DRN-3615435

Complaint

Mr O is unhappy that Monzo Bank Ltd ("Monzo") closed his account and recorded a fraud prevention marker against him.

Background

In March 2022, Mr O's account received credits of £250 and £100. The funds were immediately transferred on to a third-party. Monzo subsequently received a notification from the third-party bank, responsible for sending these payments to Mr O's account, stating that the payee of the funds had reported being a victim of fraud. Monzo decided to block Mr O's account pending a review. As a result of the review, it decided to close to close the account and also record a fraud prevention marker against Mr O.

Mr O was unhappy and complained. Monzo looked at Mr O's complaint and didn't uphold it. As Mr O remained dissatisfied he referred the matter to our service.

One of our adjudicators looked into Mr O's concerns. He didn't think that Monzo had done anything wrong or treated Mr O unfairly and so didn't recommend the complaint be upheld. Mr O 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 O 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 O's account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr O was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr O 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 O's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr O's account and that his actions suggest he was complicit in this. And having considered everything, I find that Monzo did have enough to record a fraud prevention marker here. I'd like to explain why in a little more detail.

There doesn't appear to be any dispute that the funds in question, which entered Mr O's account in March 2022, did so as a result of fraudulent activity. So the only matter which remains in dispute here is whether Mr O was complicit in allowing his account to receive these illegitimate payments.

Mr O has said that he agreed to receive the payments into his account on behalf of his friend who was owed money. He said his friend asked him to receive these payments as his own account was blocked. Mr O was supposed to withdraw the funds in cash and pass them on to his friend but by the time he received the funds his friend's account was unblocked and so he instead transferred them on. Mr O told our adjudicator that he never paid this friend before. He also said that his friend wasn't very trustworthy but didn't think much of it at the time. Finally, Mr O wasn't able to provide any messages or anything similar to verify this arrangement with his friend.

I've thought about what Mr O has said. But while I've tried to give Mr O the benefit of the doubt there are some things which simply don't add up here. For example, Mr O says that he never made any previous payments to his friend. But there are payments made to and payments received from the payee in question prior to the transactions in question. Mr O says he can't be expected to have remembered this. But given the number of payments, I would have expected him to at least recall that the payments flagged up weren't the first payments he'd aver made to his friend.

Furthermore, I'm also concerned that Mr O still made the second transfer on the day after the first, even though the first transfer would clearly have highlighted that his friend's account wasn't in fact blocked, as, he says, he was told. And this was in circumstances, where Mr O says his friend wasn't trustworthy. In these circumstances, by the time of the second payment, at the very least, I think that Mr O ought to have been on notice that the payment may not have been legitimate, yet he chose to transfer these funds anyway. And all of this is the case in circumstances where Mr O hasn't been able to provide anything to corroborate his version of events either.

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

I now turn to the closure of Mr O's account. I think it's worth me explaining that the terms and conditions of Mr O'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 O'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 O's account. And I'm therefore not upholding Mr O's complaint on this basis either.

I appreciate this will be very disappointing for Mr O. But I hope Mr O will understand the reasons for my decision and that he'll at least feel his concerns have been listened to. Furthermore, Mr O 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 O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 August 2022.

Jeshen Narayanan
Ombudsman