

The complaint

Mr F is unhappy that Metro Bank PLC closed his account and placed a fraud marker against his name.

What happened

Mr F says that in June 2020 he brokered a car for a third-party through a rental company he had a pre-existing relationship with. The third-party wasn't previously known to Mr F, but he says he was reassured of his legitimacy by the mention of mutual clients and the supply of a UK driving license.

Mr F says that the third-party paid for the car via a number of payments to his Metro account. He says these were paid in instalments as the car was being hired for a music video, and the third-party had informed him that the money was being raised from numerous sources at different times.

After the payments were made to Mr F, Metro contacted him and informed him his accounts would be closed without reason. Mr F wasn't happy about this, so he made a complaint.

Metro issued a response to Mr F's complaint. It told him that the payments referred to above were confirmed as originating from fraud. It advised Mr F to speak with the sender of the funds, if they were known to him, and report the matter to law enforcement if he was a victim himself. It pointed out that if law enforcement were to investigate the matter and deem him innocent, he should forward all relevant documentation to Metro for it review the decision.

Mr F supplied documentation to support his position, including an invoice, a hire agreement and identity documents supplied by the third-party. Metro said that this wasn't sufficient to explain the multiple payments to his account and the references they were made under; so it referred Mr F back to its original response letter.

Mr F remained unhappy with Metro's response. He also discovered that it'd placed a fraud marker against his name using the Cifas database. Mr F says this caused him severe financial difficulty as he felt this was the reason why existing financial products were withdrawn and he was unable to open another bank account. So, he came to our service to look into things further.

An Investigator at our service looked into the evidence provided by both parties but thought Metro were fair in closing his account and applying the Cifas marker. He felt that there were sufficient discrepancies in Mr F's testimony to satisfy the burden of proof set out by Cifas guidelines and thought that the account was closed in line with the terms and conditions. So, he didn't think Metro needed to do any more.

Mr F disagreed with the Investigator's findings. He thought that he'd provided sufficient evidence to prove he was an unsuspecting victim and that the Cifas marker was unfair in the circumstances.

As Mr F disagreed with the Investigator's findings, so the matter was passed to me for a

decision.

On 10 September 2021 I issued a provisional decision to both parties and explained why I thought this complaint should be upheld. I invited both parties to send any additional comments or evidence they wished to make. These findings set out the following:

'The bar for applying a Cifas marker is a high one. In order for Metro to do so it must satisfy itself that a fraud or financial crime was committed or attempted. Cifas also requires that Metro's evidence of the subject's conduct must be clear, relevant and rigorous such that it could confidently report it to law enforcement. I therefore find it unfair to apply such markers based upon mere suspicion.

In the circumstances of this complaint, Mr F has been in receipt of alleged fraudulent funds indirectly, commonly referred to as a second-generation recipient. This means that Mr F didn't receive the funds directly from the person alleged to have fallen victim to a crime. But instead, they have been transferred to him from someone who did.

So, I must be mindful of that fact here. Fraudsters do use funds obtained from crime to make legitimate purchases from unsuspecting individuals and businesses to launder the criminally obtained funds. And it's unfair to place fault on such individuals or businesses who are unaware of the criminal origin of these funds. But there are also occasions where individuals and businesses are used knowingly to launder criminal assets to help prevent detection and disguise these funds; sometimes for financial gain themselves. To knowingly do so is considered a criminal act and is commonly referred to as money laundering.

Metro's position, in short, is that there is sufficient evidence to support more than mere suspicion of Mr F's conduct; and therefore the application of the marker. But Mr F has submitted testimony and supplied a number of documents in support of his submission of being an unsuspecting recipient of fraudulently obtained funds.

Mr F has told our service that he was a young man at the time of the transactions subject to this complaint. He's told us, and provided supporting evidence, that he intended to become an entrepreneur in the car rental industry. We've also obtained testimony from the third-party company that he brokered the car on behalf of supporting this fact and evidencing the specific hire agreement which led to him being in receipt of the funds.

Our Investigator was suspicious of the email, which the third-party business sent to our service, as Mr F's email address could be seen below it and the same text was repeated below that. Our Investigator thought that this indicated Mr F had sent the email to the business for it to forward it to us. But Mr F has pointed out that the business incorrectly sent the email to him and that he responded asking it to be sent to our service instead.

