

The complaint

Miss Y complains that Metro Bank PLC has added a marker about her at CIFAS, the national fraud database.

What happened

Miss Y says she received notice her account was going to be closed in January 2022. And she says she hadn't been involved in any fraudulent activity and has been the victim of identity fraud herself.

Metro Bank said it hadn't made a mistake. It said that an attempt had been made to credit Miss Y's account with £4,745.50 on 12 January 2022. It had reviewed what happened and decided to close her account and add the marker. Metro Bank said that if Miss Y provided evidence to support her claim and reported this to the police then it would be willing to look at this again.

Our adjudicator recommended that the complaint be upheld, and the marker removed. There was a high bar to add the marker. Miss Y had said that she had been the victim of identity fraud in December 2021 when a direct debit payment she hadn't authorised was refunded. The name of the payee of the attempted payment didn't match that of Miss Y. And there wasn't evidence that Miss Y had the opportunity to discuss what happened with Metro Bank. There wasn't sufficient to show that Miss Y was complicit in what happened. But our adjudicator said it was a matter for Metro Bank to decide whether to continue to offer her an account.

Miss Y accepted the recommendation and said that emphasis on her being the victim of identity fraud should have been given. She was satisfied that the marker be removed as a resolution to the complaint.

Metro Bank asked for an ombudsman's decision and didn't make any further points.

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.

I need to consider whether the report to CIFAS was made fairly. On this point, Metro Bank needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

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. A marker shouldn't be registered against

someone who was unwitting; there should be enough evidence to show deliberate complicity.

I've taken into account guidance from CIFAS about cases where someone was going to receive attempted fraudulent payments into their account – acting as a so called 'money mule'. And that relevant factors in deciding whether Miss Y was deliberately complicit in what happened include whether she knew or ought to have known that the money wasn't legitimate, whether she could have benefitted from the money by keeping part and whether she has provided generic or inconsistent explanations.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I note that Miss Y wrote a detailed letter to Metro Bank dated 13 January 2022. It registered the marker on 18 January 2022 and wrote a final response to Miss Y on 1 February 2022.

It's fairly up to Metro Bank to support the marker as I say. Beyond indicating that she should report matters to police and gather her own evidence I'm not clear how Metro Bank did assess her explanation. I take into account that it hasn't disputed that there was an unauthorised payment from her account in December 2021 that was refunded. And I think the evidence about whether or not her account had been compromised would in some part come from Metro Bank itself. It hasn't provided any information about the operation of her account and the faster payments for example on 12 January 2022 to show how the account was accessed. And the payment didn't actually credit the account and how it might have been dispersed isn't commented on. I'm also unclear what investigation police may have done and over what timescale bearing in mind that the expectation for the marker is that Metro Bank should already have all the information necessary to report the matter to the authorities.

Having listened to Miss Y's call with this service and considered the circumstances I find her explanation to be plausible and I don't find that Metro Bank has sufficient to demonstrate that she was deliberately complicit in what happened.

So, I consider that Metro Bank should remove the marker. That resolves things as Miss Y has now accepted. And as our adjudicator has said it's fairly a matter for Metro Bank to decide whether it wanted to offer her an account or not.

My final decision

My decision is that I uphold this complaint and I require Metro Bank PLC to remove the CIFAS marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 29 December 2022.

Michael Crewe
Ombudsman