

The complaint

Mr X complains that Metro Bank PLC blocked and closed his account. He complains they registered his details with CIFAS the UK's fraud alert service. Mr X wants the CIFAS marker removed, and his account reactivated.

What happened

Mr X had an account with Metro. Mr X used the account to receive payments from selling cryptocurrency.

Mr X used a cryptocurrency trading platform, which I will refer to as B to advertise and sell cryptocurrency. Mr X has explained that he posted adverts via B's platform. If a buyer was interested, they'd indicate they wanted to buy cryptocurrency from Mr X via the platform and send the payment to Mr X's Metro bank account. Mr X would then send the cryptocurrency to the buyer.

Metro carried out a review of Mr X's account. Following the review, they wrote to Mr X on 10 March 2021 giving him seven days' notice of the closure of the account. The account closed on 17 March 2021.

Mr X was asked to provide proof of entitlement of the funds remaining in his account. Mr X provided some documentation. Metro were not satisfied with the information provided and the funds were returned to source. Mr X hasn't complained about the lost funds.

Mr X complained to Metro about the account closure and the CIFAS marker.

Metro said they were entitled to close the account and load a CIFAS marker for misuse of facility because Mr X had received fraudulent funds into his account.

Unhappy with their response Mr X complained to our service. One of the adjudicators looked into the complaint. He thought that although Metro had received information from other banks about fraudulent payments being made into Mr X's account, Mr X had provided sufficient information and a plausible explanation. He thought Metro should remove the CIFAS marker. He thought Metro had closed the account in accordance with their terms and conditions.

Metro was unhappy with the view. As there was no agreement the matter has come to me to decide.

In my provisional decision I said:

The marker that Metro have filed with CIFAS 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, they're not required to prove beyond reasonable doubt that Mr X was guilty of a fraud or financial crime, but they must show that there are grounds for more than mere suspicion or concern. CIFAS 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 a bank must first be able to show that fraudulent funds have entered Mr X’s account, whether they are retained or pass through the account.

Secondly, the bank will need to have strong evidence to show that Mr X was deliberately dishonest in receiving the fraudulent funds and knew they were, or might be, illegitimate payments.

However, a marker shouldn’t be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a CIFAS 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.

I need to assess whether I think there is sufficient evidence to meet this standard of proof – and therefore, whether Metro acted fairly in loading a CIFAS marker against Mr X.

For Metro to have fairly loaded a CIFAS marker against Mr X they need to have evidence to show that Mr X’s account received fraudulent funds. I’m satisfied based on the information provided by Metro they’ve sufficient evidence that the funds paid into Mr X’s account between 11 January 2021 and 22 February 2021 were fraudulent. I’m therefore satisfied that Metro met the first pillar to load a marker.

But this isn’t sufficient on its own for Metro to load a marker, I need to be satisfied Mr X was complicit in the fraud, so in summary was deliberately dishonest and knew the funds were fraudulent. So, I’ve moved on to consider this.

Mr X has said that he trades in cryptocurrency and uses his Metro account to do so. We have asked him to provide evidence of his trades through the trading platform that he uses, to evidence his version of events. Mr X has been able to give us information that shows he has carried out genuine trades. I appreciate that trading in cryptocurrency can be risky. However, looking at the evidence I can’t see that Mr X knew or ought to have known that the people he was trading with were using fraudulent funds. He has been able to evidence genuine trades that match up with the fraudulent funds received into his account.

I appreciate that Mr X received a substantial number of confirmed fraudulent funds into his account, but he has been able to provide proof that the funds were genuinely received for cryptocurrency trades. This makes me think that he wasn’t a witting beneficiary of fraudulent funds so I think Metro should remove the CIFAS marker. Metro should also pay Mr X £150 for the inconvenience of having had a CIFAS marker recorded against him.

Account closure

As the investigator has said it’s generally for banks to decide whether or not they want to provide, or to continue to provide, banking facilities to any particular customer. Unless there’s a good reason to do so, this service won’t usually say that a bank must keep a customer or require it to compensate a customer who has had their account closed.

Banks should, however, give reasonable notice before closing an account. Usually that

means 60 days' notice, but it can be less depending on the circumstances. In this case Metro gave wrote to Mr X on 10 March 2021 and gave Mr X seven days' notice to close his account. And having looked at the evidence and the terms and conditions of the account which Mr X agreed to when he opened the account, I am satisfied Metro acted fairly in closing the account, so I won't be asking them to reopen it.

Responses to my provisional decision

Mr X has accepted my provisional decision. Metro have also accepted my provisional 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.

Although Mr X and Metro have not provided any further comments, I have nevertheless re-considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have seen nothing to change my mind and so my provisional findings stand.

My final decision

My final decision is that I uphold this complaint. To put things right Metro Bank PLC should remove the CIFAS marker from Mr X's record and pay Mr X £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 3 November 2023.

Esperanza Fuentes
Ombudsman