While I take on board how the email may be interpreted as suspicious, I equally find the explanation from Mr F plausible. I've also noted that when this was pointed out by the Investigator, the third-party business attempted to clear matters up by providing their telephone number and asking our service to contact them. I think this goes some way to support Mr F's version of events.

Metro has also pointed out a number of other inconsistencies in Mr F's submissions that it says supports the fact that the Cifas marker should remain. This includes:

- *The payments were made in multiple transfers to Mr F's account. It questioned why it wouldn't be done in a single payment.*
- *The references for the payments didn't match what Mr F had claimed the*

payments were for. These were referenced 'bike' and 'birthday' rather than for the car rental Mr F claims he was receiving the payments for.

- It felt there were discrepancies in the evidence submitted, such as slightly differing signatures on the paperwork to the driver's licence. It's also pointed out that the fingers holding each of these appeared Caucasian, which didn't match the profile of both sending and receiving account holders.
- The pricing of the vehicle and brokerage fee appeared to be out of line with standard industry expectations.
- The destination of the funds once paid into the account didn't appear to marry up to where Mr F said they were being paid in for.

While these are legitimate suspicions and concerns, Mr F has provided explanation for each of them when given the opportunity.

Mr F has informed our service that payments were made in multiple transfers as the car was being rented for a music video. He was told by the sender that money was being raised by numerous people participating in it and may come at different times and sources. Mr F was unable to explain the reason for the unusual references made in the payments, but this isn't something he would necessarily have control over as he isn't the person placing the references into the transfer; this would be done by the sender.

Mr F has also explained that as the vehicle was being used for stunts during the music video, the pricing can't be compared to industry standards. I feel this is evidenced further by the email sent by the third-party business where it points out external and internal damage to the vehicle when it was returned.

Mr F has also explained the way in which he paid the third-party company. He says that he had cash lying around at home and used this to make the payment. This is supported by the third-party business in its submission to our service. He then used the funds transferred to his account to make payment to another account in his name. And he says he then paid this out to numerous sources including family members who he says he uses to save money and prevent him from spending it.

I also don't accept Metro's submissions regarding the discrepancies in the paperwork supplied in evidence to Mr F's testimony. I'm unaware of the skin tone of both the sending bank account holder or Mr F, but having looked at the photographs myself, the skin tone of the person holding the documentation is not that of a Caucasian; as suggested by Metro. Nor do I think that the signatures on the documentation are so different to that held on the driving licence that a reasonable conclusion can be made that they are inconsistent. I think it's reasonable to expect that handwritten signatures would differ slightly each time they are written.

To the contrary, I find it compelling that Mr F has a photograph of the driver's licence which holds the same information as the genuine sending bank account holder's information. And the time stamp of this photograph, along with the photographs of the agreement and invoice, appear to corroborate the timeline of Mr F's testimony. If Mr F was used as a knowing money mule in the circumstances, I find it unusual when comparing this to general patterns of fraud and money laundering that he would possess such documentary evidence to support his testimony. And that the information on the documentation and identity matches that of the genuine sending bank account holder.

I do however acknowledge that the combined factors above could be interpreted as suspicious. But I think Mr F has provided sufficient testimony and evidence to counteract this and support his position. Metro has expressed concern with the fact that Mr F was using a personal account for business purposes and that the way in which he conducted

himself doesn't fall in line with how a genuine business would operate. But I think it's important to consider that Mr F wasn't running an established and experienced business. He was a young man who says he was attempting to break into this space and establish himself. I therefore find it unreasonable to hold him to the same standard of expectations.

I also think that consideration should be given to the origin of these transactions. Mr F hasn't received these directly from the individual who has alleged to have been victim of a crime. They have been sent to him by a person who he has shown was engaging in a genuine business transaction with him; for which the person received the services paid for.

Taking all the above into consideration, I don't think Metro have applied the marker against Mr F's name fairly. As such, I'll be asking it to remove the marker.

I've also considered if Metro were fair and reasonable in closing Mr F's account in the way in which it did.

Metro has told our service that the account was closed in line with its terms and conditions. The relevant terms and conditions of the account relied upon are 11.2. These set out when Metro can close a customer's account and what notice it will provide.

