

Complaint

Ms Z is unhappy that Monzo Bank Ltd (“Monzo”) closed her account and registered a fraud prevention marker against her.

Background

In July 2021, Ms Z’s account received payments of £500 and £100. Some of the funds were immediately transferred to a third party and a large part of the remainder was spent via debit card purchases. Monzo subsequently received a notification from the bank responsible for sending the payments to Ms Z’s account stating the payee of the funds had reported being a victim of fraud. Monzo reviewed Ms Z’s account and as a result of its investigation, it decided to close her account and record a fraud prevention marker.

After learning of the fraud prevention marker, Ms Z complained that this was applied unfairly. Monzo looked at Ms Z’s complaint and didn’t uphold it. As Ms Z remained dissatisfied she referred the matter to our service.

One of our adjudicators looked into Ms Z’s concerns. He didn’t think that Monzo had done anything wrong or treated Ms Z unfairly and so didn’t recommend the complaint be upheld. Ms Z 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 Ms Z 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 Ms Z’s account, whether they were retained or merely passed through. Secondly, Monzo also needs to have strong evidence to show that Ms Z was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Ms Z allowing someone else to use her 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 Ms Z's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Ms Z's account and that her actions suggest she was complicit in this.

Having considered matters, I do firstly want to start by saying that it's disappointing to see that Monzo failed to obtain Ms Z's version of events before recording the marker. I accept that it had received a fraud notification from a third-party bank. But, on its own, this is only really enough to trigger suspicion or concern. And I have to question how Monzo could possibly have assessed Ms Z's knowledge and intention before it recorded the fraud marker against her when it looks like it didn't speak to him before doing so.

That said, even though it would have been preferable for Monzo to have contacted Ms Z before recording the fraud marker. I don't think that doing so would have made too much of a difference here. I say this because I think there is enough here to justify the recording of the fraud marker.

Ms Z has disputed that the funds were fraudulent. She said that someone transferred the funds to her in error and she didn't realise at the time the funds weren't hers. Ms Z said that as she owed someone money she transferred £500 of what came in to a third party.

I've thought about what Ms Z has said. But I'm afraid that Ms Z's version of events simply isn't plausible. I say this because she had a low credit balance (of £7.23) on this account before the funds came in. So I can't see how she could reasonably have believed that the £600 were her funds.

I do accept that Ms Z has provided statements to show that she had sufficient funds to pay the person she owed in other accounts. But I don't see how this explains the sequence of activity which took place on this account – especially as it doesn't explain why Ms Z would decide to pay the person she says she owed, at precisely the time money she wasn't expecting randomly turned up in an account.

I've also seen the statement Ms Z has provided to show that she received a £15.50 credit from the same person who reported the fraud, a year before the payments in question. But I don't see how or why this would lead Ms Z to believe that the same person would legitimately have transferred her a further £600 well over a year later. And at best she ought to have checked that the funds were legitimate before going on to spend them in the way that she did. Furthermore, as Monzo received a notification of fraud from a third-party bank, I think that it was legitimately entitled to conclude the funds transferred were fraudulent.

So overall and having considered everything, I'm satisfied that Monzo did have sufficient evidence to show that fraudulent funds entered Ms Z's account. And it was also reasonably entitled to conclude that it was more likely than not that Ms Z was complicit in this. As this is the case, I don't think that it was unfair for Monzo to record a fraud prevention marker in the circumstances that it did.

I now turn to the closure of Ms Z's account. The terms and conditions of Ms Z'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 Ms Z'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 Ms Z's account in the way that it did. And I'm therefore not upholding Ms Z's complaint on this basis either.

I appreciate this will be very disappointing for Ms Z. But even taking into account the impact Ms Z says the marker is having on her, I can't ignore the fact that the available evidence appears to indicate that it's more likely than not she was complicit in fraudulent activity. So I hope that Ms Z will understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

Furthermore, Ms Z might find that she's able to open an account with another bank as long as she 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 Ms Z's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Z to accept or reject my decision before 10 March 2023.

Jeshen Narayanan
Ombudsman