

Complaint

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

Background

In January 2022, Mr H’s account received two credits of £75, a credit of £100, a credit of £85 and two further credits of £80. The funds were transferred on to other third-party accounts. Monzo subsequently received notifications from three different third-party banks which were responsible for sending most of the payments to Mr H’s account stating the senders of the funds had reported being victims of fraud. Monzo then received a similar notification from another of its customers.

Given these notifications, Monzo decided to review Mr H’s account. As a result of its investigation, Monzo decided to close Mr H’s account and also record a fraud prevention marker.

Mr H complained. 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 anything wrong or treated Mr H unfairly and so didn’t recommend the complaint be upheld. Mr H 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 H 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 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 his actions suggest he was complicit in this. And having considered everything, I find that Monzo has done this 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 H's account in January 2022, did so as a result of fraudulent activity. So the only matter which remains in dispute here is whether Mr H was complicit in allowing his account to receive these illegitimate payments.

When questioned about the activity on his account, Mr H told Monzo he didn't know anything about the activity on his account. He said the last transaction he made was a transfer to himself, which left this account with a zero balance. And the first he learned of this activity was when he contacted Monzo after receiving an email from Monzo telling him that his account was going to be closed. Mr H has suggested his account might have been hacked as a result of being compromised by phishing or a similar approach.

I've thought about what Mr H has said. But I haven't seen anything to suggest that Mr H's Monzo account was hacked. Mr H has speculated about the possibility of having falling victim to a phishing scam but he's not provided any detail at all on how this might have happened, or any explanation on when he might have been asked to provide his details as part of any such scam.

We've not been provided with any indication that any other accounts Mr H had were compromised in this way or subject to similar activity either. Furthermore, while I accept it's possible for this to have happened, it would nonetheless be somewhat of a coincidence for Mr H's account to have been used in this way, later on in the same day he transferred all of his remaining funds out and he says he stopped using this account.

I've also seen a record of the devices used to login to Mr H's account. And while it's fair to say more than one device was used, it's clear that Mr H's main device was used to login after the last transaction he says he made. Given this is the case, I can't reasonably say that Mr H couldn't have known what was going on his account. And while it's possible Mr H may not have physically moved the funds himself, the available evidence does suggest that the most likely explanation here is that Mr H allowed his account to be used in this way.

I'm afraid the lack of anything to corroborate Mr H's version of events means that I can't reasonably conclude he was an unwitting participant here. Instead, I think it's more likely than not that he was complicit in the fraudulent activity which took place on his account. So I don't think that Monzo acted unfairly towards Mr H and I'm not upholding this complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 February 2023.

Jeshen Narayanan
Ombudsman