

The complaint

Mr J complains that Monzo Bank Ltd added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Monzo Bank has shown that it received a report that funds paid into Mr J's account in June 2021 had been fraudulently obtained. These had been withdrawn from the account. So, it added the marker and closed Mr J's account.

Our adjudicator didn't recommend that the complaint be upheld. He had discussed the payment with Mr J. He'd first told him that as the specific day was his birthday this money was from family. But the adjudicator said that this didn't tie up with the name of the sender and the reference on the payment for 'Apple TV'. Mr J had provided screenshots of two online chats relating to the sale of TV related items. But one was dated 10 June 2021, indicated that someone was then coming to collect an item and was a number of days before this payment. And the other was several days after and was an enquiry only. So, our adjudicator thought that Monzo Bank had met the standard for adding a marker and had grounds to close the account.

Mr J didn't agree. He said that he didn't know that this money was fraudulent. And he didn't have any more proof but is an honest person and has shown someone came to his house to collect an item. Mr J said it's unfair that he's been unsuccessful in opening a bank account elsewhere and can only have a pre-paid account.

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 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've noted that Monzo Bank has a record of an online chat with Mr J on 24 June 2021 and told him his account had been frozen. I don't see it gave him the opportunity to explain this payment. But our adjudicator has asked him about this now and told him the name of the sender and the reference number. Mr J has some information about trying to sell what seems to be more than one item at around this time and to still have an item available after the receipt of this payment. But he can't evidence receiving the specific funds of £50 in question here legitimately.

I can see from the information provided that after receipt the money was moved to a savings 'pot' at Monzo Bank and then later moved back the same day when it was withdrawn. There's no information that anyone other than Mr J had access to the account to do this. So, I think he was reasonably aware of this money and the nature of the payment. And I find he was most likely complicit in what happened.

Monzo Bank says that it applied the CIFAS marker because Mr J 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 it 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 J'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 J 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 J had used fraudulently obtained funds based on the evidence it had.

Given my findings about the marker I consider that Monzo Bank closed the account under the terms and conditions. I appreciate what Mr J says about the impact of the marker and his need for an account, but I don't have a reasonable basis to require Monzo Bank to do anything more.

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 J to accept or

reject my decision before 17 February 2023.

Michael Crewe
Ombudsman