

The complaint

Mr M complains that Metro Bank PLC closed his account and registered a fraud marker at CIFAS, the national fraud database.

What happened

Mr M opened an account with Metro Bank on 28 February 2020. He says he left his bank card and his mobile phone in his jacket in a park on 1 March 2020. He did nothing about this. He says he only found out that Metro Bank had closed his account when an account he had at another bank was closed in May 2020. He says he had nothing to do with a fraudulent payment into his Metro account and that the fraud marker is unfair. He didn't speak to Metro about this in March 2020 and it said it had wrongly recorded his door number as '16' rather than '60' so he didn't get its letter about his account.

Metro Bank says it received a report on 13 March 2020 that a credit for £400 into Mr M's account was part of a scam. The money had quickly been moved out that day using an online payment. It spoke to Mr M on 13 March 2020 to ask him about the source of the credit. And it wasn't satisfied with his answer and told him that it would be closing his account and registering the marker. It wrote to Mr M about this.

Our investigator didn't recommend that the complaint be upheld. She said that:

- She didn't think that the pattern of use of the account was typical of a fraudster. There had been no attempt to use the card or act quickly after Mr M said it had been lost. And as Mr M said he hadn't shared his details with anyone (including his PIN) it was a risk for a fraudster only to have the option of transferring any credits online.
- Mr M accepts he had registered his device for use with online banking on 28 February 2020. A different device was used to make the payment. A third party wanting to access mobile banking with that different device would need Mr M's customer number, security number and to be able to access a one-time passcode sent to the mobile phone number Metro Bank had registered for him.
- She'd listened to a recording of the call Metro Bank said it had with Mr M. She considered the voice was similar to his and it was most likely him. The person was able to give security details about the account. Notably that person gave the correct address for Mr M as living at number 60 not 16. She thought it likely a fraudster would have given the door number that Metro Bank had.
- The person on the call couldn't explain the money coming in but did give the surname of the person sending it which matched the narrative on the payment. So, she thought that Mr M knew about the fraud.
- She didn't understand why Mr M didn't report either his phone or card lost. He had said it was too far to go to a branch but there seemed to be one relatively close to his address. And he could have called or reported this online.
- She thought Metro Bank had grounds to close the account given the reported fraud. Mr M had been made aware of this on the phone and it was up to him to give Metro Bank his correct address. It had shown that it had met the high bar for recording a marker.

Mr M didn't agree and wanted his complaint to be reviewed. He now said that all his information including the access details for online banking and his PIN were stored on his phone. His passcode for his phone was his name and he had given his name on the background screen on his phone. He maintained he never spoke to Metro Bank in March. He can see why it closed his account, but he thought that the CIFAS marker was harsh given the implications for him.

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 and that the evidence would support this being reported to the authorities.

I know Mr M thinks he has a plausible explanation for what happened and that as any new point has been put to him he can counter it. I need to explain to him that I won't be able to say *exactly* what happened here and I'm thinking about what is *most likely* overall.

The following factors here are to me most relevant in making this assessment:

- Mr M had an existing bank account. He says he opened this one as a back up or to separate his money. He says he never used it. His application form was signed on 28 February 2020, he had the bank card and he'd registered for online banking. He remembers (because of a cousin's birthday) when he was in the park and lost his jacket and card on 1 March 2020. He said his phone was worthless to him. If that was all the case and having gone to the trouble of opening a new account I find it highly unlikely he would do nothing about that as he claims for two months. Our investigator's explained that this wouldn't be difficult for him to report to Metro.
- To find he wasn't involved I'd need to think that an opportunistic fraudster found his card and phone, was able to work out the passcode and accessed all the information he says he stored on there. I note that Mr M's explanation of how much information was on there seemed only to be given in response to what the investigator explained would have been required by a fraudster. In any event I'd need to think that this fraudster made no immediate attempt to use the card but instead made arrangements to access the account online. And that the fraudster waited up to 10 days (depending when the card and phone were found) before being able to arrange for fraudulent funds to be paid into the account. That risked detection and what would have likely been expected to have been Mr M's report to police and Metro Bank by then of the loss.
- I've listened to the call Metro Bank says it had with Mr M and the calls he's made to this service. I agree with Metro Bank and our investigator that it is most likely his voice on the call in March 2020. I say that taking into account the point our investigator made about the address discrepancy and that a fraudster would most likely have given the door number he knew Metro Bank had. And also, because I see no reason why a fraudster would have continued with the call. He would have known that by then the funds had been moved on and found out that they'd been reported as fraudulently obtained.
- Given my finding about the call I'm persuaded that Mr M had knowledge of this money - giving for example the surname of the person involved. His explanation that it was from a friend didn't stack up and when asked to explain further he was silent on the call while Metro Bank told him that his account would be closed, and the fraud marker added.

- Mr M knowing about the fraud is consistent with him doing nothing about this until he had issues with his account at another bank. He only then contacted Metro Bank to try to do something about the marker likely when he understood the potential implications for him.

So, on balance while Mr M's account isn't an impossible one I find it implausible for the reasons I've given. I consider Mr M allowed his account to be used for this fraudulent activity and was a witting participant.

Metro Bank says that it applied the CIFAS marker because Mr M received fraudulent funds into his account. So, I've looked at whether Metro Bank 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. This essentially means that Metro Bank needs to have enough information to make a formal report to the police. 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 M's account of events and the evidence Metro Bank 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 M received fraudulent funds into his account and didn't report this to Metro Bank at the time.
- He allowed his account to be used in this way and so was in control of who had the benefit of this money.
- Metro Bank had grounds to believe that Mr M had been involved in the movement of fraudulently obtained funds through his account.

I consider Metro Bank had grounds to close the account and I won't be asking it to do anything more. I know Mr M will be disappointed by findings.

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 M to accept or reject my decision before 4 December 2020.

Michael Crewe
Ombudsman