

## The complaint

Mr X has complained that Metro Bank PLC registered a marker against him at CIFAS, the national fraud prevention agency.

## What happened

Both sides are most familiar with the case, and it's important that we preserve Mr X's anonymity, so I will summarise what happened in brief.

Mr X received some money into his Metro account that was then withdrawn or transferred on. It turned out these were fraudulent funds. Mr X was a minor at the time.

Mr X says a person befriended him and told him they didn't have a properly working bank account. This friend asked if they could pay Mr X money and have him withdraw or send it on for them. At first, Mr X agreed. He explained he was young and didn't think to ask further questions, and he felt intimidated by them. He then became hesitant. He says the friend got other people involved from a gang, who assaulted him and made violent threats to Mr X and his family. They also visited his home. In the end, they took his phone – which had their conversation logs. They also stole his card, and coerced him into giving them the PIN.

Metro closed Mr X's account and registered a CIFAS marker against him.

The following year, Mr X asked Metro to remove the marker. He explained it had been a very traumatic experience which he'd wanted to forget, and he had not been in control of what happened. He explained he'd been unable to get even a basic bank account since, and was at risk of losing his university place as he could not receive his student loan.

Metro have declined to remove the marker, broadly for three reasons:

- Mr X said his phone was stolen, but later spoke to Metro using the same number
- Mr X had not been able to evidence that he was assaulted
- Mr X's testimony focused on how some branch transactions were carried out, but didn't specify how some cash machine withdrawals had happened. Metro felt Mr X may have left those withdrawals out because he'd benefitted from them

Our investigator looked into things independently and didn't uphold the complaint, as he also felt it was suspect that Mr X had not accounted for the ATM withdrawals. Mr X asked for an ombudsman to look at things afresh. He explained he was young and didn't understand how this all worked. He'd left details out as he didn't know how safe we or Metro would keep his information, and he didn't want the perpetrators to trace things back to him and make good on their threats. The complaint was passed to me to decide.

I sent Mr X and Metro a provisional decision on 14 July 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

*I need to consider whether this report to CIFAS was made fairly. On this point, Metro needed to have more than just a suspicion or concern about Mr X. It needed to be able to show that it had reasonable grounds to believe that Mr X had knowingly attempted to commit fraud or a financial crime. Importantly, it also needed to have strong evidence of this, to a standard that would support reporting Mr X to the authorities.*

*Based on what I've seen so far, I think the marker should be removed – I'll explain why.*

*Metro pointed out that Mr X had said his phone was stolen, but some time later he spoke with the bank on the same phone number. Because of this, Metro feel his version of events may be false, and that he may have willingly and knowingly participated in the fraud. However, Mr X explained that after his phone was stolen, he bought a cheap replacement device and simply asked his phone company to transfer his number to his replacement's SIM. And that makes perfect sense – that's what most people would do.*

*Indeed, this matches up with the phone calls I've listened to. For example, around a month after the fraud, a staff member asked if Mr X had access to his number, and he said only as of recently. At one stage he couldn't both read a text and keep a call going as he was on a cheap non-smart replacement phone which didn't have that capability. He also mentioned on several occasions – usually unprompted – that his phone and card had been stolen.*

*So I don't think this was a good reason for Metro to add a CIFAS marker. Indeed, I think the evidence broadly supports what Mr X says happened to his phone.*

*A second reason Metro had for adding this marker was that Mr X hadn't been able to prove he was assaulted or coerced into complying with the perpetrators. But while I understand Metro's thinking, I don't think it was reasonable for them to require Mr X to produce that sort of evidence here. It's not realistically possible for Mr X to evidence what the gang told him in person, and they took his phone so he can't pass on any message histories. And by the time Metro asked for this evidence, it had been just under a year since the assault – so it's not like Mr X could give them photos of bruises or procure CCTV footage. Further, the onus here is on Metro to evidence that Mr X knowingly and willingly tried to commit a crime, not on Mr X to prove that he didn't. So I don't think Metro took the most reasonable approach there.*

