one bank, responsible for sending the some of the payments to Mr A’s account, stating that the payees of the funds had reported being the victims of fraud. Monzo decided to review Mr A’s account. It decided to close the account and also record a fraud prevention marker against Mr A.

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

One of our adjudicators looked into Mr A’s concerns. She didn’t think that Monzo had done anything wrong or treated Mr A unfairly and so didn’t recommend the complaint be upheld. Mr A 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 A 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 A’s account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr A was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr A 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 A's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr A'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 A 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 A has said that the payments into his account were for him to exchange foreign currency. He's said he didn't know the people making the transfers into his account but transferred them on to a third-party who then arranged for foreign currency transfers. Mr A was the one accepting the transfers from others because the party he was transferring the funds onto didn't want so many people transferring funds into his account.

I've thought about what Mr A has said. But I'm mindful that more than one bank reported having customers who made payments into Mr A's account who'd reported being victims of fraud. So while Mr A has queried why only one transaction appears to have aroused suspicion when he had a number of payments made into his account, the fraud marker wasn't recorded solely on the basis of one report.

Equally, while I've tried to give Mr A the benefit of the doubt there are some things which simply don't add up here. For example, Mr A says that he got involved in the transactions he did to use up the foreign currency he had because it was just lying there idle. But that doesn't explain why transfers in the same foreign currency, he was looking to use up, were made to an account in his name. Furthermore, I'm also concerned that Mr A willingly decided to accept payments from a number of people he didn't know when the person who the funds were ultimately supposed to go to didn't want these transfers made into his account. I think that this ought to have alerted Mr A to the fact that these payments may have been illegitimate.

Finally, I've also considered what Mr A has said about him now having a debt, which he's having to repay, to the third-party he transferred the funds to as these funds were recalled from his account. But I don't think that Mr A taking steps to repay this amount because he says the third party got his lawyer to threaten legal action means that he wasn't complicit in what happened in the first place.

I know Mr A says he feels he being penalised for Monzo not asking for his version of events at the time. And as I've said I do think that Monzo ought to have asked Mr A for this. But I'm satisfied that it doing so here is unlikely to have made a material difference in Mr A's position or Monzo's decision to record the fraud marker.

Overall and having considered everything, I'm satisfied that the available evidence is sufficient to conclude that Mr A was not an unwitting participant in fraudulent funds being received into his account. So I don't think that Monzo acted unfairly towards Mr A when recording a fraud marker against him.

I now turn to the closure of Mr A's account. I know that since his complaint has been with us Mr A has said he accepts Monzo was entitled to close his account. But for the sake of

completeness and as it formed part of Mr A's initial complaint, I think it's worth me explaining that the terms and conditions of Mr A's account permitted Monzo to close it without notice where it believes a customer has "*broken the law or attempted to break the law*". I've already explained why I think Monzo was reasonably entitled to conclude that Mr A's account had been used for fraudulent purposes when explaining why it didn't act unfairly in recording the fraud prevention marker.

As this is the case, I'm also satisfied that, for much the same reasons, the terms and conditions permitted Monzo to close Mr A's account. And I'm therefore not upholding Mr A's complaint on this basis either.

I appreciate this will be very disappointing for Mr A – especially given what he's said about the effect the fraud marker is having on him. But I hope Mr A will understand the reasons for my decision and that he'll at least feel his concerns have been listened to. Furthermore, Mr A 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 A's complaint.

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

Jeshen Narayanan
Ombudsman