

The complaint

Mr D complains that Metro Bank PLC registered a marker at CIFAS, the national fraud database, when it closed his account.

What happened

Mr D says he wasn't involved in any fraudulent activity on the account. And that the marker is affecting his ability to access financial products. He wants the marker to be removed.

Metro Bank said it wouldn't be removing the marker. A payment of £980 into Mr D's account on 3 January 2018 had been reported as fraudulent. And a withdrawal of £950 in cash had been made within a couple of hours of receipt of the payment at one of its stores. It had written on 13 January 2018 to tell Mr D that his account was being closed in seven days.

Our adjudicator didn't recommend that the complaint be upheld. He explained that there was a high bar for adding the CIFAS marker. Mr D had told him that he kept all the details about the account including the card and PIN in an envelope and carried this in his school bag. And Mr D believed that this was stolen and used to carry out fraud on the account. There was no record of Mr D informing Metro Bank that he'd lost those details. And Mr D had told him that he hadn't become aware of having lost these until around a year after the account was closed. Our adjudicator didn't find this plausible as Metro Bank had notified Mr D of the closure. Our adjudicator also noted that Mr D had told him that a further credit to the account for £1,000 on 4 January 2018 had nothing to do with him. While two cash point withdrawals each for £300 had been quickly made the rest of the funds seemed to be used for everyday expenditure. And this wasn't a typical pattern for a fraudster who would be looking to access funds as quickly as possible. Mr D didn't have any evidence to support his version of events.

Mr D didn't agree and wanted his complaint to be reviewed. He said in summary that he'd had the account since he was 13. And because he was still a child didn't think anything of the envelope going missing. He also stated that in contrast to what our adjudicator's noted *"there wasn't a defining moment when I realised I did not have the envelope."* He went on to state *"it was more that I didn't know 100% where it was, but I also didn't know for certain that I'd lost it. What I know now is the last time I remember having the envelope, it was in my schoolbag and I didn't come across it again."* Once he had received the letter from Metro bank *"I assumed at the time it was because I was overdrawn"* and he said looking back at his statements he'd been overdrawn by £10.61 *"for a number of months before the unrecognised transactions took place."*

He said of the disputed payments that the withdrawal of £950 couldn't have happened at a cashpoint and as this happened in a branch *"this is where my disgust at Metros conduct lies."* He asked how someone who didn't look like him be able to take out the money and said this is an internal failing that facilitated fraud. Of the £1,000 credit he said he'd lived some distance from London all his life up to then and had never been unaccompanied to central London where withdrawals were made. He insisted he was at school on those days and could obtain information from the school registry to prove this. Mr D has now provided a letter from his previous school showing that from 4 January to 17 January 2018 he'd been at school for morning and afternoon registration.

Mr D said that CCTV would show this wasn't him withdrawing money and obviously not a schoolboy. He didn't think that there was evidence he'd been complicit, and Metro Bank hadn't asked for his explanation at the time. That would have alerted him and overcome his own naivety at not contacting Metro Bank about the account closure.

His mother has also provided a supportive statement saying that when she saw the closure letter she should have gone into a branch. She said that the impact of the marker added when he was just 15 or so is "*extremely punitive*". He has been asked to prove it wasn't him making the payments, but Metro Bank hasn't proved it was him especially given the size of the payments.

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.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their 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 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 appreciate that in 2018 it didn't ask Mr D about what happened, although it notified him of the closure of the account. And I weigh that in considering his evidence and what he's now reasonably able to provide.

I find his explanation about the loss of the envelope difficult to assess as he says there was 'no defining moment' of this. He either had the envelope or he didn't and doesn't seem to know when it was lost or when he realised that. He also says that the closure of the account didn't prompt him to realise that at the time.

I've looked at his statements and it isn't right that he'd been overdrawn for several months before this payment. Notably it seems that both in July 2017 and as late as November 2017 a person (I understand to be his mother) had been sending him small credits and he'd been using his card to make payments. I find this more reason for him to realise when he didn't have that card even if it seems to be right that he was overdrawn by the end of December 2017.

In my view it's reasonable to think that a fraudster in possession of all the details needed to use his account would do so as quickly as possible with the risk of detection at any time. That seems to make it unlikely the envelope was taken from a school bag during term as the fraudulent payment didn't credit until 3 January 2018. And the next school term started

on 4 January 2018 – the day after this. In addition, there were no funds in his account so I think it would be unusual for an opportunistic thief to decide to use his details in this way.

I'm satisfied money obtained fraudulently had been paid into his account. The question of the withdrawal being allowed has been raised. I've no further evidence as to whether this was by Mr D (which Metro must have thought) or someone else able to impersonate him. And who would it seem to have had the envelope with all his details. I think it would be a bold move for a fraudster to go into a branch. And CCTV even if available wouldn't resolve whether any third party involved was acting with Mr D's authority or not.

I consider the possibility of him allowing someone else to use his account and benefitting from this especially given his evidence about when he was at school from 4 January 2018. And because as our adjudicator has said the further credit of £1,000 wasn't this time withdrawn as quickly as possible and there seemed to be day to day spending after that. Mr D would be equally responsible though for what a person he'd allowed to use his account did.

He was 15 at the time and his mother seemed to be aware then of the closure of this account. And neither of them did anything about that, enquired further or dealt with what they believed to be a small debt which could potentially in itself cause Mr D problems. I'm unclear if a closing statement was received on the account which would have shown all this activity. The copy of statement sheet '35' for January 2018 provided by Metro Bank seemed to be correctly addressed to Mr D. Overall I think that there was a reasonable opportunity for them to make enquiries even given his age then. And I'm not clear that they'd have had other significant evidence at that point that's disadvantaged them given the timing of my assessment nearly five years later.

Having balanced all these factors I'm satisfied that the *most likely* explanation is that Mr D was complicit in what happened which as I say could have involved him allowing someone else to use his account.

Metro Bank says that it applied the CIFAS marker because Mr D received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Metro Bank needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr D's account of events and the evidence he has provided, I'm satisfied that Metro Bank had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr D received fraudulent funds into his account and didn't report this to Metro Bank at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.

- Metro Bank had grounds to believe that Mr D had used fraudulently obtained funds based on the evidence it had.

In light of this I think it had grounds to close his account under the terms and conditions. I appreciate what Mr D's said about the impact of the marker for him, but I don't have a reasonable basis to require Metro Bank to do anything more.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2023.

Michael Crewe
Ombudsman