

## The complaint

Mr G complains Monzo Bank Ltd registered a fraud marker at CIFAS, the national fraud database. He doesn't think it's treated him fairly.

## What happened

I issued my provisional decision on this complaint on 19 October 2022, inviting both parties to let me have any further evidence or comments by 2 November 2022, before I finalised things. I have set out a copy of my provisional decision below.

### *What happened*

*Mr G held an account with Monzo. On 20 February 2021, his account was credited with £500. Shortly afterwards £450 of that was transferred to a third party who I shall call M. On 24 February the account received a further £500. £610 was transferred to M again. On 26 February the payment made into Mr G's account on 20 February was identified as fraudulent - the bank from which the funds had come told Monzo their customer had been the victim of a scam. Monzo blocked the account and Mr G contacted Monzo about this.*

*Following a review, Monzo told Mr G that it would be closing his account. Mr G later discovered Monzo had also placed a 'misuse of facility' marker against him with CIFAS which was preventing him from opening an account. He contacted Monzo to complain, but it didn't think it had done anything wrong. It said, it had placed the marker in line with its internal policies and regulatory obligations. Unhappy, Mr G referred his complaint to us.*

*An adjudicator considered the complaint, she asked Mr G for some information. In summary Mr G said:*

- He did not know the person who transferred the funds to his account.*
- He couldn't remember anyone called M.*
- He had in the past shared his account number and sort code with family and friends.*
- But he had never shared his mobile app details on his Monzo account.*
- Only he had access to his phone and mobile banking app.*

*Having considered the complaint, the adjudicator was satisfied Monzo was entitled to record the marker because it had received a report of fraud from another bank. And looking at the available evidence, the adjudicator couldn't see how funds could have been paid and removed without Mr G's involvement. She also didn't think Monzo had made a mistake in closing the account.*

*Mr G didn't accept the adjudicator's conclusions and asked for an ombudsman to review his complaint. So, the case was passed to me. During the review, I asked the adjudicator to speak with Mr G again about the activity on his account that had led to the loading with CIFAS and the withdrawal of banking facilities.*

Mr G told us that he needed help financially and asked a friend to assist him. I shall refer to his friend as 'P'. But he said P didn't have money so P asked another friend to help him. So, he thought the money paid 'in' was from P's friend. Our adjudicator pointed out that the fraudulent payment was from a female rather than a male (as was another payment matching the same surname). She asked Mr G for the name of P's friend, but Mr G said he didn't know.

Our adjudicator then asked Mr G if he'd made payments to M from the money he'd received. He said he had transferred funds to M, because M was a friend who he owed money to. Our adjudicator asked Mr G if he could provide evidence to support what he was telling her. Mr G said he'd respond later that day or the next morning if he found anything. Mr G didn't respond.

### **What I've provisionally decided – and why**

*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 G 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 a bank must first be able to show that fraudulent funds have entered Mr G's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr G was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not 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.*

*Monzo received a report from the third-party bank that an incoming payment was from a fraud. And while Monzo don't appear to have asked Mr G for more information about what he knew, this isn't the end of the matter. As there are further considerations. In order to determine Mr G's complaint, I need to consider whether I think having regard for what we know now that there's enough evidence to show fraudulent funds entered the account and that Mr G's actions suggest he was complicit in this. And having considered everything, I find that Monzo is justified in recording the fraud 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 G's account did so because of fraudulent activity. I have seen the report from the sending bank about the payment made on 20 February. Mr G says he has no knowledge of this or the second payment on 24 February either. So, the only matter which remains in dispute here is whether Mr G was complicit in allowing his account to receive illegitimate payments.*

*Mr G says he doesn't know anything about the two payments into his account, including the one that was flagged as fraudulent by the third-party bank. But he says he had been expecting funds from a friend of a friend and assumed these related to that. I've thought about Mr G's testimony but I don't find it very plausible. I say this because, I've reviewed Mr G's mobile banking records that show the date and times his banking app was accessed. And I can see from these that his account was accessed not just on the days when both payments came in but in-between too. Monzo's evidence also shows that only one mobile device was registered to his banking app – which matched Mr G's. Mr G has said no one had access to his app or phone so based on this I think it's more likely that it was him viewing the account. Particularly, as the records show the use of a thumb print that had been used by Mr G before. Given the occasions and periods over which the account was accessed, I'm satisfied Mr G was aware of the incoming payments and as such, he also knew these came from two females and not a friend of his friend. However, there's no evidence of him querying this.*

*Following receipt of the fraudulent payment on 20 February, funds were paid out relatively quickly. Mr G says he did this because he needed to pay M back. But I don't find Mr G's version of events persuasive. I've listened to a call that took place in September between our adjudicator and him and when he's given M's name, he says he can't remember anyone with that name. I've thought about this within the context of what G has told us more recently and if what he suggests is true, I would have reasonably expected him to remember M (tell our adjudicator) and reference the fact that P's friend was also sending him some around this time, which he'd be using to pay M back. But none of these details are mentioned in the conversation. Also, of note is the fact that there's no other evidence to corroborate the arrangements Mr G has described involving him, P, P's friend, and M.*

*Considering everything, I think it's more likely Mr G had knowledge of the fraudulent funds that credited and later debited his account. While I've thought carefully about what he's said, the available evidence suggests it's more likely than not he was complicit in receiving fraudulent payments in his account.*

*Of course, Monzo should have asked further questions as per CIFAS's guidance to its members. But I'm satisfied from looking at the evidence that if in possession of this information, Monzo would have still recorded the marker and was therefore reasonably justified in loading it. It follows that my provisional conclusions are that I don't think it's treated Mr G unfairly and so there's no basis for asking it to remove the marker. I'm also satisfied Monzo closed Mr G's account in line with its terms and conditions given the account activity and level of awareness. So, I provisionally find it made no mistake here either.*

### ***My provisional decision***

*My provisional decision is that I don't intend to uphold this complaint.*

Monzo responded to say that it didn't have anything further to add. Mr G responded on 25 October. He said he'd been the innocent victim of a fraud and he'd provide screen shots of messages from P. These would show P's friend was genuinely loaning him £500 so that when the funds credited his account that's what he understood they were for. Mr G asked that we wait two days for him to provide evidence.

The deadline for my provisional decision expired on 2 November 2022. No further information or evidence was submitted.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note Mr G's comments, but he hasn't provided any of the supporting evidence that he's alluded to and the deadline for my provisional decision which extended beyond the two days he said he'd need has now passed. I also note that the adjudicator had also asked Mr G for supporting evidence before I issued my provisional decision. But none was forthcoming. Also, as I said in my provisional decision, I would have reasonably expected Mr G to reference the details he's told us about in his initial call with our adjudicator but he didn't. In the circumstances, I see no reason to depart from my provisional decision which I fully adopt as part of this final decision.

Based on what I've seen, I think it's more likely Mr G had knowledge of the fraudulent funds that credited and later debited his account. I explained in my provisional decision why the available evidence suggests it's more likely than not he was complicit in receiving fraudulent payments in his account.

I think if in possession of the information referenced in my review, Monzo would have still recorded the marker and was therefore reasonably justified in loading it. It follows that I don't think Monzo has treated Mr G unfairly and so there's no basis for asking it to remove the marker. I'm also satisfied Monzo closed Mr G's account in line with its terms and conditions given the account activity and level of his awareness. So, I find it made no mistake here either.

## **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 December 2022.

Sarita Taylor  
**Ombudsman**