

## The complaint

Mr M complains that Metro Bank PLC ('Metro') registered a fraud prevention marker against him without due cause.

## What happened

I issued a provisional decision in June 2021 to explain why I thought Mr M's complaint should not be upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

*"In January to February 2017 Mr M received six payments into his account. Metro received a notification from the sending bank that these payments were fraudulent. The sending bank alleged that the money was sent as part of an insurance fraud, whereby the sender was duped into thinking they had been paying for a car insurance policy. Following a review, Metro closed Mr M's account and referred Mr M to Cifas to register him on the National Fraud Database.*

*Mr M told us that he contacted Metro to find out why his account had been closed, and he was informed that a complaint had been made about payments into his account relating to a car he'd sold. Mr M says he asked Metro to provide some more information about the complaint but he was advised to get in touch with the sender himself. Mr M explained that it would be onerous to do this as he is involved in the sale of multiple vehicles each month, and that he wouldn't necessarily have up to date contact details for all the buyers. Metro asked Mr M if he could review his files and provide supporting documentation along with and the contact details of the sender. As some time had passed, he said he no longer had these details but provided an invoice that matched the name on the sending account and a logbook for the car he said he sold to the buyer. Metro said the evidence Mr M provided didn't change their mind and maintained that they had a duty to refer this matter to Cifas.*

*Mr M explained that this was having a significant impact on him as he was not able to open another bank account or apply for a phone contract or credit card. He had also wanted to apply for a loan and this was preventing him from doing so. He said he had also been prevented from a property purchase. Mr M did open another account but that too was closed, likely due to the Cifas marker.*

*So Mr M came to our service. Our investigator recommended that the complaint be upheld. She felt Metro should have given Mr M the opportunity to respond to the allegations at the time. The investigator also felt that the invoice and logbook Mr M provided showed that the money was sent as part of a legitimate car sale, rather than as part of any fraud or financial crime. So the investigator recommended the removal of the Cifas marker, and that £250 be paid to Mr M for the distress and inconvenience it had caused him. Metro disagreed. In response to the view and a further request for information that I made, they said:*

- the amounts received into the account didn't match the amount the car was allegedly sold for on the invoice;*
- the year of the invoice was not the year the payments were made;*

- it seemed strange that there were no details of the sender on the invoice other than their name – which Mr M could have seen on his bank statement;
- the log book was unclear as it didn't show Mr M as the registered owner, and he had only provided the front cover;
- it was strange for money to be paid into a personal account for business sales and this breached the account terms;
- they had researched the car that Mr M had allegedly sold and found at the time of sale it had no MOT and had been declared off the road for tax purposes. They didn't think a dealer would be able to sell the car in this condition;
- Mr M's bank statements showed that there were numerous payments from other people with references that indicated the payments were for insurance – and the reason Metro may not have received fraud claims about these payments is that these individuals may not have had cause to claim on their vehicle insurance. The individual who made the fraud claim in this case had only discovered he was uninsured when he had an accident and needed to make a claim;
- all funds had been spent or removed from Mr M's account so the sending individual could not be refunded at the time;
- it would be strange for a car dealer to sell a car in instalments without any finance agreement in place as this would put them at risk; and
- they agreed with my point that it would be strange for someone to pay insurance in 6 payments over one month, but felt this could speak to the naivety of the sender.

#### *My provisional findings*

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I am minded to reach a different conclusion to the investigator. I know this may be disappointing to Mr M, but I'll explain why I am currently thinking of not upholding this complaint.*

*The marker that Metro asked to be applied is for misuse of facility. The misuse relates to using the account to receive fraudulent funds. For Metro to record this they don't need to be able to prove beyond reasonable doubt that Mr M is guilty of an offence of fraud. But to register a Cifas marker, they are expected to be able to demonstrate that there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted. What this means in practice is that Metro must first be able to demonstrate that the funds that entered Mr M's account were fraudulent funds – and not part of a legitimate car sale. And secondly, Metro will need to have strong evidence that Mr M was deliberately dishonest in receiving those funds and knew it was, or might be, an illegitimate payment.*

*Mr M hasn't denied knowledge of the funds that came into his account. But he explained that the money was sent to him as part of a legitimate sale rather than any kind of fraud. But the sender has alleged that he thought he was paying for an insurance contract, and later discovered he was uninsured when he went to make a claim. As such he has alleged that Mr M was deliberately dishonest in receiving and spending these funds. The relevant finding for me to make is whether I believe Metro had sufficient evidence to conclude that the money sent to Mr M was as the result of a fraud, and that he was deliberately dishonest in relation to this, such that it would be able to escalate its concerns to Cifas.*

*Based on my review, I am currently minded to say that Metro were entitled to do so. This is because:*

- *My review of Mr M's statements has shown that there were numerous payments into his account with references to insurance, but he told this service that he didn't sell insurance at that time. So this indicates he has not been entirely honest with Metro or this service.*

- *When asked about the discrepancy between the amounts paid in and the alleged invoice for the sale of the car, Mr M explained that the extra money was likely for an administration cost that he charged at the time. I do not find this particularly persuasive as I would expect all related costs to be included on an invoice.*
- *Mr M had said he sold a lot of cars as a car salesman for his family business. If this was true, I would have expected payments to go into a business account. I would also expect any instalment based sales to have a finance agreement in place in order to protect Mr M and the business.*
- *Whilst I accept that the inaccuracies on the invoice could be down to human error, I think it is reasonable for Metro to conclude that the invoice does not constitute compelling evidence of a genuine sale. On its own, it would not be conclusive. But when considered with the other evidence, I can see that Metro would have grounds to suspect the invoice that was produced appeared suspicious.*
- *Similarly, I think the production of the front page of a log book doesn't provide Metro with evidence to support that the payments were received as part of a genuine sale. I say this because there is no mention of Mr M on the logbook, and Metro have provided evidence that the vehicle didn't have a valid MOT, and was declared off the road. I am aware people may buy vehicles for parts, but I still don't currently feel that the logbook provided Metro with conclusive evidence of a sale.*

*Taking everything into account, I am currently minded to conclude that Metro had enough evidence to meet the burden of proof required by Cifas to add the marker against Mr M. So I am presently thinking it was fair that Metro reported Mr M to Cifas and closed his account. Unless something changes my mind, I won't be asking Metro to remove the marker.*

*My provisional decision*

*For the reasons above, I am not currently minded to uphold Mr M's complaint."*

### **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.

Metro didn't have any further points to add following my provisional decision. Mr M did ask what evidence he could provide, but decided not to provide any further evidence.

Given that I have not received any further evidence to consider, I see no reason to deviate from my provisional decision. So, for the reasons I outlined in that provisional decision, I am not upholding Mr M's complaint.

### **My final decision**

For the reasons set out above, I don't 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 5 August 2021.

Katherine Jones  
**Ombudsman**