*Lastly, I've considered the gap in Mr X's testimony. I acknowledge that he didn't specifically talk about the cash withdrawals until our investigator asked about them, and I think this is a fairly finely balanced issue. I can understand why our investigator felt this undermined Mr X's version of events.*

*However, the problem here is that Metro didn't properly investigate things with Mr X at the time. They simply closed his account and added the CIFAS marker. I can't see that they spoke to him first or got any detailed testimony. From what I can see, the first detailed testimony Mr X gave was nearly a year after the events in question, and his conversations with our investigator were around a year and a half after. Because Metro didn't discuss things with him at the time, I don't have any contemporaneous testimony to compare his current testimony with. It also means I need to bear in mind the difficulty of piecing together potentially traumatic events a long time after the fact.*

*Mr X was only a minor, and throughout his communication with Metro and our service he's been frank about how scared and traumatised he's felt. He explained that he wasn't sure how safe he would be giving over all the details of what happened to us or Metro, and he was worried that if he said too much he could put himself or his family in danger. Our investigator argued that if that was the case, Mr X wouldn't have given us the details he'd already given. But while I appreciate that argument, I'm conscious that people acting in fear will often act less than entirely logically – not least if they're young and unsure what to do. And what Mr X says happened does otherwise seem most plausible. Having listened to the calls involved, he really seemed quite shaken about being assaulted and about the threats levelled against himself and his family.*

*Further, it seems like somewhat of a leap to assume that just because Mr X didn't talk about the cash withdrawals at first, it must mean that he benefitted from them. It's also perfectly plausible that he was coerced into making them – or letting the gang make them – in the same manner as the branch transactions, as he now says he was. And it's possible that Mr X struggled to talk comprehensively about what happened because of potential factors such as being a minor, having trauma, acting under fear or duress, dealing with intimidating and unfamiliar financial matters on his own, and/or trying to piece things together again a significant time after the fact.*

*Importantly, Metro don't actually appear to have any evidence that Mr X benefitted from the fraudulent funds. He didn't keep any of the money in his account or transfer any money to other accounts in his name. And Metro haven't provided anything to suggest that Mr X was flush with cash after this. Mr X's existing testimony gives a plausible account of what happened to the fraudulent money – that he was misled and coerced by criminals into accepting it into his account and then passing it on. It bears repeating that Metro can only justify this CIFAS marker if they have strong evidence that Mr X knowingly tried to commit a crime – suspicions or assumptions are not sufficient.*

*In other words, while we may not be able to rule out that Mr X benefitted from the funds, there does not appear to be any significant evidence which shows he benefitted from them, and in these particular circumstances we also cannot rule out that Mr X was simply taken advantage of by criminals.*

*So in summary, I do understand why Metro added the marker, as I think they had good reason to be suspicious of Mr X. But I don't think they had quite enough evidence to meet the bar of recording a CIFAS marker against him, not least given their lack of investigation. I am not currently satisfied that Mr X knowingly and willingly tried to commit a financial crime, nor that he benefitted from it – though I am fully conscious of the possibility. I think the risk of Mr X being an innocent party is too great to justify this CIFAS marker remaining.*

*It follows that while I don't think Metro acted entirely unreasonably here, I think it would be more reasonable for them to now remove the CIFAS marker.*

I said I'd consider anything else anyone wanted to give me – so long as I received it by 11 August 2021. Mr X didn't have anything further to add. Metro sent in some further submissions, which I'll talk about 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.

Metro felt they hadn't been unreasonable in expecting evidence of Mr X suffering the abuse. But as I explained in the provisional decision: *"while I understand Metro's thinking, I don't think it was reasonable for them to require Mr X to produce that sort of evidence here. It's not realistically possible for Mr X to evidence what the gang told him in person, and they took his phone so he can't pass on any message histories. And by the time Metro asked for this evidence, it had been just under a year since the assault – so it's not like Mr X could give them photos of bruises or procure CCTV footage. Further, the onus here is on Metro to evidence that Mr X knowingly and willingly tried to commit a crime, not on Mr X to prove that he didn't. So I don't think Metro took the most reasonable approach there."* Metro have not added anything new there, so my position remains the same.

