

## **The complaint**

Mr F is unhappy Metro Bank PLC loaded a fraud marker against his name.

## **What happened**

At the beginning of March 2021 Mr F says that he saw an advertisement via a social media platform regarding a cryptocurrency investment. Mr F says that he carried out due diligence and researched the company online. This returned no concerns and had received numerous positive reviews from users. So, he contacted the social media user and followed their advice to open a bank account with Metro and then link this to a cryptocurrency wallet within an application.

He was then instructed to share the information about the account and the wallet with a social media 'support user'. He was told that over the course of a number of days he'd start to see cryptocurrency appear in his wallet from an initial investment he paid in. Mr F was told that he'd also receive guidance and knowledge from the support user thereafter. Unfortunately, Mr F says that he found out this was a scam when his accounts started to close down and he became locked out of his crypto wallets.

Metro says that the account Mr F set up received—or attempted to receive—a number of payments. These were all eventually reported by the sending banks to have originated from fraud. As such, it closed Mr F's account and reported him to the Cifas fraud database.

Mr F complained to Metro as he felt he was a victim of fraud rather than a participant in it. Metro responded to Mr F's complaint and said it hadn't made an error. It reiterated that Mr F's account received a number of confirmed fraud payments, and attempts were made to transfer further fraudulent funds into the account. It concluded that this was sufficient justification to close the account and load the marker.

Mr F remained unhappy with Metro's response, so he brought his complaint to our service. An Investigator looked into the evidence provided by both parties and concluded Metro had made an error. They felt that Metro hadn't followed the fraud marker database guidance and didn't contact Mr F to allow him to explain the activity. They concluded that information from a third-party bank wasn't sufficient to show that Mr F was complicit in the activity reported and therefore should remove the marker.

Metro didn't agree. It pointed out that the information provided by the third-party banks is deemed a reliable source and further added that a number of other fraud markers had been loaded by other members of the database suggesting Mr F was deliberately dishonest. It also pointed out that Mr F transferred the fraudulent funds from the account to another account in his name, suggesting that he was attempting to layer the funds.

As Metro disagreed with the Investigator's assessment, the matter has now been passed to me for to make a final decision.

## 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.

The relevant considerations here are set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must be clear, relevant and rigorous such that the member [Metro] could confidently report the conduct of the subject [Mr F] to the police.

In addition to the Handbook's burden of proof, Cifas released guidance to its members in March 2020 providing best practice guidance when filing markers against 'Money Mules' against the National Fraud Database. As Mr F had received fraudulent funds into his account held with Metro, I find that the guidance is relevant in these circumstances.

Firstly, I acknowledge that the first burden of proof has clearly been met in this case. It's clear that Metro received reliable reports from third-party banks informing it that Mr F had received, or attempted to receive, fraudulent funds into his account. So, I'll now go on to consider the second burden of proof and the 'Money Mule' guidance set by Cifas.

The second burden of proof, in my interpretation, requires more than mere suspicion of the consumer's willing involvement of the alleged activity to load them to the database. It requires "clear" and "rigorous" evidence that would warrant reporting the subject to the police. This is further supported by the 'Money Mule' guidance that sets out that "*You must have evidence to show that the consumer was aware that the payment they were receiving was, or might be from an illegitimate source.*"

Broadly, it also highlights the need to consider evidence supplied by the consumer and says that contact *should* be made with them prior to deciding to load the marker. This is typically to establish if the consumer has themselves been victim to a fraud or has been duped into unwittingly laundering funds through their account.

Here, I don't think Metro has followed this guidance. It made no attempt to contact Mr F and provide him an opportunity to explain the activity on the account. Metro has pointed out that this could amount to "tipping off", but I don't agree. Asking a consumer to explain activity on their account doesn't necessarily require the member to reveal the origin of the funds and the reports received by the third-party banks. It merely provides the consumer an opportunity to explain their entitlement to the funds or the circumstances to which they came into their account.

I also don't agree with Metro's submission that other loadings on the Cifas database support its position that Mr F was deliberately dishonest. To the contrary, Mr F has informed our service that the other bank which he held an account with involved in this particular fraud decided to remove the marker loaded against him as a result of his testimony and submissions. I cannot verify the circumstances surrounding the other markers held on the database or if they've been loaded correctly. But Metro hasn't been able to show how these loadings support its decision to load a marker specifically under these circumstances.

Mr F has provided a consistent testimony to our service throughout outlining that he was actually the victim of a fraud rather than a witting participant. He, likely naively, thought he was investing in cryptocurrency and handed control of his account and crypto wallet over to

the fraudsters thinking they were acting in his best interests. But instead, discovered that not only were they intent on stealing his original investment, but were also to use his accounts to launder fraudulent funds. I realise that this may seem like a negligent thing for a reasonable person to do, but I can see that Mr F was relatively young at the time of the fraud and likely inexperienced in financial matters. It's also common for fraudsters to target young adults as unsuspecting 'Money Mules' for these reasons.

Overall, I don't think Metro has adhered to the guidance set out by Cifas when dealing with potential instances of 'Money Mules'. And had Metro contacted Mr F and allowed him the chance to explain the circumstances and provide evidence, I don't think it would have fulfilled the second burden of proof required by Cifas. I say this as it's more likely than not that Mr F has instead fallen victim to a fraud himself and had his accounts used unwittingly to launder funds.

### **Putting things right**

Metro should now remove any fraud markers it has placed against Mr F's name.

### **My final decision**

For the reasons I've given above, I uphold this complaint and direct Metro Bank PLC to remove any fraud markers associated with Mr F regarding these circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 July 2022.

Stephen Westlake  
**Ombudsman**