

The complaint

Mr T complains Monzo Bank Ltd (“Monzo”) restricted and then closed his account without warning. He also complains that two transactions he’d received for selling goods were returned to the remitting account and that a fraud marker has been registered against him unfairly.

To put things right Mr T wants Monzo to return the money it sent to the remitter along with 10% interest, remove the fraud marker and compensate him for the substantive distress and inconvenience he’s suffered.

What happened

Mr T says he sold two gaming consoles to someone after advertising them on a social media site on 7 October 2021. He adds that he sold two more consoles a few days later to the same individual. Both payments to Mr T for the goods were made using bank transfer.

A few days later Monzo blocked Mr T’s account, and he was asked to provide information to show his entitlement to the two payments he’d received of £1,200 respectively. Around a week later, Monzo informed Mr T that it had decided to close his account immediately and the two payments would be returned to source – that is, the remitting accounts.

Mr T later found out that Monzo had also registered a CIFAS (Credit Industry Fraud Avoidance System) ‘misuse of facility’ marker against him. Mr T says that this has caused him substantive distress and inconvenience, especially as he was told by another bank, which he has a commercial account with, that it would withdraw the service from him. Mr T says the prospect of losing his livelihood through this business account caused him severe anxiety.

Mr T complained to Monzo, who did not uphold his complaint. In short Monzo said:

- The closure of Mr T’s account was done correctly and Monzo followed its internal procedures and acted in line with our regulatory obligations when doing so
- The CIFAs marker was applied correctly
- Monzo will credit Mr T’s account with £25 as an apology for not addressing all his complaint points in its first response to him

Unhappy with Monzo’s answer, Mr T referred his complaint to this service. One of our Investigator’s looked into Mr T’s complaint, and they did not uphold it. Later, Mr T made further responses, and his complaint was re-opened and allocated to another of our Investigator’s.

Mr T had also corresponded with Monzo directly explaining the impact of the CIFAS marker. At that point Monzo decided it would remove the CIFAS marker and pay Mr T £175 compensation. Mr T was happy the marker was going to be removed but believed he should be paid more compensation for the distress and inconvenience he suffered.

So, our Investigator looked into Mr T's complaint again taking into account his new arguments. In summary they recommended Mr T's complaint should be upheld. Some of the key findings they made were:

- Monzo acted in line with its obligations when restricting and reviewing Mr T's account
- Monzo should not have closed Mr T's account immediately, but it should have given him the two months' notice as per its terms and conditions
- Monzo has important obligations to verify funds in its customer's accounts, and its reasons for doing this with Mr T were fair. But considering the information Mr T gave Monzo, it should have continued its review. But Monzo didn't do this, instead it decided to return the funds to source. Given the information Mr T has given this service - something Monzo should have explored more in its review - he has provided sufficient evidence to show entitlement to the funds
- To put things right, Monzo should pay Mr T £2,400 plus 8% simple interest from 25 October 2021 till settlement. And it should pay Mr T £300 for compensation for the inconvenience it's caused

Mr T accepted our Investigator's recommendations. Monzo did not agree. Though I won't set out exactly everything Monzo have said, I'd like to assure it that I've carefully read everything it's sent. Some of the key points are:

- Mr T's proof of entitlement to the funds isn't enough. That's because the references for the payments he received did not match with the goods he was selling, and the purchaser paid more than agreed
- The additional information Mr T provided to this service did not change its mind
- It had done nothing wrong in closing the account immediately and it had concern enough to take the actions it did
- Mr T's account activity doesn't match with it being used for buying gifts for friends and family as well as for receiving money from personal items he sold on social media platforms. Monzo had concerns the account was being used for business purposes

As Monzo didn't agree, Mr T's complaint has now been passed 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.

Having done so, I've decided to uphold Mr T's complaint. I'll explain why.

I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right

outcome. I do stress however that I've considered everything Mr T and Monzo have said before reaching my decision.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from banks as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information Monzo has provided is information I consider should be kept confidential.

Account review and restrictions

Banks in the UK, like Monzo, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

Having looked at Monzo's reasons for reviewing and restricting Mr T's account, I'm satisfied it's acted in line with its obligations when doing so.

Return to source and Account closure

After asking Mr T for information relating to the two payments mentioned above, and some other transactions, Monzo decided to send the two £1,200 payments back to the remitting accounts. Monzo argue that it had enough information and concern to have done this and so hasn't acted improperly.

