

## Complaint

Miss A is unhappy that Metro Bank PLC (“Metro”) recorded a fraud prevention marker against her. She says that she was also a victim of a fraud and it’s unfair for Metro not to remove the marker.

## Background

In August 2016, Miss A’s two Metro accounts received a number of payments from a third-party. Metro subsequently received a notification from the bank which sent the funds that its customer had been scammed into making 13 payments from their account totalling close to £7,000.00. Metro immediately wrote to Miss A on 1 September 2016 and informed her that it would be closing her accounts in 7 days. It then went on to register a fraud prevention marker against her in the middle of September 2016.

After learning that Metro had recorded a fraud prevention marker against her, as result of a subject access request she made in 2021, Miss A complained to Metro. Metro looked at Miss A’s complaint and didn’t uphold it. As Miss A remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss A’s concerns. He didn’t think that Metro had done enough to show that Miss A was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss A. Metro disagreed and so the complaint was passed to an ombudsman for a final decision.

## My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The marker that Metro has filed with is intended to record that there’s been a ‘misuse of facility’ – relating to using the account to receive fraudulent funds. In order to file such a marker, it isn’t required to prove beyond reasonable doubt that Miss A is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

What this means in practice is that Metro must first be able to show that fraudulent funds entered Miss A’s account, whether they were retained or merely passed through. Secondly, Metro also needs to have strong evidence to show that Miss A was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Miss A allowing someone else to use her account in order to receive an

illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker, the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account in order to understand their level of knowledge and intention.

In order to determine Miss A's complaint, I need to decide whether I think Metro had enough evidence to show fraudulent funds entered Miss A's account and that she was complicit in this. It's important to note Metro had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, there doesn't appear to be any dispute that Miss A's account was in receipt of fraudulent funds in the last few days of August 2016. So I can understand why Metro had concerns about the usage on Miss A's account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Metro also has to produce sufficient evidence to show Miss A was complicit in fraud. And I don't think that it has done that here.

I think it would be helpful for me to start by setting out that Metro doesn't appear to have carried out any sort of investigation into Miss A's actions, once it received the notification from the third-party bank. It simply sent Miss A a letter saying that it would be closing her account in 7 days. So Metro didn't give Miss A any opportunity to explain her side of the story. And I have to question how it could possibly have assessed her knowledge and intention before it recorded the fraud marker against her - arguably this in itself is unfair.

Miss A has, since learning about the marker, explained that she was targeted by someone much older than her who took advantage at a time when she was young and while her family was experiencing financial difficulty. She's explained that she was introduced to an older man by a friend and was encouraged to provide her debit card and account details to him as he said he could make money for her and help her financial situation. Our adjudicator found Miss A's version of events plausible and he thought that Miss A was unwittingly involved in fraud, rather than it being the case that she was complicit in it.

Metro says this isn't the case because Miss A admits to providing her card to the older man in order for him to make money for her. And its view there can be no reasonable explanation as to how this would happen, unless her account were to be used for illegal activities. I've thought about what Metro has said but I don't agree with its assertions, as I don't think it automatically follows that Miss A ought to have realised that her account would be used for illegal activities just because someone told her they could make her some money. In my view, Metro appears to be substituting its judgement and expertise in these matters, for that of Miss A's without accounting for her age and lack of knowledge about financial matters.

More importantly it is Metro's responsibility to demonstrate that Miss A was knowingly part of the fraud. And I think that it has failed to do that here. Metro needs to have relevant and rigorous evidence such that it could report the matter to the police. In other words, a reasonable suspicion that Miss A knew fraud would take place when she handed over her card and account details. Simply saying Miss A ought to have known illegal activity would take place (even taking into account what she's said) just isn't enough to meet what is a high bar. This is especially the case seeing as Miss A's version of events here isn't implausible.

Furthermore, there isn't any evidence indicating that Miss A made a financial gain either as the fraudulent funds in question were transferred elsewhere. At best there may have been some retail transactions made. But even then these were for less than the amount of the

funds that were already in the account prior to the fraud taking place. So I've not seen anything to suggest that Miss A benefitted from the fraudulent funds and would question why she'd knowingly participate in a fraud where she didn't benefit.

Overall and having considered everything, I don't think that Metro had sufficient evidence to meet the test for recording a fraud marker against Miss A. As this is the case, I think that it was unfair for Metro Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss A's complaint and Metro needs to remove the fraud marker it has recorded.

### **My final decision**

For the reasons I've explained, I'm upholding Miss A's complaint. Metro Bank PLC should remove the fraud marker it has recorded against Miss A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 20 April 2022.

Jeshen Narayanan  
**Ombudsman**