

## The complaint

Mr K is unhappy that Metro Bank PLC placed a fraud marker against his name.

## What happened

Mr K held an account with Metro. In 2017, Metro received notification from a third-party bank that Mr K had been the recipient of fraudulent funds into his account. It was referring to a payment of £784 received on 20 September 2017.

Metro carried out a review of Mr K's account and decided to close it, providing 7 days' notice, in line with the terms and conditions of the account.

Later, Mr K realised he had a fraud marker applied against his name on the Cifas database, and this was causing him significant difficulty in obtaining and maintaining financial products. So, he made a complaint to Metro and asked it to remove the marker.

Metro responded to Mr K's complaint defending its reasons for loading the marker. It said that due to the receipt of fraudulent funds, it had an obligation to report the matter to Cifas.

Mr K remained unhappy with Metro's response, so he referred his complaint to our service. An Investigator considered the evidence provided by both parties but didn't find Metro had made an error in the circumstances. Broadly, the Investigator found that the evidence suggested Mr K was likely aware of the funds entering his account; they also found it likely Mr K authorised some of the activity that saw the fraudulent funds being spent.

Mr K disagreed. He told our service that his ex-partner was responsible for the receipt of the funds and the spending of them. He told our service that they had taken his card and mobile telephone, leading to the breach of his account.

As Mr K disagreed, the matter has been passed to me for 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.

One of 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 clear, relevant and rigorous such that the member [Metro] could confidently report the conduct of the subject [Mr K] to the police.

When considering these standards, my interpretation of the bar for recording a Cifas marker is a high one. I must also take into consideration what is fair and reasonable in the

circumstances. Having done so, I find that the marker has been applied fairly here: I'll explain why.

Mr K originally received the £784 into his savings account: held with Metro. This was then transferred to Mr K's current account: also held with Metro. From here, the funds were spent via a number of card payment and cash withdrawals. Mr K has given a number of differing testimonies to explain this.

Mr K initially told Metro that that the money was spent on improvement works for a bathroom and supplied an invoice to support this. He didn't however divulge why he'd received the money that was paid in, which was eventually report as fraudulent.

Metro were then contacted by a family member representing Mr K who said that he'd innocently helped an ex-close friend by providing access to his account. No evidence was provided to support this. Mr K has since said that he was aware of the family member contacting Metro, but that the information he'd provided was incorrect.

Mr K then informed our service that his ex-partner was responsible for the activity after they'd taken his bank card and telephone without his knowledge. He claimed that the information relating to his online banking was contained within his phone, which explained how his ex-partner had accessed and moved the funds.

These differing accounts do impact the credibility Mr K's testimony holds. And I have considered this in my findings.

Further, I don't find Mr K's current reason for the activity to be likely. Mr K has told our service that his ex-partner took his telephone and bank card without his authority, which is how they carried out the activity in dispute.

Having looked at the account activity prior to the receipt of fraudulent funds, it was used frequently. Therefore, had Mr K's card been taken without his authority, I think it's likely he would have reported this fact to his bank. But Metro holds no reports of Mr K reporting his card as lost or stolen.

Furthermore, money was spent on the account from the balance that was contained within it prior to the fraudulent activity. Mr K has never disputed these transactions despite them using money that was legitimately his.

I also don't think a third-party, intent on laundering funds through another person's account, would do so without prior knowledge they could be guaranteed access to their account. That would have meant that Mr K's ex-partner was aware of how to access his telephone, that his online account information was contained within the device and where to find it, knew his PIN and took both of these at a time that wouldn't alert Mr K, as this would have no doubt run the risk of have both the phone and card blocked before they could carry out the activity. I also question why a third-party would further complicate their fraudulent activity by having the funds transferred the savings account first rather than the current account. This would have merely required the card to extract the funds.

I can't be certain what actually happened in these circumstances, but the combined factors I've mentioned above suggest that it's more likely that Mr K either carried out the activity himself, or permitted a third-party access to his online banking and bank card.

When weighing this against the fact that Mr K has provided differing testimonies, I'm persuaded that it's more likely than not that he was aware of the activity and therefore meets the requirements set out by Cifas to load a marker against his name.

**My final decision**

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 November 2022.

Stephen Westlake  
**Ombudsman**