

The complaint

Mr S complains Monzo Bank Ltd unfairly applied an adverse fraud marker against him in 2022.

Mr S says Monzo's actions have caused him substantive distress and inconvenience as his main bank account has been closed and he is unable to get credit.

What happened

The details of this complaint are well known by both parties, so I won't repeat them again here in detail. Instead, I'll focus on setting out some of the key facts and on giving my reasons for my decision.

Between November 2022 and December 2022, Mr S received two payments respectively of £145 and £410 into his Monzo account. Both payments were immediately transferred to the same beneficiary, who I'll now refer to as Miss D.

In December 2022, Monzo closed Mr S' account and the remaining balance was defunded to Miss D's account. In 2023, after Mr S' external bank account was closed, and as he was getting declined for credit and other account applications, he raised a subject access request with CIFAS (Credit Industry Fraud Avoidance System) based on advice given to him by a bank. Mr S says he then realised Monzo had applied a Category six – misuse of facility marker against him.

Unhappy, Mr S complained. Monzo didn't uphold Mr S' complaint. In summary, Monzo said the marker was applied in line with its internal procedures and following a second review, it still can't remove it. Mr S referred his complaint to this service.

One of our Investigator's then started looking into Mr S' complaint. In its submissions to this service, Monzo explained:

- It received an internal fraud report against Mr S on 5 December 2022 that their other customer had been scammed through a social media site into sending payment
- When the funds entered Mr S' account they were dispersed instantaneously to another Monzo customer's account. That third-party had also had a similar fraud report made against them
- Monzo noted a change of activity on Mr S' account once the third-party had a fraud report upheld against them. And there has only ever been one registered device on Mr S' account
- Because of the evidence and circumstances, Monzo loaded a CIFAS marker and closed Mr S' account in 2022

Our Investigator then asked Mr S about the two fraudulent payments into his account in 2022 and who the third-party was that the money had been paid to. In short, Mr S said:

- The third party was his ex-girlfriend, Miss D. He was not aware Miss D was using his account on his old phone in this way until this service brought it to his attention
- Mr S knew nothing about either of the payments in and out of his account
- Mr S only checked with CIFAS when his main account with another bank was shut down, and another bank suggested he do so when failing an application with it
- Miss D was the only person who knew the password to his account due to having access to his phone
- Upon learning about what Miss D did, Mr S has reported the matter to Action Fraud and his local police force
- The police say they can't investigate the matter further as Miss D didn't steal anything from him – so its not a criminal matter
- Mr S forwarded an email from the police constable in which his statement was attached

This information was presented to Monzo, and it didn't think it made a difference. Monzo added that only one device was ever registered to the account and the account activity doesn't support Mr S' account. That's because the activity shows the account was in regular use with card payments and ATM withdrawals in close proximity to payments into the account from Miss D.

Our Investigator recommended the complaint was upheld. In short, their key findings were:

- As the payments were immediately transferred to Miss D, Mr S didn't benefit from them. Mr S says he didn't know anything about them, so Miss D must have used his device and app to receive the funds and transfer them out in this way. Miss D would stay over with him, and they were in a relationship for around ten months
- Mr S says he only found out about the CIFAS marker in June 2023 when his main bank account was closed. Mr S contacting Action Fraud and the police upon discovery of what happened adds weight to his testimony
- There's no evidence Monzo contacted Mr S at the time to ask him about these transactions and his entitlement to them. This isn't in line with CIFAS guidance issued in 2020 about what banks should do in these circumstances. So Monzo hasn't acted fairly in loading the CIFAS marker
- Had Monzo done what it should have from November 2022, its likely Mr S would have been able to satisfy it of his innocence and the marker wouldn't have been applied
- Based on the evidence Monzo has provided, it's not met the standard of proof to have applied the CIFAS marker. Monzo has a responsibility to carry out a thorough investigation before loading such a marker and it didn't do so
- Monzo had strong evidence Mr S wasn't entitled to the funds, but he wasn't aware of them, and his testimony is likely accurate. So to put things right, Monzo should remove the marker immediately and pay him £150 compensation for the distress and inconvenience caused

Monzo didn't agree with what our Investigator said. I'd like to assure Monzo that I've carefully read everything it has said in response. But given this service has been set-up to deal with complaints quickly and with minimal formality, I will only summarise what I consider to be its key arguments here:

- Mr S' account had been surrendered to a third-party. Only one device was ever

- registered with the original email and telephone number attached
- When Monzo reached out to Mr S about the credits to his account, he said he had no knowledge of the account usage despite it being used regularly. Mr S should've therefore known about his account transactions, and nothing was ever reported to Monzo
- There isn't any evidence Mr S didn't benefit from the funds Miss D moved into her account
- Based on Miss D's Monzo account activity, it has strong basis for stating she was in control of Mr S' account
- Mr S must have had knowledge of what was going on given he de-funded his Monzo account when closed to Miss D. The only way Mr S wouldn't have been aware of the closure is if he wasn't using the app himself
- Biometrics were last used in October 2022. There was a fair amount of card activity on the account facilitated by credits from Miss D. This indicated Miss D had use of the card
- Monzo doesn't claim Mr S defrauded it, but his actions in allowing Miss D's usage of the account enabled the fraud that occurred against another Monzo victim, which makes him culpable and justifies the CIFAS marker

As there was no agreement, this complaint has been passed to me to decide.