Metro pointed out that they spoke to someone on Mr X's phone number who did not sound like Mr X. They argued that if this was the person who Mr X said was abusing him, then it meant his story was not plausible as that person was trying to help Mr X and ensure a CIFAS marker wasn't registered against him.

As I said in the provisional decision, it seems like all the calls in question were made on a replacement phone after Mr X recovered his number. Mr X never claimed this other person was the person who assaulted him – it appears that Metro just assumed he'd say that. Instead, Mr X explained this was a family member who he'd asked to speak to Metro on his behalf when he felt too intimidated to talk. Metro could have clarified this had they carried out a comprehensive investigation and spoken to Mr X about this.

Metro pointed out that Mr X didn't question where the credits came from. I understand their point, and that's certainly something I might be more concerned about if Mr X was an adult or otherwise experienced with financial matters – or if, for example, he'd claimed that the money was owed to him. But Mr X never claimed he was entitled to the funds. And he was a minor with little to no experience with financial matters. Indeed, if he got threatened and coerced by criminals – as he's consistently explained – then it's perhaps rather unsurprising that he didn't question them about the source of their funds. Again, it's worth reiterating that Mr X was only a minor.

Metro said that Mr X's account was opened just before the fraud, which indicated it might have been opened for the purpose of fraud. I understand that argument too, and again if Mr X were an adult then it might look rather odd to open an account and then not use it soon after. But at his age and stage in life, it seems quite normal to open an account in advance without needing to use it straight away. Being a minor, it's not like he would've had wages to pay in or a mortgage to pay out. And again, if Metro had done a reasonable investigation at the time and questioned Mr X about this, then I'd have contemporaneous testimony about this. But Metro did not investigate things with Mr X at the time. And so while I think they've provided a reason to be suspicious of Mr X, I don't think they have enough to justify a CIFAS marker against him.

Metro pointed out that Mr X had checked his online banking at points, and that it was most likely Mr X who made the branch transactions. Therefore they were satisfied the genuine customer was involved. But Mr X never denied knowing that his account had been used – indeed, he consistently explained that it was him who authorised the branch transactions, on the instructions of the fraudsters. The crux of the issue is that he says he was misled and coerced into helping them.

Lastly, Metro highlighted that the fraudsters had left a small fraction of the money involved in Mr X's account. Metro felt that showed it was most likely that Mr X had benefitted from the fraud. It's not clear why this money was left in the account; it may have been a mistake or the criminals may have originally intended to use the account further, and so on. But given the sums involved, I don't find it to be a particularly significant amount, nor an amount I'd expect to be a payment to Mr X. And if it was intended as a payment, it would have made much more sense if they'd just handed the cash to him rather than deposited it in an account which – according to Metro – would have only been set up for fraud. Metro haven't provided anything else to substantiate their assertion that this small fraction of the funds was left over as a payment to Mr X – again, this looks rather assumptive on Metro's part. And again, they never questioned or investigated this at the time. It's also worth pointing out that it looks like Mr X's account was frozen and then closed with this money still inside – in which case I can't see how Mr X has benefitted from it.

So having reconsidered the case, I maintain that I understand Metro's position and accept they had good reason to be *suspicious* of Mr X. But I don't think they had quite enough evidence to meet the bar of recording a CIFAS marker against him, not least given their lack of investigation at the time. I am not satisfied that Mr X knowingly and willingly tried to commit a financial crime, nor that he benefitted from it – though I am fully conscious of the possibility. I think the risk of Mr X being an innocent party is too great to justify this CIFAS marker remaining.

Therefore I direct Metro Bank PLC to remove any fraud marker they registered against Mr X in relation to this matter.

It's worth reiterating that I understand why Metro and our investigator came to the respective conclusions they did, and that this was a finely balanced issue. Mr X came very close indeed to having this marker remain for the full period, with all the consequences that entails. I hope that he will keep this in mind and will strictly avoid any similar situations in future.

### **My final decision**

I uphold Mr X's complaint and direct Metro Bank PLC to remove the fraud marker in question.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 6 September 2021.

Adam Charles

**Ombudsman**