

The complaint

Mr A complains that Monzo Bank Ltd registered a marker at CIFAS, the national fraud database, when it closed his account.

What happened

Mr A says he has no knowledge of any fraudulent use of his account in January 2021. And that he found out about the marker when he wanted to apply for a financial product. He says that a marker that had been added by a different business for similar reasons had been removed.

Monzo Bank said it hadn't made a mistake. It had received a report that money paid into Mr A's account had been obtained fraudulently and had been paid out quickly. So, it said it had a basis to add the marker.

Our adjudicator didn't recommend that the complaint be upheld. She explained that there was a high bar to add the marker. She'd discussed what happened with Mr A and he said he thought that software may have been added to his phone to allow remote access. He no longer had this phone and all the data had been wiped. There were several IP addresses associated with use of the account for locations he says that weren't close to him. And he said he'd only owned an Android device and not an iPhone device that had been linked to the account too. He'd not lost his Monzo card, and this remained in an envelope unused. He'd opened the account to transfer funds to his family and he'd instead thought about trading in cryptocurrency which he'd never done. And that because he'd been on relevant platforms and social media his phone may have been compromised. Mr A said he had the app but didn't receive any notifications.

Our adjudicator said that if such a remote access had been placed on his phone he'd have likely reported this and kept it as evidence. He'd not reported that Apple Pay had been activated with the card on a different device and as the card details were kept safe she couldn't see how these had been compromised. All devices and access to the account had been verified. And although Mr A said he'd not had an online chat on the app with Monzo Bank on 27 January 2021 again that would have required identification for verification. So, she thought it more likely than not that he was complicit in what happened. Under the terms and conditions of the account Monzo Bank had grounds to close it based on what had happened.

Mr A didn't agree. He said that he was immensely concerned about this allegation against him. He denied any involvement and said he had no knowledge or participation in what happened. He maintained that there was clear evidence of the involvement of hackers and another financial business had accepted what he said and removed a marker.

Mr A said that there were several IP addresses used not connected with his service provider.

And that other devices had accessed the account. He again said he had never owned an iPhone. The name noted for transactions on the account wasn't related to him. And Apple Pay had been activated on someone else's iPhone. He denied having the chat with Monzo Bank. It had never contacted him, and he didn't think it had shown there'd been deliberate dishonesty. He'd been discussing what he thought were plausible explanations with the adjudicator. He said any inconsistencies in what he said had been down to the way that discussion had been handled and he'd not been told that this would be used as part of the assessment. Mr A said he'd never lost his card and how it was or wasn't compromised was only presumption. There were numerous reported instances of hackers compromising mobiles generally. He stressed the impact of the marker on him and his family and that this was disproportionate.

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 won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I'm only looking here at what Monzo Bank did here and not any other financial business. In any event I don't have further information about the other CIFAS marker being removed if Mr A wanted to rely on that.

I've listened to a recording of the call he had with our adjudicator. I appreciate Mr A is unhappy about this, but I can't see that she otherwise then explained that the purpose of the call was to get information and to give Mr A an opportunity to explain and provide his understanding of what happened. She said she didn't want anything more at that time. And I've also considered his comments following that and her view and he's had the opportunity to respond with any evidence or comments he wanted and had asked for extra time to do so before the decision came to me.

I need to consider whether the report to CIFAS was made fairly. On this point, Monzo Bank needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer 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 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 deliberate complicity.

To meet the standard of proof required to register a CIFAS 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.

I know from what Mr A says he's seen records regarding the devices and IP addresses relating to access to the account. I think the following points are relevant to an assessment of what happened:

- Monzo Bank says that the account was opened on 17 January 2021. Mr A accepts he opened the account with his details and his device.
- He said that he had opened it to send money to family, but this didn't work out. He said he was trying to get into crypto currency and "to link my Monzo account to a crypto exchange" and had been interested in 'whitelisting' which it seems is expressing an interest in purchase before a coin comes on the market. He says he was 'activated' with [a named business] and "a couple of others."
- Mr A received a card for the account that he kept in the envelope and never used.
- The records show that of the devices registered there was only one Android device and that had been involved with the account since 17 January 2021. That device is recorded as having access to the app during the period and including on 27 January 2021.
- Another device was recorded as being associated with the account from the date it was opened and a third from 19 January 2021.
- Some payments out of the account appeared to be related to cryptocurrency and included to [the business Mr A said he had activated].
- Mr A has no direct evidence to support his phone was taken over and on his account other devices were needed to be registered to carry out this fraud. He said when talking to our adjudicator that it was his "honest belief" that this had happened.
- All device use and the attempted registration for Apple Pay required verification with his information.
- A fraudster involved risked detection especially with a newly opened account that was likely to be used by the genuine accountholder. And the money that was reported as fraudulently obtained credited the account on 26 January 2021. Mr A says he doesn't recognise this or any other payments.
- Mr A says he didn't have the online chat with Monzo Bank on 27 January 2021. That was about why the account had been closed and asking if it could be reinstated. He didn't appear to pursue why the account had been closed or attempt to use it again and was in contact with Monzo Bank in March 2022 for a data subject access request.
- Monzo Bank thought it did as a result have some contact with Mr A when the account had been closed although he wasn't asked about activity on the account. He's had the opportunity to provide that now.

I think that there are two broad possibilities here. Either as Mr A says a third party was able to somehow access his data just it seems at the time he'd decided to open a new account and was actively interested in cryptocurrency. And that he had no reason to use that account or access it until he found out about the marker. The other is that he was involved with what happened although this may have been through allowing someone to use his details and possibly relating to his interest in cryptocurrency trading. In the latter case he may not have known exactly what had been involved but as I set out above would still be responsible for what happened on the account. And that's especially as his explanation isn't that he had been somehow tricked into allowing what happened or providing his details. The fact that there were different devices and IP addresses involved isn't inconsistent with either explanation.

While I note what Mr A says and his testimony he doesn't have anything to support his phone actually being hacked even if that were technically possible. And for his security information and card details which he says he kept safe and didn't disclose to be compromised and so connected with Apple Pay. I think the close link in time to him genuinely opening an account and what happened on the account indicates he was most likely involved. And that his device was accessing the account through the period wouldn't seem to have been necessary for an unknown third party who had been able to compromise his details and register another device. Taking all that into account and the nature of the online chat on 27 January 2021 I can see why Monzo Bank believed that this

was with the genuine Mr A. And if so would help explain why he didn't seem to want to use the account again after it had been closed and hadn't asked why after that.

Having balanced all the information I think it's most likely that he was complicit in what happened, and which could have involved him allowing someone else to use the account.

Monzo Bank says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Monzo Bank needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events and the evidence he has provided, I'm satisfied that Monzo Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr A received fraudulent funds into his account and didn't report this to Monzo Bank at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Monzo Bank had grounds to believe that Mr A was involved in the use of fraudulently obtained funds based on the evidence it had.

In light of these findings, I think it had grounds to close the account under the terms and conditions. I appreciate Mr A will be disappointed given what he's said about the impact of the marker on him. But I'm afraid I don't have a basis to require Monzo Bank to do anything further. If Mr A doesn't accept my decision he remains free to pursue this in court subject to any relevant time limits.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 March 2023.

Michael Crewe
Ombudsman