

The complaint

Mr R complains that Monzo Bank Ltd unfairly registered a marker about him at Cifas, the national fraud database.

What happened

Mr R had an account with Monzo, which he opened in 2018.

In March 2022, a payment of £110 was made into Mr R's account, from an individual I will refer to as Mr A. Mr R transferred the funds into another account with a different bank in his name. And then spent the money.

On 22 March 2022, Monzo were notified by another bank that the payment from Mr A was fraudulent and that their customer had been the victim of a fraud. Mr A told his bank that he'd been scammed by Mr R who said he was selling football tickets. Mr A paid Mr R for the tickets but said he had never received them.

Following this Monzo decided to place a fraud marker against Mr R's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds.

Mr R discovered the marker, when he had several of his bank accounts closed and he contacted Cifas. Mr R complained to Monzo. He explained that he hadn't done anything wrong and had sold Mr A tickets – he provided a screenshot and email to support his explanation. He said he'd not used his Monzo account since opening it but intended to start using it to save for a house which is why the money for the tickets didn't go into any other account. Mr R also said he'd agreed to refund Mr A on the understanding he didn't use the tickets. And that he'd refunded Mr A £110 from his other bank account in attempt to iron things out and regain access to his Monzo account.

Mr R complained to Monzo. He said Monzo should have asked him about his entitlement to the payment. He explained that as a result of the marker he'd had to put off going on his honeymoon and wasn't able to purchase a house because the marker had led to the closure of other bank accounts he had. In response, Monzo said it wasn't willing to remove the marker.

Unhappy with this response Mr R brought his complaint to our service. He wants Monzo to remove the marker and pay him compensation for the trouble, upset and financial losses caused by the marker.

An investigator looked into Mr R's complaint and asked Monzo and Mr R for some more information about what had happened. Monzo didn't provide any information, so the investigator didn't think it had treated Mr R fairly in loading the marker. And he asked the bank to remove it. In response, to the investigator's view, Monzo provided more information. After reviewing everything the investigator said that Monzo hadn't done anything wrong when it had recorded the marker against Mr R's name.

Monzo agreed with what the investigator said. Mr R didn't. He wants the marker removed and provided additional evidence that he says demonstrates he did nothing wrong. He provided bank statements from his other bank account, which he says show he refunded Mr A his money. He also said that he was able to resell the tickets he'd initially sold Mr A, because Mr A hadn't used them.

As no agreement could be reached the matter 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.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. It's then for me to decide whether it's fair to rely on evidence that only one party has seen. It's not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it. Here, the information is sensitive and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether Monzo has treated Mr R fairly. So, I'm persuaded I should take it into account when deciding the outcome of the complaint.

The marker that Monzo filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr R is guilty of a fraud of financial crime, but they must show that 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*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr R'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. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate* complicity. There's also a requirement that Monzo should be giving the account holder an opportunity to explain what was going on.

It's not in dispute that Monzo didn't provide Mr R an opportunity to provide information about his entitlement to the money he'd received from Mr A, before it recorded the marker. However, Mr R was able to provide information to Monzo at the time he raised his complaint.

Mr R provided screenshots of an email confirming he'd sent the tickets to Mr A, and copies of his bank statements from his other bank account which he says showed he'd refunded Mr A. He didn't provide any communications between him and Mr A that led to the ticket sale or any evidence that he'd advertised the tickets. Based on Mr R's response, I think if Monzo, had asked Mr R about the payment at the time, it's likely that he would have provided the same information prior to the marker being recorded.

So, I need to consider whether based on all the information including the evidence Mr R has submitted whether Monzo had sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I'm satisfied they did, and I say this because:

- I've seen the evidence provided by Monzo. This confirms that Monzo received a fraud report from a bank whose customer, Mr A, felt they'd been defrauded in not receiving the tickets he'd agreed to buy from Mr R.
- The evidence Mr R has supplied simply shows that the payment was sent to him by Mr A – which isn't in dispute. I've considered this evidence, but I'm not persuaded that this shows Mr R was entitled to the money.
- Monzo has provided evidence to show that Mr R immediately moved the money paid into his account within minutes of the funds crediting his account to another account in his name. If this was a legitimate payment, I don't understand the urgency of Mr R's actions. Especially given what Mr A has said about how he intended to use his Monzo account – to save for a house.
- Mr R hasn't provided any evidence about his arrangement with Mr A which would support his explanation – for example the advert he placed on social media advertising the tickets for sale and the communications he says he had with Mr A about the sale. I appreciate Mr R says his relationship with Mr A was conducted over social media and because Mr A blocked him from contacting him that these messages are no longer available. But I find the fact there is no evidence at all just isn't credible.
- Mr R hasn't provided any evidence that the tickets were resold as he suggested – which makes me question whether they existed in the first place.
- I'm also aware of other complaints Mr R has with this service which involve instances of Mr R's bank accounts being closed – including the bank account Mr R says he used to refund Mr A. I've looked at the bank statements and note they are different to the statements submitted by Mr R in relation to his complaint against Monzo. I can't think of a legitimate explanation for this. This leads me to doubt the credibility of Mr R's version of events and suggests to me that Mr R was potentially involved in fraudulent behaviour.
- I note too that Mr R says he refunded Mr A on 21 March 2022 however, this was prior to Monzo receiving the fraud report. So, it's not clear why Mr R would have done this when at the time there didn't appear to be a problem.
- The investigator made some further enquiries which suggested the account Mr R says he refunded isn't Mr A's account so, I'm not satisfied Mr R sent a refund to Mr A as he claims.
- I've reviewed Monzo's rationale for recording the marker and the information it considered. Mr R disagrees that he has done anything wrong. And that could well be the case, but I'm not going to direct Monzo to remove the marker. Based on what I've seen, I'm satisfied it met the standards Cifas requires of its members to record the marker.
- I've considered what Mr R says about the impact the marker has had on him. But in my view, based on all the evidence, I think it's most likely he allowed his Monzo account to be used for receiving fraudulent funds. So, I'm not convinced Mr R is an innocent party. I think the evidence shows that Mr R was involved in a misuse of facility.

I understand Mr R would naturally want to know the information I have weighted in order to reach this finding. But as I've set out already, I am treating this information in confidence, which is a power afforded to me under the Dispute Resolution Rules (DISP), which form part of the Financial Conduct Authority's regulatory handbook.

In summary, the requirements around banks lodging markers at Cifas include there being sufficient evidence that the customer was aware and involved in what was going on. When I weigh everything up, I think this most likely exists here from reviewing all of the evidence.

Having looked at all the evidence I'm satisfied this shows there were reasonable grounds to suspect that fraud had been committed. And from all the evidence I've seen that Mr R was likely complicit in this. So, even though Monzo didn't contact Mr R (as it should have) I don't believe the evidence Mr R's given is sufficient to show he wasn't complicit in the fraud or was entitled to the money he received from Mr A. So, I don't believe it would be right to ask Monzo to remove the marker.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 August 2024.

Sharon Kerrison
Ombudsman