

The complaint

Mr Z complains Atom Bank PLC acted unfairly when it registered markers in his name after he was the victim of fraud.

What happened

Mr Z had an account with Atom Bank and accounts with another business who I'll refer to as "H" in the rest of this decision.

Mr Z says he noticed four payments totalling just over £8,400 going from his Atom Bank account to one of his accounts with H after returning from holiday. He says he didn't recognise these payments and others payments leaving his other accounts, so he contacted Atom Bank and H.

Mr Z says H agreed that one of his mobile phones had malware on it and agreed to refund payments that had gone out of his accounts. In comparison, Atom Bank said that it believed he'd carried out or authorised the four payments that went out of his account. And then not only closed his account but also registered markers in Mr Z's name – on the basis that he had falsely reported a loss.

Mr Z says those markers are having an impact on his ability to take out credit etc and are unfair. He complained to Atom Bank and to us – he complained to us with the help of a representative – saying that Atom Bank had acted unfairly.

One of our investigators looked into Mr Z's complaint and said that they didn't recommend that Atom Bank needed to take any further action. Mr Z was unhappy with our investigator's recommendation and asked for his complaint to be referred to an ombudsman for a decision. His complaint was, as a result, passed to me.

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.

Both parties have sent us a lot of evidence and Mr Z's representative has, in particular, made detailed submissions as to why it's unfair that Mr Z has markers in his name. I can understand why – the markers in question have the potential to impact Mr Z considerably. So, I've considered the submissions very carefully.

Having considered the submissions sent in, I think it's fair to say that the arguments Mr Z's representatives have put have changed in emphasis over time. The arguments initially focussed on the fact that one of the two mobile phones Mr Z owns had malware on it and on the fact that H refunded payments Mr Z had made out of his accounts with them having established this. More recently, Mr Z's representatives seem to be saying that Mr Z has been the victim of a scam and that it isn't right that he should have markers in his name given that he's a victim. Based on everything I've seen, it's entirely plausible that Mr Z has been tricked into sending money to accounts elsewhere in the belief that he'll make money out of a

cryptocurrency related transaction. But that's not what he told Atom Bank, nor is it what Atom Bank looked at. And that's what I'm looking at – whether or not Atom Bank dealt with Mr Z fairly given everything he's told them. I should add that I'm satisfied H didn't initially decide to refund the transactions that went out of Mr Z's accounts with them. It only decided to do so the second time it looked into what had happened. But again the more important point is that I'm looking at what Atom Bank has done, not another business.

Mr Z told Atom Bank that he didn't make any of the four payments that left his account on 17 and 18 August 2023. I can see Atom Bank looked into this and produced evidence to show that all four payments had been completed using facial recognition and that they identified Mr Z when he initially disputed the transactions using facial recognition too. Mr Z has been sent a copy of the images captured on all five of those occasions and based on everything I've seen I don't think it was unfair or unreasonable of Atom Bank to conclude that the person who completed facial recognition on all five occasions – in other words, including when the transactions were disputed – was the same person and was Mr Z. I accept that one of Mr Z's phones was used to make the payments and a different one was used to dispute the transactions – but that's now common ground and doesn't alter the fact that all the images appear to be of the same person. Mr Z's representatives have given examples of how facial recognition technology might be compromised – often relying on very technical arguments – but haven't, in my opinion, come up with a sufficiently plausible explanation of the likenesses (including clothing) between the image it accepts is Mr Z (in other words, the one when he disputed the transactions) and the images taken earlier on that day when the disputed transactions were authenticated. In short, I agree with our investigator that Atom Bank didn't – based on what it was told – act unfairly.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 29 March 2024.

Nicolas Atkinson
Ombudsman