

The complaint

Mr S is unhappy Metro Bank PLC (“Metro Bank”) has recorded a Credit Industry Fraud Awareness System (“CIFAS”) marker against his name. He feels the marker should be removed.

What happened

Mr S’s account was opened in 2013. In February 2015 Metro Bank had concerns about funds that had been paid into the account and closed it the following month. Metro Bank’s records reflect Mr S called it in 2016 to discuss the account closure and was advised he would need to write to its head office for further information.

In June 2020 Mr S contacted our service to complain about the CIFAS marker recorded by Metro Bank and the impact this was having on him. He said he hadn’t committed fraud and he felt Metro Bank was treating him unfairly.

In July 2020 Metro Bank responded to Mr S. It said that:

- In March 2015 it decided to close Mr S’s account because it was informed fraudulent funds had been directed to his account
- When this happened, it sent a letter to the address it held for Mr S to let him know the account was closed
- Because it had a duty to report instances of fraud, the CIFAS marker had been fairly recorded

Mr S didn’t accept this and asked us to investigate the complaint. He explained the account with Metro Bank had originally been his, but he felt it was likely that people in his life at the time the funds entered his account had accessed his details and used the account without his knowledge. He felt they were liable for the potentially fraudulent activity and he shouldn’t be responsible for this.

Throughout the course of his complaint and our investigation at various points, Mr S has said:

- He left the UK suddenly in December 2014 leaving many of his possessions behind including his Metro Bank card
- Before he left the UK, he lived with 12 other people and shared a room with three people, all of whom would’ve had access to his belongings when he left the UK suddenly
- Amongst his possessions were a diary and a spare phone which he’s said at one point was for university use and at another point business use. Although he didn’t give anyone his PIN, he kept all his security passwords and information in an email draft in his email account which he’d left open and accessible on his phone
- His PIN is his birthday and this may have been known to others as he thinks it might’ve been in some personal correspondence he left behind and it would’ve been on a driving license he lost
- He lived with someone who arranged marriages and loans who had asked to use one

of his accounts in the past

- His business partner had full access to the phone he left behind as it was for business use. He's provided a series of correspondence he's said is between him and various other business associates and which he feels demonstrate his business partner wasn't a trustworthy person
- His girlfriend at the time knew his PIN was his date of birth, although he couldn't recall if it was the day and month or the year of his birth
- He doesn't recognise the mobile number registered to the Metro Bank account and this isn't and wasn't his number
- He thinks it's possible bank employees were involved in the funds entering his account

Our investigator didn't uphold the complaint as they didn't feel Mr S had been able to provide plausible or persuasive evidence the funds were deposited into his account without his knowledge. As Mr S didn't accept this, the complaint has been passed to me to make a 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.

The marker that Metro Bank have filed with CIFAS is intended to record that there'd been a 'misuse of facility' – relating to the account retaining wrongful credit. In order to file such a marker, the bank isn't required to prove beyond reasonable doubt that Mr S is guilty of fraud or a financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr S's account, whether they are retained or simply pass through the account. Secondly, Metro 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. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

In 2015 two deposits were made to Mr S's account, each of around £5,000. Metro Bank has shown me the evidence it obtained suggesting the deposits were fraudulently obtained. And although I can't go into detail about this information here given the sensitivity of it, having considered it carefully, I'm satisfied Metro Bank has acted reasonably in relying on this information. So as a starting point, I'm satisfied Metro Bank did have reasonable grounds to believe fraud had been committed.

Was Mr S responsible for the deposits?

Mr S has said he wasn't complicit in receiving the funds into his account. He's provided the service with numerous explanations as to how someone else in his life at the time would've had full access to his account and could've used it without his knowledge. He thinks this is what has happened in this case. But overall, I'm not persuaded by what he's said.

Much of Mr S's testimony hangs on the fact that he left the UK in 2014 in a rush due to the death of a family member and knew he wouldn't be returning. And, as a result, he left behind items which a reasonable person wouldn't generally abandon, such as bank cards, diaries, a smart phone and private correspondence. But the evidence he's provided of his emergency departure is a flight he appears to have booked a month in advance and around four days before he said his family member sadly passed away. And whilst it may show he left the UK in December 2014 (although I would note the year is not shown anywhere on the ticket) this doesn't demonstrate he wasn't in the UK in February 2015 or that (even if he was overseas at that time) he couldn't have been involved in receiving funds into his bank account.

Mr S has said he left some of his personal items behind because his visa was coming to an end in December 2014 and he knew he wouldn't likely return to the UK. But this is at odds with what he's said about leaving the UK quickly and unexpectedly. And it seems odd that if he was leaving the UK permanently he would leave behind so many valuable items as well as the busy business he says he was running at the time.

Also, on another occasion Mr S told us he left his things behind because he moved to his uncle's home in a different part of the UK city he was living in, which again, is at odds with his testimony that he left in a rush. But I'd also add that whether Mr S initially left in a rush or left the UK as planned, I don't think he's explained why at some point he didn't arrange to close down his UK accounts which is what I'd expect a reasonable person to have done if they didn't plan on returning. Especially as he says he didn't receive any letters from Metro Bank confirming the account was closed so he believed it was left open.

Throughout the course of the investigation Mr S has listed numerous people that he said potentially had access to his accounts and could've used them to deposit and then withdraw money. But I haven't found this information very persuasive and the information Mr S has provided about this again hasn't been very consistent.

I've also taken into account that Metro Bank's records show it received contact from Mr S in 2016 – he asked why his account had been closed. Its records suggest he was told he would need to contact head office for more information about this. He didn't do this. I think this indicates Mr S likely asked about the account closure at this time, and in being told to contact its head office was given enough information to suggest something unusual was happening with the account. It seems strange that Mr S didn't pursue the matter at the time. Especially if he was aware he left all of his banking information openly available to many different suspicious people in his life.

Also, when Mr S discovered the CIFAS marker in 2020, he initially denied any knowledge of the activity on the account and suggested bank staff might've been involved. Over time, he's suggested it might've been various other people in his life, but it seems unusual that the amount of different people Mr S has described all would've known how to access his account and have the motivation to do so.

Mr S later appears to have narrowed this down to believing either his ex-business partner or ex-girlfriend used his account without his knowledge. When asked specific questions about how this might've happened, over time rather than from the outset, he's revealed his PIN was his birthday and this would've been in letters he left behind. Also that all his security information was in an email draft he left open on his phone when he left the country and this phone was not password protected.

But it's not clear to me why someone would need to write down their own birthday in order to remember this. And whilst he's said he left behind paperwork that might contain his birthdate he hasn't been specific about what this paperwork was. He's also said he lost his driving license which explains how someone would know his birthday, but it's not clear how

someone would know this was also his PIN. Or that the person who found his driving licence would also have had access to all his other personal items.

Mr S has provided correspondence which he feels demonstrates his business partner/ex-girlfriend had access to his email accounts. He's also provided correspondence between him and various people he says he worked with who confirm these people were suspicious characters. But there's no way for me to verify this. So I don't think it provides persuasive evidence someone else used Mr S's account to receive and withdraw funds without his knowledge.

Overall, I don't think Mr S has provided a consistent, plausible explanation as to who accessed his account and used it to deposit the funds in question. In all the circumstances I think Metro Bank has acted reasonably in concluding it's more likely than not he was responsible for the deposit and subsequent withdrawals. As such, I think Metro Bank has fairly recorded a CIFAS marker in relation to this.

In any event, a CIFAS marker usually remains for six years from the point it's first filed. As it has now been more than six years since it was filed it is likely no longer recorded against Mr S.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 July 2021.

Faye Brownhill
Ombudsman