

The complaint

Miss B complains that Monzo Bank Ltd closed her account and registered a Cifas marker against her without due cause.

What happened

Miss B opened an account with Monzo Bank Ltd on 13 August 2021. The account remained unused until 5 September 2022 when several payments were made into and back out of the account. On 8 September 2022 Miss B received a £800 payment into her bank account with Monzo. Within minutes there was an attempt to transfer these funds out of the account to an online cryptocurrency account. But this payment was blocked.

The same day, Monzo received a report from the sending bank which indicated that the sender, 'A', had been the victim of payment fraud. Specifically, that they didn't recognise the payment.

Monzo restricted Miss B's account and later closed it on 13 October 2022. It also loaded a negative fraud marker against her on the National Fraud Database.

In December 2023 Miss B realised a Cifas marker had been registered against her name and raised a complaint, asking Monzo to remove it. She said that she'd not used her Monzo account as she had another account with a different bank.

But Monzo didn't uphold the complaint or remove the marker and so Miss B asked our Service to look into the complaint. Miss B said she wasn't aware of the £800 transaction. She'd never used her card and always kept it in her draw. She said the only possible explanation for what had happened was that someone must have used her card.

Our Investigator looked into things. They thought Monzo ought to have spoken to Miss B to understand her version of events prior to loading the marker but were of the opinion that this wouldn't have changed the outcome. They said the account closure and the loading of the Cifas marker was fair. In particular, they noted:

- No new device login device was registered to the account since it was opened as might be expected if a fraudster was accessing the account.
- The immediate attempt to withdraw the funds was suspicious. And the log in that enabled this was done via a log-in using face biometrics which suggests Miss B's device wasn't compromised.
- A pin was successfully recovered via the app on 5 September 2022 which required Miss B to provide a photo of her ID along with a selfie video. This ID had to match the ID provided when the account was set up. All of this indicates it was Miss B that was accessing the account in September.
- No card payments were made on the account, all payments were via online transfer. So, a compromised card doesn't explain the account activity.
- The transactions that occurred on the account prior to 8 September involved

transfers into the same cryptocurrency account that there was an attempt to send the £800 to. There would be no benefit to a third party fraudster in transferring the funds to a cryptocurrency account Miss B was using.

Miss B disagreed and said she didn't recognise the cryptocurrency account. She reiterated that she had not touched her card or used her pin. She said this sounded like identity theft.

So, Miss B's complaint has 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.

The relevant considerations here are set out by Cifas: the fraud marker database controller.

In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards at the time of the loading were:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous such that the member [Monzo] could confidently report the conduct of the subject [Miss B] to the police.

In addition to the Handbook's burden of proof, Cifas released guidance to its members in March 2020 providing best practice guidance when filing markers against 'Money Mules' against the National Fraud Database. As Miss B had received reportedly fraudulent funds into her account held with Monzo, I find that the guidance is relevant in these circumstances.

The second part of the burden of proof requires more than mere suspicion of the consumer's willing involvement of the alleged activity to load them to the database. This is further supported by the 'Money Mule' guidance that sets out that *"You must have evidence to show that the consumer was aware that the payment they were receiving was, or might be from an illegitimate source."*

Broadly, it also highlights the need to consider evidence supplied by the consumer and says that contact should be made with them prior to deciding to load the marker. This is typically to establish if the consumer has themselves been victim to a fraud or has been duped into unwittingly laundering funds through their account.

Monzo has provided evidence of a report it received stating that Miss B received fraudulent funds on the 8 September 2022. So, I understand why it was concerned about fraud here. But I'd note Monzo didn't give Miss B the opportunity to provide an explanation of the origin of the funds before deciding to load a negative marker and close her account. And I don't think this was fair in the circumstances. Without this discussion, I don't think it could be confident that it had clear, relevant and rigorous evidence that fraudulent funds entered Miss B's account and she knew they were, or might be, an illegitimate payment.

That being said, had Monzo approached Miss B at that time, I think it's likely she'd have provided the explanation for the funds that she later gave as part of her complaint. And Miss B hasn't disputed that the funds were fraudulent and hasn't suggested she recognised the transaction. So, I'm now satisfied the first part of the burden of proof has been met.

This means that the matter at the heart of this complaint is whether the second part of the burden of proof has been met. Miss B's version of events is that she doesn't recognise these transactions; she had never used the account and all account activity was carried out by fraudsters and not her.

But I don't find Miss B's version of events particularly persuasive here in light of the evidence Monzo has provided for broadly the same reasons as our Investigator.

Whilst Miss B has speculated that fraudsters may have gained access to her card, I'd note she hasn't confirmed how. There's also no evidence a fraudster used her card directly. The payments Miss B is saying she did not make and has no knowledge of all occurred via online faster payments transfers. And these payments would have required more than just the card itself, they would have required security credentials. But Miss B has not explained how an unknown third party could have had everything they needed to complete the transactions.

In addition, the evidence strongly suggests Miss B was involved in these transactions:

- Her ID was used to recover a pin around this time.
- There was a transfer into the account from another account in Miss B's name.
- No new devices were enabled during this time which means the transactions used the device registered by Miss B when she first opened the account.
- Face biometrics were used to sign into the device immediately prior to the attempt to transfer the money out.

Miss B has not explained how fraudsters were able to obtain her identity documents, access to her other account, access to her device or how they were able to replicate her face biometrics. I also cannot see any benefit to fraudsters in moving funds between Miss B's accounts.

I appreciate there is a possibility that Miss B did not directly complete the transaction herself, but that does not negate her responsibility here – the account access enabled the transfer to be attempted. I think it is likely that if Miss B did not complete transaction herself, she allowed it to be completed. And I am unable to say on the evidence that she was unwitting in doing so.

For all of these reasons, I think it's most likely that Miss B was complicit in the receiving of fraudulent funds. And so it follows, that I won't be asking Monzo to do anything further.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 9 September 2024.

Jade Cunningham
Ombudsman