

## The complaint

Mr W complains that Metro Bank Plc filed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. Mr W would like the marker removed and for Metro Bank Plc to pay him compensation.

### What happened

Mr W attended a branch of Metro on 16 December 2017 and opened a bank account. In branch Mr W was issued with a debit card and security details and chose a PIN number himself. Metro also took a photo of Mr W while opening the account for identification purposes.

In January 2018, Mr W raised four card disputes with Metro. The relevant details around the card disputes are below:

Date	Amount	Comments
3 January 2018	£25.40	Mr W explained he was charged twice in a pub due to confusion with paying by contactless and cash.  Metro refunded the full amount.
29 January 2018	£621.40	Mr W said his card was stolen on 26 January 2018 around 10am and several transactions had been made.  Metro cancelled the old card and issued Mr W with a new card.  Metro refunded the full amount.
19 February 2018	£515	Mr W raised a further dispute regarding a transaction which he didn't raise previously (on 29 January 2018).  Metro rejected the dispute as a fraudulent claim as they had received proof that the payment was authenticated using Mr W's registered phone number and a known IP address used by Mr W.
21 February 2018	£2,410.95	Mr W disputed all transactions made on the account since he opened it. Mr W excluded the account to account transfers and faster payments in the disputed claims.  Metro rejected the claim.

Following Metro's investigation, they issued Mr W with a notice to close letter on 25 February 2018. Mr W raised a complaint about this to Metro at the time and they issued him with their final response in March 2018.

At the time of making the decision to end their banking relationship with Mr W, Metro uploaded Mr W's details onto the CIFAS database.

Mr W has since attempted to open two accounts with Metro online in September 2019 and March 2020. Metro have closed both accounts due to their previous communication of no longer wanting to offer Mr W banking facilities.

Mr W contacted Metro in April 2020 requesting them to remove the CIFAS marker. Mr W found out about the CIFAS marker after completing a Subject Access Request (SAR) with CIFAS directly. Metro refused to remove the marker and sent Mr W their final response on 8 April 2020.

### **What Mr W has told us**

Mr W told us during a telephone call that he believed he'd been a victim of identity theft. He told our investigator he'd been trying to open an account for around three years and each time he opened one, it was closed shortly afterwards. After receiving the SAR from CIFAS, Mr W thought the marker Metro had applied was for someone else opening the account fraudulently in his name. Mr W confirmed he'd opened the account with Metro – not a third party.

Mr W explained that while he had the account with Metro, he remembered a few transactions had been made which he didn't authorise. Due to the time which had passed, Mr W said he couldn't remember the full details of the transactions. Mr W said after that Metro told him they'd reviewed his account and decided to close it.

Mr W says he has a young daughter and is struggling because of not having an account.

### **What Metro have told us**

Mr W called Metro on 7 January 2018 and claimed to have no funds in his account but thought he should have had around £60. Metro advised they would need to cancel the card and raise a card dispute because of the discrepancy but Mr W didn't want Metro to do that and said he'd call back the next day.

On 27 January 2018, Mr W telephoned Metro and asked to complete a transfer to an existing payee for an amount of £20. Metro advised Mr W his balance was £6.81. Mr W then asked to transfer the full amount of £6.81 to the payee. Mr W didn't query his balance at this time and therefore Metro find it hard to believe his card was stolen the day before as Mr W claims.

When Mr W reported the dispute transactions to Metro on 29 January 2018, he said his card was stolen on 26 January 2018 at around 10am. Metro have provided evidence to show the IP address used for one of the claims was one which Mr W had used previously. Mr W logged onto his online banking on 26 January 2018 at 06:17 and on 27 January at 05:31. Metro have explained their online banking platform allows customers to report their cards as lost or stolen but Mr W didn't do this during either of his log-ins.

Some of the transactions raised in the dispute started as early as 06:55 on 26 January 2018 which contradicts the information Mr W gave as to when his card was stolen (around 10am). On 5 February 2018, Mr W contacted Metro and asked them to refund two transactions which were pending at the time. Mr W gave the same story he had used previously that he paid by cash and contactless.

Mr W made a number of account to account transfers during the time he had the account open with Metro which he doesn't dispute. Many of these account to account transfers are followed by an ATM withdrawal of the same amount which Mr W is disputing.

A number of beneficiaries were created during the times when the disputed card transactions took place. Metro have explained that in order to create a beneficiary on the mobile app, the person would require access to the telephone number registered on the account, as well as the actual card which is linked to the account for PAN verification. Mr W hasn't disputed the transfers made and therefore Metro believe he would have still been in possession of his genuine debit card at the time the transfers were made.

The evidence provided shows that many transactions used the genuine card and PIN. Mr W told Metro he has never shared his PIN code with anybody else and hasn't ever written it down.

Overall, Metro are satisfied that:

- Mr W was in possession of his card throughout the period;
- Mr W had access and was aware of his balance through his mobile application and online banking platform;
- Mr W received refunds from Metro on a couple of occasions and therefore continued to raise further card disputes.

