

The complaint

Miss S has complained that Metro Bank PLC recorded a marker against her at CIFAS, the national fraud database.

What happened

In August 2019, Miss S received money into her Metro account. Minutes later, the money was withdrawn using her card and PIN, at a cash machine and a currency exchange.

On the same day, a savings account was set up using Miss S's online banking, which received further funds. These funds were then quickly paid into her current account and withdrawn using another currency exchange.

The sending bank for the first set of money reported that Miss S had received fraudulent funds. In response, Metro sent Miss S notice they were closing her account. According to the contact notes, she phoned them the following week to discuss this, and they told her again about the account closure. Metro also added a marker against Miss S at CIFAS.

Miss S says that around March 2020, she realised her card was missing and when she tried to replace it that's when she found out her account was closed. She complained, but Metro felt they'd closed her account and added the CIFAS marker fairly.

Miss S explained she often kept an undisguised record of her PIN, which she may have lost around the time of the fraud. Her representatives explained she had difficulties in concentrating or remembering things, and often lost belongings. Her phone was secured with a password. She didn't share her card or security details with anyone, and no one she knew had approached her about all this or asked to use her account. She had another account, but that card didn't go missing. She kept her ID safe at home, so it hadn't gone missing either. She didn't know the people who'd paid money into her account, and was unaware of all the activity from the time. She said someone must have taken her Metro card and used it for the fraud without her knowing.

I sent Miss S and Metro a provisional decision on 4 March 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

In order to register this CIFAS marker, Metro were not required to prove beyond all reasonable doubt that Miss S had done something wrong. Instead, they had to have reasonable grounds to believe she'd misused her account, beyond a suspicion or concern. I've very carefully considered everything that both sides have provided, and based on what I've seen so far I currently think that Metro did have sufficient grounds to register the marker. I'll explain.

I'm satisfied from Metro's technical evidence that the fraudulent funds were withdrawn using Miss S's genuine card and the correct PIN. Now, it is possible that Miss S may have lost the card and her record of her PIN. That said, it does seem unlikely that she happened to lose them both at the same time, in a place where someone would notice, and that the person who picked them up happened to be capable of carrying out the subsequent fraud. It's also possible that someone deliberately stole the card and the record of the PIN. But it's difficult, then, to see why they didn't steal the card for her other account too. So these possibilities don't seem exceedingly likely. But I do accept that it's possible for someone to have got hold of Miss S's card and PIN without her permission, even if it's not especially likely. So I accept that the issue of the card and PIN alone are not sufficient grounds for the marker.

The currency exchanges would normally ask for ID in order to withdraw the money, so there's a good chance that whoever withdrew these funds was able to prove their identity as Miss S. And I understand Miss S's ID was kept safe and didn't go missing. Here, though, I'm not able to see what ID the currency exchanges checked. So I accept that this, too, is not sufficient for Metro to add the marker – though it does raise questions about how someone might have potentially been able to provide ID in the name of Miss S and match any photos, unless they were Miss S herself.

The biggest issue here is the online banking. I've gone through Miss S's online banking history, which records the device ID of her phone. Her phone was the only authorised device for this account. Throughout the day of the fraud, Miss S's phone was used to check her online banking, and she would have been able to see the disputed payments coming in and going out as they were happening. Indeed, it's difficult to see how the funds were withdrawn so quickly unless someone was checking the online banking to see when the funds had been received – and it appears that this person was Miss S via her phone. Miss S's online banking was also used to set up the new savings account that received the second set of money. This was all authenticated using Miss S's genuine phone and her genuine security details. Miss S's phone was then used to check her online banking regularly for about the next two weeks. And according to the account notes, she rang Metro the following week and they talked to her about closing the account.

So it does look like Miss S was aware of what was going on as it was happening, and she appears to have used her online banking to take part in the disputed activity.

Further, it is most difficult to see how Miss S wouldn't have noticed anything was wrong until the following March. I do understand that she has difficulties keeping track of things, and that she had another account elsewhere that she could use. But before the fraud, she used her Metro account fairly regularly, with only a matter of days between activity. So it should have been very noticeable if her card was missing for months on end. And Metro emailed her both about setting up the savings account, and when they were closing her accounts – I've looked at their records and am satisfied they emailed her at the correct address. It also looks like Miss S spoke to Metro on the phone about this, too. So it seems most implausible that she didn't notice anything amiss for over half a year – which is a very considerable amount of time in this context.

In summary, in order to carry out the disputed activity, someone would need to have not only been able to take Miss S's card and PIN at the right moment without her knowing, but they would also need to have somehow learned her online banking username, password and security information. They would also need to have been in possession of Miss S's phone over the day of the fraud and the following days. They would need to have been able to get past her phone's security too. And they would need to have either held onto her phone for nearly two weeks, or to have been able to consistently take it from her and replace it without her ever noticing. They would also potentially have needed her ID, and to have looked sufficiently like her in order to match the photo. I don't think there's any plausible way that an unknown thief could have done all that. And from what we've been told, it doesn't seem that there's anyone Miss S knows who did this without her permission either. Further, I've not seen any evidence that makes it seem implausible that Miss S could've authorised the disputed activity or given someone else permission to do it. And it looks like she was aware of what had happened long before reporting it.

That leaves only one likely possibility: that the disputed activity happened with Miss S's knowledge and permission. This is a difficult message for me to give, and I know it's a difficult message for Miss S to receive. But given the evidence I have, and the balance of probabilities, I'm currently unable to reasonably reach any other conclusion.

So based on what I've seen so far, I think Metro acted fairly in registering the CIFAS marker. It follows that I also currently think it was reasonable that they closed Miss S's accounts. I can see that they closed them in line with the terms and conditions.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 1 April 2021. Metro didn't add anything further. Miss S's representative responded with some further points, which I'll discuss below.

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.

Miss S's representative reiterated her difficulties, and said it's possible someone could have taken advantage of her naivety to get her to make these payments – though they did not know of anyone doing so. I have taken Miss S's situation into account, and have thought carefully about what might have happened. But Miss S said that no one had approached her to make these payments or asked to use her account, and she hadn't shared her account with anyone. She said she was completely unaware of what had happened, and only discovered it around seven months later. And there doesn't appear to have been anyone she knows of who asked her to make these payments. So Miss S has effectively ruled out that possibility. I cannot fairly conclude that that was what happened here.

The representative pointed out that our investigator hadn't previously mentioned certain details such as Miss S's call with Metro. That's why I initially made a provisional decision, rather than a final decision – as it gave both parties the chance to respond the additional details I brought up.

Miss S's representative also said that when they went into a branch, Metro gave them a copy of the account closure letter that was missing the heading and signature. They felt this was suspicious and felt strongly that I should have mentioned this in the provisional decision. I'm afraid the reason I didn't mention this was because I didn't think it was relevant. I can see that Metro emailed Miss S about the closure of her accounts, so I'm satisfied that Metro sent her the proper notification regardless of the letter. And I don't find it especially unusual or noteworthy for a reprinted letter to Miss S. Some of the formatting of the original.

I do understand the representative's strength of feeling, and I appreciate that they've been candid in their communication. I've considered their points carefully and understand they will continue to pursue things with the police. But having reconsidered the case, I've not found any reason to change my prior conclusions – that the only likely possibility is that the fraudulent activity happened with Miss S's knowledge and permission. And so I cannot fairly tell Metro to remove the marker in dispute.

My final decision

I don't uphold Miss S's complaint in this case.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 4 May 2021.

Adam Charles
Ombudsman