

The complaint

Mr T complained because Metro Bank Plc closed his account, and recorded a CIFAS marker against his name.

What happened

On 3 August 2019, Mr T opened a cash account with Metro Bank.

On 21 August 2019, £3,800 was credited to Mr T's account.

Mr T withdrew:

- £250 cash at a cash machine on 21 August;
- £3,000 cash at a different cash machine about an hour and a half later the same day;
- £250 from a third cash machine on 22 August.

Metro Bank then received notification that the credit consisted of fraudulent funds.

On 5 September, Metro Bank wrote to Mr T to give him formal notice that it would close his account in 7 days. Metro Bank said it was unable to continue to act as his bank, and wouldn't make any new banking services available to him.

Mr T complained. But Metro Bank didn't uphold his complaint. It told him that it had reviewed Mr T's account after being notified by a third party that the £3,800 had been fraudulent.

In January 2020, Mr T complained to this service. Mr T had found out that Metro Bank had recorded a CIFAS marker against his name, and he wanted this removed. He initially told the investigator that he'd had no idea the money was fraudulent, and had just kept the money because he thought no-one would notice.

Mr T told the investigator that his brother had owed him money. His brother had phoned in August 2019 to say he was going to pay the £3,000 which he owed Mr T, into Mr T's Metro Bank account. Mr T told the investigator that he didn't remember taking out £250 on 21 August 2019, but that after he'd taken out the £3,000, he gave the Metro Bank card and PIN to his brother.

The investigator didn't uphold Mr T's complaint. He didn't think Metro Bank had been unreasonable when it had closed Mr T's account, or when it had recorded the CIFAS marker against his name. The investigator explained that he'd thought about what Mr T had said about his brother. But he wasn't persuaded that Mr T didn't know the funds might not be legitimate.

Mr T put forward many reasons and explanations for what had happened, and why the CIFAS marker should be removed. In summary, he said:

- He didn't have anything to do with what had happened and didn't know the money had been taken from someone else;

- He'd spoken to his mother, and had found out the same thing had happened to her, and his brother had been in prison over the issue, but Mr T said he hadn't known about this until after the issue with Metro Bank;
- He said he withdrew the £3,000 cash in order to buy his brother's car;
- The reason he'd opened the account with Metro Bank was because his normal bank had refused to increase his overdraft. It had been his brother's suggestion to open the Metro Bank account;
- Mr T also said the reason he'd opened the account with Metro Bank was to try to increase his credit score.

The investigator considered Mr T's further points but still didn't consider Metro Bank was wrong to close Mr T's account, or to have recorded the CIFAS marker.

Mr T wasn't satisfied and asked for an ombudsman decision. He gave more detail about what he'd done with the cash from the £3,000 withdrawal, and how much of it he'd given or lent to his brother. Mr T also said that the last time he'd taken out a large amount of money to send to his brother, the account had been frozen because the bank had thought it was suspicious. And he didn't want that to happen again, so he hadn't used his account with the other bank.

Mr T also said that he wasn't disputing the fact a crime had been committed. But he said he'd been willing to report everything as soon as he'd found out. He said he didn't see why he had to have a CIFAS marker, because he was a victim as well, and he doubted that this would stop his brother doing the same thing again.

Mr T also said that if, as had been assumed, he knew about the fraud, he'd also have known about the consequences of a CIFAS marker. He said it wasn't fair to say he "*was smart enough to agree to be involved but not smart enough to check the repercussions.*" And he also said that if he'd got away with it, why would he stop there.

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.

Mr T has raised multiple points in his submissions to the service. I've understood and looked into all of those, but I've commented on what I think is vital to my conclusions.

Power to close Mr T's account

Under the terms and conditions of Mr T's account, Metro Bank had the power to withdraw banking facilities. The relevant section is section 11.2 of the Terms and Conditions of the account. This says that the bank may suspend, stop or reduce a service, facility of an account it provides. The reasons include

"If we think that..."

- *There has been fraud or other suspicious activity involving your account (or we suspect this is the case);*
- *you have used, are using or getting, or may use or get a service or money illegally, fraudulently, or improperly, or that someone else acting on your behalf may do so."*

Metro Bank had the power to close the account immediately, though in fact it gave him 7 days' notice before doing so.

I accept that Metro Bank received information that the £3,800 which was paid into Mr T's account had been obtained fraudulently, and I have seen evidence of this.

So I find that Metro Bank had sufficient grounds for closing Mr T's account, and it didn't act unfairly when it did so.

CIFAS marker – how it works

CIFAS is a fraud prevention agency. It maintains a large database, in order to protect financial organisations and their customers against fraud. As the CIFAS website sets out, the criteria for a marker on the database include:

- There are reasonable grounds to believe that a fraud or relevant conduct has been committed or attempted;
- The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police or a relevant regulatory body.

So I've gone on to consider whether Metro Bank had sufficient grounds, in the light of this requirement, to record a marker against Mr T.

CIFAS marker and Mr T's account

Mr T opened his new account with Metro Bank on 3 August 2019, and the first and only credit was on 21 August for £3,800 which was soon discovered to be fraudulent funds. Meanwhile Mr T had taken out most of this money on the same day that it was credited, and more the following day. Because the fraudulent money was taken out straightaway, it couldn't all be sent back to the person who'd been defrauded, who really owned the money.

I note that Mr T doesn't disagree that a fraud was committed. What he says is that it wasn't his fault but his brother's. But I'm not persuaded that Mr T didn't know what was going on. He withdrew the money immediately, which is often a sign that a fraudster wants to remove the funds before the fraud can be discovered and withdrawals stopped.

And Mr T has said that he took out the £3,000 to buy his brother's car. But if he believed the incoming money was from his brother, it seems unlikely he'd have needed to take it out the same day to pay his brother for a car. It's not likely his brother would have sent money, if they both knew Mr T was going to pay his brother exactly the same amount back the same day.

Mr T's explanations for several aspects of his complaint have varied over time. To give just one example, at different times Mr T said that he opened the Metro Bank account:

- to improve his credit score (though it was a cash account which wouldn't be likely to do this);
- because the other bank wouldn't increase his overdraft;
- because previously his money had been frozen when he'd sent money to his brother's account.

For this and other aspects, there's no consistency in what Mr T knew.

I've taken into account the suspicious circumstances. Instead of using his normal bank, Mr T opened a new account with Metro Bank and the only incoming transaction was fraudulent. When the credit reached the account, Mr T didn't report it to Metro Bank as an anomaly, but immediately withdrew the money himself. In addition, I've borne in mind the inconsistencies

in what Mr T said. Having done so, I'm not persuaded that Mr T knew nothing about the fraud.

In any case, an account is the responsibility of the account holder. Mr T has argued that a CIFAS marker being recorded against him wouldn't be likely to stop his brother doing the same thing again. But this isn't the purpose of a CIFAS marker. The purpose is to protect financial organisations and their customers.

Taking all these factors into account, I don't consider that Metro Bank was wrong when it recorded a CIFAS marker against Mr T's name.

My final decision

My final decision is that I do not uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 24 November 2020.

Belinda Knight
Ombudsman