

The complaint

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

What happened

Mr M says he opened an account in July 2021 to trade in cryptocurrency. And that he was tricked by friends to allow payments into his account. He didn't know that this was fraudulent. The marker has affected his ability to access financial products.

Monzo Bank said it hadn't made a mistake. It had received reports that money paid into Mr M's account had been obtained fraudulently. It had grounds to add the marker.

Our investigator recommended that the complaint be upheld, the marker removed and Mr M paid £200 in compensation. She explained that there is a high bar for adding a marker. And Monzo Bank didn't contact Mr M before adding it and it hasn't met the standard of proof required. She said that she found Mr M's explanation to be plausible having spoken to him. He said he'd been told that the money was from the sale of cryptocurrency and that he could keep some of the funds as a 'thank you'. And could learn how to trade to make money.

Mr M said that he accepted the recommendation. Monzo Bank said that having reviewed the position it would change the marker from one stating that Mr M had retained a '*wrongful credit*' to '*Third party fraud facilitator- funds received- conduct unexplained.*' It said that this was an appropriate loading for a 'money mule' who transferred the funds themselves. And it said that as a result the compensation wouldn't be appropriate. Our investigator told Monzo Bank that she still didn't think it had met the standard of proof for adding a marker and so she'd refer the case for a final decision.

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 taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr M was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I note that on 15 July 2021 having been told about the decision to close his account Mr M stated in an online chat with Monzo Bank that "*I trade that's why I can also provide evidence of my transactions*". But Monzo Bank said it couldn't give any more information or do more.

Our investigator has now spoken with Mr M and finds his account of what happened to be plausible. I don't have reason to go behind that and I note he has evidenced his other trading in cryptocurrency. He may have been able to provide more information to Monzo Bank at the time as he'd offered to, and I think he's been consistent in what he's said. So, I'm not persuaded on the information that he was a witting participant in what happened and that his intention was to facilitate fraud. I also don't think that Monzo Bank's offer now to change the marker is a sufficient response given this finding. I don't consider it has met the standard of proof required.

I agree that the recommendation of our investigator is fair and note that it was a matter for Monzo Bank to decide to close the account in line with its terms and conditions.

My final decision

My decision is that I uphold this complaint and I require Monzo Bank Ltd to:

- 1) Remove the CIFAS marker.
- 2) Pay Mr M £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 February 2023.

Michael Crewe
Ombudsman