

The complaint

Mr K complains that Monzo Bank Ltd unfairly registered a marker about him at Cifas, the national fraud database. Mr K also complains that Monzo closed his account.

What happened

Mr K had an account with Monzo, which he opened in 2019.

On 14 September 2023, a payment of £120 was made into Mr K's account, from an individual I will refer to as Mr T. Mr K immediately transferred the funds to other people. And then spent the remaining money on food, travel and bills.

Following this, Monzo were notified by another bank that the payment from Mr T was fraudulent and that their customer had been the victim of a fraud. Mr T told his bank that he'd been scammed by Mr K after he'd agreed to purchase an item. Mr T paid Mr K a part payment for the item but said he had never received anything. Mr T then blocked all communication with him.

Monzo contacted Mr K and asked him to explain the payment from Mr T. Initially Mr K said he wasn't aware of the payment. And that he didn't remember receiving it. He then told Monzo that he believed it had been a refund he was expecting.

Monzo asked Mr K to provide any evidence he had about his entitlement to the £120. And how he knew Mr T. Mr K didn't provide anything and said that someone must have paid the money into his account by mistake – which wasn't his fault. He said he hadn't noticed the payment and he hadn't checked the details of where it had come from.

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

In March 2024, Mr K complained to Monzo and told them that he'd been the victim of a robbery, and someone had stolen his mobile phone and identification. Mr K said his email had been hacked and his bank card had then been used. So, he said that he needed Monzo to provide him with a letter stating it was willing to remove the Cifas marker. In response, Monzo said it wasn't willing to remove the marker. And that it hadn't done anything wrong when it had closed Mr K's account. Monzo also said that there was no evidence Mr K's account had been compromised.

Unhappy with this response Mr K brought his complaint to our service. He said the marker caused other bank accounts he had to be shut down, which meant he wasn't able to access funds to keep up with his debt management plan, pay his bills and buy food. He wants Monzo to remove the marker so he can open a bank account.

An investigator looked into Mr K's complaint and asked Monzo and Mr K for some more information about what had happened. Monzo didn't provide any information, so the

investigator didn't think it had treated Mr K fairly in loading the marker and closing his account. To put things right he asked the bank to remove the marker and pay Mr K compensation. 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 K's name. And closed his account.

Monzo agreed with what the investigator said. Mr K didn't. He wants the marker removed. He explained that he can't get a job or receive any benefits because the marker has prevented him from having a bank account. So, Mr K said the marker is stopping him from paying his debts and causing him financial problems.

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'll deal first with Monzo decision to close Mr K's account. Monzo have relied on the terms and conditions of Mr K's account in closing the account. These outline that Monzo can close a customer's account with two months' notice, and in certain circumstances they can close an account immediately. In this case, Monzo closed Mr K's account immediately.

For Monzo to act fairly here they needed to meet the criteria to apply their terms for immediate closure – and having looked at these terms and all the evidence I'm satisfied that Monzo did. I say this because Mr K's account was being used to receive and spend funds that had originated from fraud. So, it was entitled to close the account as it's already done and end its relationship with Mr K. This means I won't be asking Monzo to reopen Mr K's account.

I've next moved on to consider the loading of the Cifas marker against Mr K. 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 K is guilty of a fraud or 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 K'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.

So, I need to consider whether based on all the information including the evidence Mr K 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. 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 T, felt he'd been defrauded in not receiving the item he'd agreed to buy from Mr K.
- Monzo has provided evidence to show that Mr K immediately moved the money paid into his account by Mr T within minutes of the funds crediting his account to someone he had regular transactional history with. And that he then went on to spend the remainder of the funds. If this was a legitimate payment, I don't understand the urgency of Mr K's actions.
- Mr K hasn't disputed these transactions, so it's likely he was responsible for moving the fraudulent funds quickly through his account and on to others. I think this action is significant. It's also contrary to what Mr K told the investigator and Monzo which was that he didn't know anything about the money – in other words he wasn't expecting it.
- I think the speed at which the funds were moved and spent suggests Mr K was most likely expecting the payment from Mr T. And benefitted from fraudulent funds.
- If Mr K had been the unwitting beneficiary of fraudulent funds, which is what he suggested when he told Monzo he'd received the funds 'by mistake', I would've expected him to alert Monzo at the time in order that his account could be safeguarded against fraud. But I haven't seen that he did so.
- I note too that Mr T has provided several explanations about the money. – initially he said he didn't realise he'd received the money, he then said he thought it was a refund, then that someone must have paid the money into his account by mistake. And finally, that he'd been the victim of a robbery, and someone had accessed his account. This leads me to doubt the credibility of Mr K's version of events and suggests to me that Mr K was potentially involved in fraudulent behaviour.
- I've considered what Mr K 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 K is an innocent party. I think the evidence shows that Mr K was involved in a misuse of facility.

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 K was likely complicit in this. 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 K to accept or reject my decision before 16 September 2024.

Sharon Kerrison
Ombudsman