I've carefully reviewed all the information I have in relation to the two transactions and having done so I'm persuaded that Mr T was most likely entitled to these funds. Mr T has given me screenshots of messages and online receipts which show he purchased the goods and had agreed to sell them to the same party. He's also shown that he was selling these goods through a social media platform.

I also think the evidence backs up his explanation as to why the purchaser overpaid slightly. Mr T's messages show that he gave them an extra controller for this. So given I think the funds were legitimate payments for the goods he sold, I'm persuaded he was entitled to the funds.

Mr T had no control as to who the payments were made from nor what reference they used. I also think Monzo's review of these payments fell short of what I'd expect it to have done. Had Monzo carried out a proper review I think – on balance – it would have received enough information to satisfy itself that Mr T had acted legitimately, and he had received those funds in good faith.

In turn, Monzo would not have returned the funds to source. So, I think Mr T has been deprived of funds he was entitled to.

I do however think Mr T's statement that he was selling personal items on social media using his Monzo account has been unhelpful. I say that because it appears he was buying goods and then selling them at profit as an enterprise. The volume of consoles he purchased, and given he was buying other goods, some which he agreed to source for the customers of the two £1,200 payments, shows he wasn't merely selling personal items. So because of this, I can understand why Monzo found his explanation overall less plausible.

Monzo's terms of account do allow it to close a personal account if it is being used for business purposes. But I would expect it to have given Mr T a warning before doing so.

That brings me onto the account closure itself. Monzo is entitled to close an account just as Mr T may close it. But before Monzo closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account, which Monzo and Mr T had to comply with, say that it could close the account by giving them at least two months' notice. And in certain circumstances it can close an account immediately or with less notice.

I've looked carefully at Monzo's terms and having done so I think that had it carried out proper due diligence around Mr T's entitlement to the funds, its more likely it would have given him two months' notice of closure.

So that means I think it had reason enough to close the account, but not in the way it did. But I think this had little impact on Mr T given this wasn't his main account nor did he have to sort out regular payments from it. So I won't be compensating him for any distress and inconvenience caused by the closure.

CIFAS marker

I note Monzo has said it removed the marker, but given I need to consider any distress and inconvenience caused to Mr T by its application, I will need to draw finding on whether it was applied fairly or not.

That's because if it was applied fairly, Monzo would most likely not have to pay Mr T any compensation. Nor has Monzo accepted it applied this incorrectly - but removed it because of the impact it had on Mr T.

The marker Monzo had filed with CIFAS was intended to record there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, Monzo's not required to prove beyond reasonable doubt Mr T is guilty of a fraud or financial crime, but they must show there are grounds for more than mere suspicion or concern.

CIFAS 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 a bank must first be able to show fraudulent funds have entered Mr T's account, whether they are retained or pass through the account. Having looked at the information Monzo have given me; I'm satisfied fraudulent funds entered Mr T's account.

Secondly, Monzo will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether Monzo had enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

For the reasons which I've already explained, I'm persuaded Mr T wasn't deliberately dishonest in receiving the funds and that he didn't know they were illegitimate. Nor, from the evidence I've seen, do I think he was complicit in any way. That means I think it's most likely he was unwitting. Because of this I don't think Monzo had enough information to meet the standard of proof required to load such a marker in the first place – though I accept it's now been removed albeit without any liability being taken by Monzo.

Mr T says that when he found out about the marker it caused him severe distress, especially as he faced the prospect of being expelled from his business account that he held with other partners. So given Monzo were wrong to apply this, I'm satisfied it needs to compensate Mr T for any distress or inconvenience he suffered whilst it was in place.

I note Mr T didn't lose his business account, so I don't need to think about any financial loss here. Also, in making an award, I've thought about whether Mr T saying he was selling personal items is a mitigating factor. And I think it is. I say that because had he been more candid about his use of the account, it's possible Monzo would have had less cause for concern.

So after carefully weighing this up, I'm satisfied £300 is fair compensation for the distress and inconvenience Mr T has suffered for Monzo incorrectly applying a CIFAS marker and for returning his funds to source.

Putting things right

To put things right, Monzo Bank Ltd must:

- Pay Mr T £2,400. And it should pay Mr T 8% simple interest on this amount from 25 October 2021 until settlement*
- Remove the CIFAS marker (if it hasn't done so already)
- Pay Mr T £300 compensation for the distress and inconvenience he's suffered

* If Monzo considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons above, I uphold this complaint. Monzo Bank Ltd must now put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 29 September 2023.

Ketan Nagla
Ombudsman