Metro have also provided us with the terms and conditions relevant to Mr W's account at the time which allows them to report information to fraud detection organisations. Metro are satisfied the marker recorded against Mr W with CIFAS for misuse of facility is correct.

### **Our investigator's view and the parties' responses**

Our investigator initially reviewed Mr W's complaint and thought Metro had acted in line with their legal and regulatory obligations when they recorded a CIFAS marker against Mr W. Metro agreed with the investigator's view. Mr W disagreed. He disputed that parts of the investigator's view were incorrect. Mr W asked for 'a fair trial' and therefore the complaint has been passed to me to review.

In December 2020, I issued a provisional decision. In it, I said;

*I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. Based on what I've seen so far, I'm likely to come to the same conclusions as the investigator overall. I've expanded on the reasons in my decision and therefore I think it's important both parties have the opportunity to respond before I make my final decision.*

*Metro applied the CIFAS marker as they believed Mr W made false accusations of disputed transactions. So I've looked at whether it was fair of Metro to apply the marker, based on the evidence and what the rules say about applying such markers.*

*When a business is a member of CIFAS it can record a marker against an individual customer when that customer has used their account fraudulently (a 'misuse of facility' marker). This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Mr W has encountered. If a business decides to file a marker it must have evidence and meet CIFAS's standard of proof. To meet the standard of proof the business must have:*

- *reasonable grounds to believe that a fraud or financial crime has been committed or attempted;*
- *and clear, relevant and rigorous evidence such that the business could confidently report the conduct of the customer to the police.*

*The conduct of the customer must also meet the criteria of the type of marker (in this case, the criteria for the 'misuse of facility' marker), and the business must usually have rejected, withdrawn or terminated a financial product on the basis of fraud. This means that a business shouldn't apply the marker on the basis of its suspicions only.*

*Having reviewed Mr W's account of events and the evidence Metro have provided, I'm currently satisfied that Metro have sufficient evidence for the CIFAS marker to be recorded on his file. I say this for the following reasons:*

- *Metro Bank have provided evidence to show it was Mr W who opened the account in branch – and therefore, it was him who chose his own PIN;*
- *Mr W has confirmed he didn't share his PIN details with anybody and he didn't write them down – therefore I find it unlikely that somebody stole his debit card to make the transactions because there's no reasonable explanation of how an unknown third party would have known Mr W's PIN;*
- *Mr W did not report his first debit card lost or stolen until 29 January 2018 despite having logged on to his mobile banking on at least two occasions before this date and after the date he claims the card was lost or stolen;*
- *Mr W has disputed all of the transactions on his account apart from the account to account transfers. I've seen that new payees were set up during the same time as some of the disputed transactions. Metro have explained Mr W would have needed his card to set up the new payees and therefore I find it difficult to believe Mr W didn't have access to his card at these times seeing as he hasn't disputed the transfers;*

*Overall, I think it's more likely than not Mr W made all of the transactions since the account opening. I see no other explanation as to how Mr W could have had his card lost or stolen but continue to set up payees and make transfers between his accounts. I'm also not satisfied that there has ever been a point of compromise with Mr W's PIN for anybody else to carry out these disputed transactions.*

*Taking everything into account, I find that Metro have met the burden of proof required by CIFAS to file the marker. So, I'm not going to ask them to remove it.*

So I didn't think Metro had to do anything differently.

Mr W responded to my provisional decision. In summary, he said Metro were relying on assumptions and presumptions. Mr W also said he was suffering with his mental health at the time and couldn't manage his finances well. Mr W thinks Metro need to have factual information to rely on. Mr W said he needs the CIFAS marker removed as it isn't true or fair.

Metro responded to my provisional decision and agreed with it. They didn't have any further information to add.

### **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 appreciate how difficult it must be that Mr W finds himself with this CIFAS marker, and I don't doubt it is causing him difficulty. However, in order to ask Metro to remove the marker, I must be convinced they applied it unfairly. And I can't agree that's the case.

I explained in my provisional decision that I think it's more likely than not Mr W did make the transactions – and there was no reasonable explanation as to how Mr W could have had his card lost or stolen but continue to set up payees and make transfers between his accounts.

And that's because he needed the genuine card to do that. Mr W has also told us he didn't share his PIN with anybody, so I can't fairly agree there was a point of compromise as to when his PIN was found out by a third party to make transactions without his consent.

Mr W has said he was suffering with his mental health at the time and couldn't manage his finances. I'm really sorry to hear this. However, I can't fairly uphold his complaint on that point alone. While I don't doubt what Mr W has said, I don't agree that excuses his financial behaviour at the time. And as I found and explained in my provisional decision, I'm satisfied that Metro met the burden of proof required by CIFAS to file the marker against Mr W. And therefore, I won't be asking them to remove it.

**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 W to accept or reject my decision before 3 February 2021.

Hayley West  
**Ombudsman**