

The complaint

Mr A complains that Monzo Bank Ltd unfairly placed a fraud marker against his name and closed his bank account.

What happened

Mr A had an account with Monzo.

In May 2021, Mr A says that a friend from school, who I will refer to as B, asked if he could use Mr A's account to receive money. Mr A says that B constantly pestered him over a number of months and after initially refusing, he eventually agreed and allowed B to use his account. Mr A says that as part of the arrangement B asked him to log into his Monzo bank account using B's mobile phone.

After B had gained access to Mr A's account, a series of payments were made into the account and were then transferred out to other bank accounts. Following this, Monzo were contacted by other banks who reported that their customers had been the victims of scams and that the payments had been made fraudulently.

Monzo blocked all of Mr A's accounts and decided it needed to look into how Mr A was operating his account. Following its review, it placed a fraud marker against Mr A's name with CIFAS, the Credit Industry Fraud Avoidance System. And it decided to close Mr A's account immediately.

After learning that Monzo had recorded a marker against him, Mr A complained to Monzo and asked them to remove the marker as it was preventing him from opening a bank account. Monzo looked into Mr A's complaint but said it wouldn't remove the marker. So, Mr A brought his complaint to our service.

One of our adjudicator's looked into Mr A's complaint. She didn't think Monzo had done enough to show that Mr A was complicit in fraud and said it had unfairly recorded the fraud marker against Mr A. Monzo disagreed. It said it had enough evidence that Mr A was involved in fraudulent activities – even if it was as a third party. Monzo said it had also amended the marker to record that Mr A had acted as a third party fraud facilitator by surrendering/selling his account details.

As no agreement could be reached the complaint has come to me to decide.

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.

The marker that Monzo recorded against Mr A is intended to record that there's been a 'misuse of facility' – in this case using an account to receive fraudulent funds. In order to file such a marker, Monzo isn't required to prove beyond reasonable doubt that Mr A is guilty of

a financial crime, but they must show there are grounds for more than mere suspicion of concern. CIFAS guidelines say:

- 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 the bank must first be able to show that fraudulent funds have entered Mr A's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr A was *deliberately dishonest* in receiving the fraudulent payment and knew it was or might be an illegitimate payment. This can include Mr A allowing someone else to use his account in order to receive an illegitimate payment. A marker should not be registered against someone who was unwitting, there should be enough evidence to show deliberate complicity.

I've considered the guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as what's commonly referred to as 'a money mule.' And the relevant factors in deciding whether Mr A 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 some of the funds and whether he has provided generic or inconsistent explanations.

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 Mr A's complaint, I need to decide whether I think Monzo had enough evidence to show fraudulent funds entered Mr A's account and that he was complicit in this. It's important to note that Monzo had to have enough evidence to meet *both* parts of this test for it to have acted fairly and reasonably.

From looking at the evidence it's not in dispute that the payments which were paid into Mr A's account in May 2021 were fraudulent. Monzo received several fraud notifications from different banks explaining that their customers had been scammed into making the payments. However, this isn't enough to register a fraud marker against Mr A. Monzo also has to produce sufficient evidence to show that Mr A was complicit in fraud. And I don't think it has done that here.

Monzo doesn't appear to have carried out any sort of investigation into Mr A's actions once it had received the notifications from the other banks. It simply blocked Mr A's account and then sent him a letter telling him that it was closing his account. So, Monzo didn't give Mr A an opportunity to provide his explanation for what had happened. This makes me question how Monzo could have assessed Mr A's knowledge and intention as complicit – which it was required to do before it recorded the fraud marker against him. This is in itself unfair.

Mr A has explained that he allowed B to use his account after he had been pestered for a number of months by B. He's consistently said that he had no idea his account was being used for fraudulent purposes, and in hindsight accepts he was very naïve, especially when he allowed B to log into his account using his own mobile device. Mr A's story has been consistent and credible. And it's backed up the technical records provided by Monzo, which show that a different mobile device was used to log into Mr A's account in May 2021. It was this device that was used to move the fraudulent funds to other accounts, which tends to support Mr A's explanation that it was B making the transactions.

Having looked at the fraud reports Monzo received from the other banks, I haven't seen any evidence that Mr A was involved in the scams. And I've not seen any evidence that Monzo thought this. I've also not seen any evidence that Mr A benefitted from any of the fraudulent funds that were paid into his account. From looking at Mr A's bank statement it appears all the money was either forwarded on to other accounts unrelated to Mr A or returned to the victims of the scams. This all tends to support the possibility that Mr A was taken advantage of or was coerced as he's said, as opposed to him being a witting participant in fraud, including that Mr A knew he was helping pass on the proceeds of fraud. I'd question why Mr A would knowingly participate in fraud if he didn't stand to benefit from it. So, whilst I can understand Monzo's concerns, I'm not satisfied that Mr A was deliberately complicit in receiving fraudulent funds. And I don't believe placing a marker against Mr A was proportionate based on what happened. Nor am I convinced Monzo have met the industry best practice guidelines when placing this marker.

Monzo has said it has recently amended the marker it has recorded against Mr A with CIFAS to show that Mr A was a third party fraud facilitator – that he surrendered his account details and was used as a money mule. It says because of the number of individual fraud reports that it received for the same type of scam, it is fair to assume that Mr A's account and Mr A is involved in fraudulent activities, even if it's third party involvement.

I've thought about what Monzo has said. It's not I dispute that Mr A was used as a money mule. But the mere fact that fraudulent funds passed through Mr A's account doesn't on its own mean it's fair or reasonable to record fraud maker against his name. Most importantly, it is Monzo's responsibility to demonstrate that Mr A was knowingly part of the fraud. And I think it has failed to do that in this particular case. Monzo needs to have relevant and rigorous evidence such that it could report the matter to police. In other words, a reasonable suspicion that Mr A knew fraud would take place when he provided his account details to B. Simply pointing out that fraudulent activity took place – especially when this isn't in dispute, isn't enough to meet the standards required by CIFAS. Especially seeing as the facts of the and circumstances of this case appear to support Mr A's version of events being plausible.

In summary, when I weigh everything up, I don't consider Monzo had sufficient evidence to meet the test for recording a fraud marker against Mr A. So, Monzo needs to remove any fraud markers it has recorded.

Finally, I've looked at Monzo's decision to close Mr A's account. Banks are entitled to end their business relationship with a customer, as long as it's done fairly and is in line with the terms and conditions of the account. The terms and conditions of Mr A's account say that Monzo can close an account in certain circumstances immediately. Given the concerns Monzo had about how Mr A was operating his account, I don't think that's unreasonable. So, it was entitled to close the account as it's already done and end its relationship with Mr A.

My final decision

For the reasons I've explained, to put things right Monzo Bank Ltd should remove any fraud markers it has recorded against Mr A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 May 2023.

Sharon Kerrison

Ombudsman