

The complaint

Mr P is unhappy that Monzo Bank Ltd loaded an adverse fraud marker against his name unfairly.

What happened

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

Mr P held an account with Monzo. In November of 2022, Mr P's account received a payment of £55 from a third-party. Approximately a week later, Monzo received a report from the third-party payer that the amount was transferred as a result of fraud. Monzo froze the account immediately and told Mr P he could no longer use its facilities: it was then closed.

Mr P attempted to apply for a number of other bank accounts but they were either rejected or closed shortly after opening. One of the banks told Mr P that he should contact Cifas—a fraud prevention organisation—as he may find information recorded against him. When Mr P did contact Cifas, he discovered an adverse fraud marker recorded against him by Monzo.

Unhappy with the loading, Mr P contacted Monzo to complain. Monzo asked Mr P for evidence he was entitled to the £55 payment into his account. Mr P says that as a year had passed since the incident, he no longer had access to the information requested. But he did provide a screenshot that he says evidenced the sale of a computer console on a social media platform.

Monzo rejected Mr P's complaint as it felt it had sufficient information to load and retain the marker. Mr P remained unhappy with this decision and came to our service for an independent review.

An Investigator considered the testimony and evidence provided by both Monzo and Mr P but found Monzo had made an error in loading and retaining the marker. In summary, the Investigator concluded that Monzo hadn't followed correct process in asking Mr P for his version of events before loading the marker. And the evidence it had now provided wasn't sufficient to meet Cifas' burden of proof.

Monzo disagreed. It argued that it had asked Mr P for evidence supporting his entitlement to the funds. It also argued that there was sufficient evidence to support the fact that Mr P was acting dishonestly.

As Monzo disagreed with the Investigator's assessment and recommendations, the matter has now been passed to me for a final decision.

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.

One of the relevant considerations here is 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 regarding this complaint are:

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 [Mr P] to the police.

My interpretation of these standards is that a member cannot simply load a marker against an individual based on mere suspicion. It must be able to meet a higher bar; in that a customer was likely a witting participant in the alleged conduct.

Cifas also released its Money Mule Guidance to members in March 2020. This reinforced the above points and set out new requirements when dealing with suspected money mules. Some of these include:

- The member must have evidence to show that the consumer was aware that the payment they were receiving was, or might be, from an illegitimate source.
- Given that consumers can act as money mules unwittingly, it is required that members provide consumers the opportunity to explain the conduct before filing to the National Fraud Database.

My first observation when considering this complaint is that Monzo hasn't carried out a reasonable investigation. I have seen no evidence that it probed the allegation being made by the sending account holder, or that it ever contacted Mr P in order to give him an opportunity to defend his position. And this is contrary to the guidance and requirements set out by Cifas.

Monzo reached out to Mr P approximately one year later once he discovered the Cifas marker and complained. And it was here that it gave Mr P an opportunity to provide his testimony and provide evidence. Mr P was unable to furnish Monzo with the evidence it requested due to the passage of time. I don't find it reasonable to hold Mr P to account for this where he was unaware of the allegations made against him until the discovery of the marker approximately one year after the event.

As Monzo failed to investigate the allegation and establish Mr P's account, the evidence against him is thin.

Monzo has relied upon a very short statement made by the sending account holder, with no context surrounding the reasons they thought they'd been scammed. I also find it in Mr P's favour that the sending account holder has referenced the same reason for making the payment as Mr P has. I say this as it opens up a potential buyer/seller dispute which can neither be confirmed nor disproven.

For these reasons, I don't find that Monzo has been able to sufficiently evidence that either of the above two standards have been met. The allegations haven't been expanded upon enough to support a fraud, and Mr P wasn't given the opportunity to explain the activity or provide evidence, which may have existed at the time Monzo decided to load the marker.

Monzo has made reference to a number of red flags it deems now to be a likely indicator of fraud, but I don't find these to be persuasive.

The differences in the evidence provided by both parties is at most suspicious. But again, it is difficult to say what evidence may have been provided had Monzo investigated matters at

the time the allegation was received. Monzo has suggested that it has no reason to question the veracity of the sending account holder's testimony, but I don't agree with this statement.

The sending account holder wasn't the person who had purchased the item and sent the money to Mr P. Therefore, the information they were providing to Monzo was second hand. And as I've already highlighted, this testimony wasn't probed further to uncover why exactly they felt they'd been defrauded. We don't even know if the item was received or not.

I am not ruling out the possibility that there has been a fraud here. But there is equally a possibility of a buyer/seller dispute. The error here is that Monzo has failed to investigate the matter at the point of reporting, and this has resulted in a lack of evidence that would meet the required standards set out by Cifas. And as I've said above, this requires more than mere suspicion. I also cannot rule out the possibility that had Monzo followed Cifas guidance at the time of reporting, Mr P may have been able to produce further evidence supporting his testimony

For the above reasons, I find Monzo didn't have sufficient information to load the marker at the time it did. And it has also failed to persuade me that it should be retained.

Putting things right

Cifas introduced new guidance recently that means, due to Mr P's age at the time, the Cifas marker ought to have dropped off his record by now. However, if that has not happened, Monzo now need to go ahead and remove the marker from the Cifas database.

I've also considered the impact this has caused Mr P. He has told our service that several bank account applications were rejected, with one specifically guiding him to Cifas. So I am persuaded that this marker has caused Mr P detriment not only in an emotional sense, but in that he was unable to obtain an account which also caused financial issues.

For these reasons, I find that Monzo should pay Mr P £200 for the distress and inconvenience caused by loading and retaining the marker against his name.

My final decision

For the reasons I've given above, I uphold this complaint and direct Monzo Bank Ltd to:

- Remove the Cifas marker held against Mr P's name if it hasn't been removed already.
- Pay Mr P £200 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 August 2024.

Stephen Westlake
Ombudsman