These terms say that Metro can close a customer's account immediately, or at the end of any notice period, if the account is used for any suspicious or fraudulent activity. As Metro had been informed that Mr F's account had been in receipt of second-generation fraudulent funds I don't think it was unfair in its decision to close the account under those terms considering the risk this posed to both Metro and Mr F. And I must also consider that instead of closing the account with immediate effect, it did give Mr F the opportunity to find alternative banking and rearrange his financial arrangements by giving seven days' notice.

For these reasons, I find the closure of the account to be reasonable in the circumstances.

While I understand that Mr F wishes for his account to be re-opened, our service can't compel a business to remain in a business relationship with a consumer (unless legally required to do so), as much as a consumer can't be compelled to bank with a certain provider.

I must also consider the impact the marker had on Mr F when it was applied by Metro. At the time Metro was informed of the alleged fraudulently obtained funds entering Mr F's account, Cifas had issued new guidance on dealing with customers that had obtained fraudulent funds, but weren't considered to be involved in the criminal act that resulted in their acquisition. These are commonly referred to as 'money mules'.

In its guidance, Cifas broadly acknowledged that there were circumstances where money that had originated from crime was transferred to unsuspecting individuals and businesses without their knowledge of its origin. The guidance sets out what Cifas members should do to investigate these scenarios and establish the consumer's witting or unwitting involvement in each case. I've interpreted that the purpose of this is to ensure unwitting money mules that had innocently been involved in the laundering of criminal assets weren't loaded to the database and impacted by the loading against their name unfairly.

Having reviewed this guidance, I don't think Metro followed the investigatory requirements set out by Cifas in establishing this difference. I can't see that Metro gave

Mr F a chance to defend his position before loading the marker against him. Having said this, I can see that it did ask for evidence from Mr F after his complaint about the marker and after reviewing this decided to retain the marker. I do think that this immediate action without investigation caused Mr F some level of distress and inconvenience as he seems to have had to make a concerted effort to prove he was an innocent party in the circumstances; after the marker was applied. I think £50 is reasonable to award to Mr F to reflect that.

Mr F has said that the impact of the marker was severe as he was unable to open another bank account. He also believed a number of his financial products were closed as a result of the marker. However, it's difficult to prove that the sole reason for this was due to the marker Metro placed against him. Furthermore, businesses should be closing accounts or declining applications in a fair way; and in line with its own terms and conditions. It would generally be deemed unreasonable to close an account solely based upon the application of a Cifas marker placed by another business. But Metro can't be held accountable for any errors these businesses may have made. Nor have I been supplied sufficient evidence to persuade me of a link between these issues and the marker.'

Metro didn't provide further comment to the provisional findings made, but Mr F did agree. After Mr F agreed, he provided further submissions regarding the closure of his accounts held with third-party businesses. He remained of the opinion that these accounts were closed as a result of the marker placed by Metro.

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.

Having done so, I don't intend to depart from the findings made in my provisional decision. I'll explain why.

While Mr F has agreed with my provisional findings and proposed award, he's also provided two inserts from previous findings our service has made in relation to other complaints against the businesses that have closed his accounts.

Mr F says he's submitted these as supporting evidence that his accounts held with other providers were closed directly as a result of the Cifas marker applied by Metro. I've already covered this element of Mr F's complaint in my provisional findings. However, to reiterate, while the marker placed by Metro likely was a contributory factor to Mr F's accounts closing, it would be unfair to place blame on Metro in its entirety for these closures.

Cifas guidance does stipulate that its members shouldn't close accounts solely on the basis of a marker applied. And as I've outlined in my provisional findings, a business should close accounts in a fair way; and in line with its own terms and conditions. So, I can't say with certainty that Metro should take full responsibility for the closure of accounts held with other businesses considering that there might be other factors involved and individual failings by these businesses.

I find that the compensation awarded in my provisional decision would fairly incorporate any additional inconvenience caused by the contribution this marker had on those decisions.

My final decision

For the reasons I've given above, and in my provisional decision, I uphold this complaint and direct Metro Bank PLC to:

- Remove the Cifas marker placed against Mr F's name
- Pay Mr F £50 for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 October 2021.

Stephen Westlake
Ombudsman