

Complaint

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

Background

In November 2021, Mr H received a payment of £340 into his Monzo account. Monzo subsequently received a fraud notification from a third-party bank saying that one of its customers had been the victim of a purchase scam.

As result of this Monzo carried out an investigation. The result of which saw it write to Mr H 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 H complained to Monzo. Monzo looked at Mr H’s complaint and didn’t uphold it. As Mr H remained dissatisfied, he referred the matter to our service.

One of our adjudicators looked into Mr H’s concerns. She didn’t think that Monzo had done enough to show that Mr H was complicit in fraud and so it unfairly recorded the fraud prevention marker against Mr H. 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 H 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 H’s account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Mr H was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Mr H 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 H's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr H'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.

Having considered matters, there doesn't appear to be any dispute that, Monzo received a fraud notification from a third-party bank explaining that its customer had been scammed into sending payments to Mr H's account in November 2021. So I can understand why Monzo had concerns about the usage on Mr H's account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Monzo also has to produce sufficient evidence to show Mr H was complicit in fraud. And I don't think that it has done that here.

Mr H has explained that the payment into his account was for items he'd sold. He's provided an extensive amount of information demonstrating that he did sell items. And he's also provided messages exchanged with someone interested in buying the item he says he was selling. It also looks like Mr H was asked to send the items to a different name and address to where the funds were coming from. And, in my view, this is indicative of the fact that he may potentially have been the victim of a scam himself, as it's possible the payee of the funds wanted to keep the items and get their money back too.

I appreciate that Monzo says it received subsequent notifications of fraud regarding other transfers. But again these appear to relate to buyer seller disputes involving goods and Mr H has provided extensive evidence demonstrating that he was selling items, I don't think that this in itself necessarily meant that the November 2021 transfer was fraudulent, or that it was fair and reasonable to reverse the initial conclusion that Monzo reached and instead record a fraud marker.

Finally, I've considered Monzo's arguments that Mr H was making crypto-currency transfers from his account. But as I understand it these transfers were to an account in his name. And they were quite a few more transactions that didn't correspond to any notifications of fraud. So I'm not persuaded that Mr H's use of a crypto-currency platform means that he was engaged in fraudulent activity either.

Of course, I accept it is possible that Mr H was complicit in fraudulent activity. And as I've explained, that was enough for Monzo to be suspicious or concerned. But the important thing here is that is Monzo's responsibility to demonstrate that Mr H knowingly and dishonestly participated in fraudulent activity, rather than it being the case that Mr H and someone else were involved in a buyer seller dispute. Monzo needed to have relevant and rigorous evidence such that it could report the matter to the police. And, in my view, what it has provided just isn't enough to meet what is a high bar. This is especially the case seeing as Mr H has provided a reasonable and plausible alternative version of events here.

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

Monzo needs to remove any and all fraud markers it has recorded against Mr H and also pay him £150 compensation for the distress and inconvenience its actions have caused.

My final decision

For the reasons I've explained, I'm upholding Mr H's complaint. Monzo Bank Ltd should remove any fraud markers it has recorded against Mr H and pay him £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 December 2022.

Jeshen Narayanan
Ombudsman