

The complaint

Mr A complains that Metro Bank PLC added a marker about him at CIFAS, the national fraud database, when it closed his account.

What happened

Mr A says he agreed to receive money into his account for a third party. And then to send it to another account. He didn't know that the money had been obtained fraudulently. The marker is having an effect on his ability to access financial products. And a different financial business had removed a marker in similar circumstances.

Metro Bank said it hadn't made a mistake. It said that on 10 April 2021 it had received a report that £500 paid into Mr A's account was from a purchase scam. He was asked to show his entitlement to the money. He had told it on 30 April 2021 that the money had come from bitcoin sale, and he had provided evidence. But this didn't match up to the details if had received from the reporting bank. On 12 April 2021 it said it had received a report of fraud in relation to a credit for £2,500. And Mr A had moved £2,400 of this to a crypto currency account with another business. Metro Bank closed his account and retained the remaining funds. It said there were grounds for the marker to be added.

Our investigator didn't recommend that the complaint be upheld. She said that Mr A had provided some screenshots of online conversations with the person he sent the money to. But these were insufficient to support his testimony and didn't correspond to what the victims had said. The funds weren't from a friend or investments. These were moved into a crypto currency account in his name and indicated that he'd profited. She didn't think it plausible that he would send money of this amount based on what a friend of a friend had told him. Or could think that this was legitimate. We were looking at what Metro Bank had done here and not any other financial business.

Mr A didn't agree and wanted his complaint to be reviewed. He said that the response was harsh and unfair. It had taken effort and a stroke of luck to gather the evidence and explanation he now had. If he had possessed this before then he could have presented his case to Metro Bank. There were very limited records from Metro Bank, and this is why he had asked for the help of this service. He wanted his evidence to be thoroughly examined, and his explanation carefully considered with a possible check on the money he'd sent on from his crypto currency wallet. Metro Bank should reconsider, and this was essential as the other financial business had accepted what he'd said.

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 need to consider whether the report to CIFAS was made fairly. On this point, Metro Bank needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted. 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 the consumer's account, whether they are retained or pass through the account. Second, 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. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

I've taken into account guidance from CIFAS about cases where someone receives fraudulent payments into their account like this – acting as a so called 'money mule'. And that relevant factors in deciding whether Mr A was deliberately complicit in what happened include whether he knew or ought to have known that the money wasn't legitimate, whether he may have benefitted from the money by keeping part and whether he has provided generic or inconsistent explanations.

I agree with our investigator that we are only looking here at what Metro Bank did and not any other financial business Mr A has been involved with. I'm satisfied it's shown that the payments had been obtained fraudulently.

I've looked at the evidence Mr A has provided. There are limited screen shots he says are his contact with the third party about receiving money. He has provided some screen shots he says show him moving at least part of this money to a crypto currency account and he then says moving this on to the third party. I'm unclear from what he says why he wouldn't have had this information to provide to Metro Bank at the time when it asked him to prove his entitlement to a payment.

In any event I'm not persuaded his explanation is a reliable one. These were sizeable amounts and didn't come from the person he says had asked to use his account. There is no evidence the money came from the sale of crypto currency. He sent money on quickly using a crypto currency account in his name and was in control of what happened to it. He seemed to have been able to retain some of it. I don't find it credible that he could think that this was legitimate. As I referred to above he would reasonably be responsible for what happened with his bank account. So, I don't find him an unwitting participant in what happened.

Metro Bank says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events and the evidence he has provided, I'm satisfied that Metro Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr A received fraudulent funds into his account and didn't report this to Metro Bank at the time.
- He authorised the movement of the funds and so was in control of who had the benefit of this money.

- Metro Bank had grounds to believe that Mr A had used fraudulently obtained funds based on the evidence it had.

In these circumstances I don't consider it acted outside its terms and conditions in closing his account and not releasing any remaining funds. I appreciate Mr A will be very disappointed by my decision given what he says about the impact of the marker for him.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 31 August 2023.

Michael Crewe
Ombudsman