

Complaint

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

Background

In October 2021, Mr W received payments into his Monzo account. Monzo subsequently received a fraud notification from a third-party bank saying that one of its customers had been scammed into making payments from their account to Mr W.

As result of this Monzo carried out an investigation. The result of which saw it write to Mr W and inform him that it would be closing his account with immediate effect. It then went on to register a fraud prevention marker against him.

After learning that Monzo had recorded a fraud prevention marker against him, Mr W complained to Monzo. Monzo looked at Mr W’s complaint and didn’t uphold it. As Mr W remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr W’s concerns. She didn’t think that Monzo had done enough to show that Mr W was complicit in fraud and so it unfairly recorded the fraud prevention marker against Mr W. Monzo didn’t respond 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 W is guilty of a fraud or 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 W’s account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr W was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr W 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 W's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr W's account and that he was complicit in this. It's important to note Monzo had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

There doesn't appear to be any dispute that the funds in question, which entered Mr W's account in October 2021, did so as a result of fraudulent activity. So the only matter which remains in dispute here is whether Mr W was complicit in allowing his account to receive the illegitimate payment.

Mr W has explained that he was led to believe that the payment was to help a friend who was unable to access the funds for an order as they were out of the country. And he was supposed to transfer these funds using crypto-currency so that his friend could fulfil her order. Mr W has supplied extensive evidence, which has since been sent to Monzo to support his version of events.

Monzo appears to be relying solely on the fact that the funds were obtained fraudulently in support of its decision to record a fraud marker. Rather bizarrely, it has chosen to do this even though its latest response appears to accept that Mr W wasn't complicit in the fraud. More importantly it is Monzo's responsibility to demonstrate that Mr W was knowingly involved in fraudulent activity. And I think that it has failed to do that here. Monzo needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, a reasonable suspicion that Mr W was complicit in fraudulent activity.

Simply pointing out that it received a report that fraudulent funds entered Mr W's account just isn't enough to meet what is a high bar. This is especially the case seeing as Mr W has provided a significant amount of evidence to show that he was also duped by the instigator of the fraud. Furthermore, there isn't any evidence indicating that Mr W made a financial gain either as the fraudulent funds in question were transferred elsewhere. And I would question why Mr W would knowingly participate in a fraud that he wouldn't benefit from.

Overall and having considered everything, I'm satisfied that Monzo didn't (and still doesn't) have sufficient evidence to demonstrate that Mr W was involved in fraudulent activity. As this is the case, I think that it was unfair for Monzo Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding Mr W's complaint.

Monzo needs to remove any and all fraud markers it has recorded against Mr W and also pay him £100 compensation for the distress and inconvenience its actions have caused.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. Monzo Bank Ltd should remove any fraud markers it has recorded against Mr W and pay him £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 September 2022.

Jeshen Narayanan
Ombudsman