What I've decided – and why

As I've already alluded to, 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 S and Monzo have said before reaching my decision.

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 have decided to uphold this complaint. I'll explain why.

Monzo say the marker it filed with CIFAS is 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 is not required to prove beyond reasonable doubt Mr S is guilty of a fraud or financial crime, but it must show there are grounds for more than mere suspicion or concern.

CIFAS says:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted
- That the evidence must be clear, relevant, and rigorous

What this means in practice is that a financial business must first be able to show fraudulent funds have entered Mr S' account, whether they are retained or pass through the account. Having looked at the information Monzo has given me, I'm satisfied fraudulent funds entered Mr S' account. Mr S doesn't dispute this either given he says Miss D used his account

without his knowledge.

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 has enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

Monzo says Mr S said he didn't have any knowledge about the fraudulent payments when it asked him about this. I've seen the email Monzo sent Mr S and note it only asked him about the incoming payment detailing the sender's name. No mention of the payments being dispersed to Miss D were made. And that is the critical issue here. I say that because once Mr S was made aware by our Investigator that the funds had been paid out to Miss D, he realised she used his phone and banking app to carry out fraud for her benefit. Something he says he didn't know anything about. So because of this, he expediently contacted Action Fraud and the police. The evidence he has submitted, and which has been shared with Monzo, supports this.

This complaint hinges on whether Mr S was deliberately complicit. Mr S' actions very shortly after he says discovered what Miss D had done add weight to his testimony. I haven't seen any evidence that Mr S was otherwise complicit given Monzo say Miss D could've shared the money from the fraud with him given the closeness of their relationship after she'd moved the money.

Monzo also say Mr S had surrendered his account to Miss D and gave her its security credentials, including the PIN, in violation of his terms and conditions. Monzo should note that this isn't in doubt or conflict here.

I do agree, Mr S appears to have over trusted Miss D and given her access to his banking and financial instruments in a way that is starkly in conflict with most terms and conditions of such financial products. So, I'm persuaded on balance that Mr S trusted Miss D who had been his girlfriend for several months with access to his phone and banking app. This is undoubtedly naive of him, but not uncommon or so far removed from reality given the youthful nature of their relationship.

But that doesn't mean Mr S wittingly acted as an accomplice to the fraud Miss D appears to have perpetrated for her personal benefit. So I don't think Mr S was wilfully or deliberately complicit – all the circumstantial evidence I have suggests he wasn't. This is supported by Monzo's submission that it knew and had closed Miss D's account for fraudulent use.

That means Monzo failed to meet the standard required to apply the marker, didn't follow CIFAS' guidance, and importantly didn't carry out any due diligence I'd expect it to have done. This failing is further exacerbated by the fact Monzo didn't carry out an investigation for Mr S who at 19 years of age would've been more vulnerable and susceptible to being unwittingly used in this way.

For the sake of completeness, I also agree that the account activity looks like Miss D was using the account exclusively for herself. This ties in with what Mr S says about not really using it himself.

Lastly, and to emphasise the point, Monzo has a duty to carry out relevant and appropriate checks before loading such a marker. I'm satisfied that it failed to take any such measure

here. So, after weighing everything up, I will be directing Monzo to remove the CIFAS marker immediately. I also need to consider what I think fair compensation for the distress and inconvenience Mr S has suffered should be.

Had Monzo done what it should have, Mr S wouldn't have had his external account closed, and face the prospect of financial exclusion in the way he says he has. Learning about such a marker, not knowing how it will impact him, and for how long, would undoubtedly have caused Mr S severe distress.

But I am mindful that Mr S' negligence in trusting Miss D in the way he did should be taken into mitigation when weighing up what fair redress should look like. Monzo may think this jars with what I have said earlier, but here I am weighing up fair redress not whether I think Mr S was deliberately complicit with the fraud.

I also haven't seen compelling evidence that Mr S has suffered financial harm to the extent a higher award is merited. So after careful consideration, I'm satisfied £150 is fair compensation.

Putting things right

To put things right, I now direct Monzo to:

- Pay Mr S £150 compensation
- Remove the CIFAS marker it applied with immediate effect

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 S to accept or reject my decision before 6 January 2025.

Ketan Nagla
Ombudsman