

The complaint

Mr D complains that Metro Bank PLC unfairly lodged a fraud marker against him and then closed his account.

What happened

What Mr D says

Mr D opened a personal account with Metro which he intended for mainly business use. He explained that he told Metro staff the reason for using the account and was provided the personal account. He continued to use it mainly for business purposes and in 2017 he received notification that the account was to be closed. Mr D believed the closure was due to the use of his account for his business.

Mr D explained that he experienced difficulties opening a new account and had to rely on less mainstream solutions for his banking needs. A few years later he applied for a covid related loan but was turned down and found out that Metro had lodged a CIFAS marker against him.

Note – CIFAS are a national fraud prevention organisation.

Mr D contacted Metro about it and eventually found that the marker was linked to an item he'd sold through his business. A customer of Mr D's business had reported fraud related to the sale of an item after the delivery was delayed. Mr D provided evidence surrounding the sale to Metro. They told Mr D that they could remove the marker if the fraud report was revoked by his customer. Mr D asked his customer to contact his bank and revoke the fraud report.

Nothing happened for some time and Mr D brought his complaint to the Financial Ombudsman Service for an independent review. Mr D also sought services from a legal professional who wrote independently to Metro about the marker. A few days after receiving the letter from Mr D's legal representative, Metro agreed to remove the marker.

What Metro have said

Metro advised that they received a fraud report from another bank concerning the sale of an item by Mr D. The customer who submitted the fraud notice was concerned about the delivery of an expensive item he'd purchased from Mr D's business and thought it may be fraudulent.

Based on this report, Metro lodged a CIFAS marker against Mr D and closed his account. Metro also noted that the account was a personal one that was mainly being used for business purposes.

When Metro were contacted by Mr D a few years after the marker was lodged, they advised him it was in relation to a specific sale he'd been involved in (rather than the way he used his account). Metro were waiting for the fraud report to be revoked before they did anything

about the marker and eventually after receiving a letter from Mr D's legal rep, they agreed to remove it.

The investigation so far

Once Mr D's complaint was brought to our service, it was looked into by one of our investigators who asked both parties for information about the complaint. Mr D sent in various documents concerning the sale of the item that generated the fraud report, his letters and emails with Metro and details of his legal reps contact with Metro. He also stated that he'd had difficulties with personal finance issues as well which he believed were the result of the marker.

Metro provided details of the fraud report and their interactions with Mr D. They explained their position and thought they'd acted appropriately. In their report to our service, Metro agreed to remove the marker. Our investigator upheld Mr D's complaint and recommended an award of £150 to Mr D.

Mr D didn't agree with the investigator's outcome and sought the payment of his legal fees and increased compensation. Metro offered a total of £300 but declined to pay Mr D's legal fees.

Mr D continued to disagree and asked for a further review of his complaint. I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are two issues here, one being the account closure and the second being the fraud marker lodged against Mr D.

CIFAS

Metro are the reporting organisation for the marker they lodged, rather than the bank that generated the original fraud report. So, it was Metro's responsibility to meet the appropriate standards laid down by CIFAS. The two relevant conditions here are:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.*
- That the evidence must be clear, relevant and rigorous.*

When Metro received the fraud report, I think it was reasonable for them to suspect that a fraud or financial crime may have been committed, but they also needed to comply with the second condition.

From the information currently supplied by Metro, it doesn't appear that they carried out a broader investigation into the allegation after receiving the fraud report. They chose not to contact Mr D about the marker or to obtain his version of events. By doing this they denied themselves the opportunity to assess the full picture.

What is apparent from the evidence supplied by Mr D, is that there was a delay in delivering the item which appears to be linked to transport issues. The evidence he provided shows he sold and later delivered the item, followed by additional contact with the customer to deal with maintenance issues. Overall, the evidence points to a legitimate sale that experienced some problems prior to delivery, rather than a fraudulent attempt to steal money from

someone.

If Metro had investigated this with some rigour, I think they would have felt the CIFAS marker wasn't an appropriate way for them to deal with the issue. But because they didn't have the full picture, they lodged the marker and declined to remove it up until they received a letter from Mr D's legal representative.

Mr D had been trying to persuade Metro to remove the marker for some time and had supplied evidence to them as soon as he was aware of the problem. For some reason, Metro put the responsibility for removing the marker back on to Mr D and the sending bank. It's not clear to me why they did that, and their decision only caused to delay its removal. It was Metro's responsibility to assess the evidence they'd been provided with and take measures to remove the marker if they were presented with additional information that brought their original decision into question.

By delaying its removal, they unnecessarily caused Mr D continuing distress. I think it was telling that Metro only removed the marker once a legal representative wrote to them, despite there being no additional information to consider.

Having looked at the evidence, I don't think that Metro met the appropriate standards required by CIFAS to lodge the marker in the first place and they delayed the removal of it by placing the responsibility back on to Mr D. I recognise that the sending bank didn't respond to Mr D's customer or Metro's attempts to contact them, but that doesn't change the responsibility that Metro had to deal with the evidence they were presented with by Mr D.

Legal fees

I have considered his request for repayment of the legal fee. Ordinarily I probably wouldn't agree to the repayment of such fees when they were incurred independently. But here I think the repayment is warranted. That's because Mr D had tried for some months to persuade Metro to remove the marker and supplied evidence to them. It wasn't until Metro received the letter from the legal rep that they removed it.

It's apparent to me that it was the weight of the argument from a senior legal representative that persuaded Metro to remove it, rather than the evidence itself. Without such an intervention, it wasn't clear at the time what would happen, and Mr D's complaint hadn't yet been investigated by our service.

I've noted Metro's comments about the legal fees and the timing of them. I don't currently think that Mr D had to have another reason for trying to remove the marker (such as the tenancy issues that were referenced in the submissions) as Metro had failed at that point to reconsider the evidence he'd provided.

In a response to our service about why they shouldn't be responsible for the legal fees, Metro said:

"Mr D knew he was in jeopardy of being evicted prior to making enquiries to (legal rep). I view that had Mr D approached us when he first knew he was potentially facing eviction at the end of his tenancy agreement in May 2021, we would have looked at his situation differently and removed the marker".

I found this a puzzling response from Metro about how they dealt with their responsibilities concerning the CIFAS marker. Either the evidence meets the standards, or it does not. Mr D had tried to persuade Metro to remove the marker with evidence that supported his version of events, so I'm unsure why Metro would then say they would have removed it based on

factors not directly relevant to the standards required by CIFAS.

Account closure

I've read Mr D's letter to Metro explaining what happened when he opened the account, although Metro don't have any record of what was discussed at the time. Mr D asserted that he was given the personal account even though he'd told Metro it was for business purposes.

I can't know what was discussed at the time the account was opened. But Metro's own policy is that personal accounts can't be used for business purposes and is something that would probably result in the closure of an account. Whilst I understand what Mr D has said and there may well have been a misunderstanding at the time, I can't think why Metro would have knowingly opened such an account when it was against their own policies.

Summary

So, whilst I currently think that Metro didn't meet the appropriate standards laid down by CIFAS, I do think they were entitled to close the account in the way they did. I'm intending to award Mr D a payment of £500 for the way that Metro handled the CIFAS marker and the subsequent delay in its removal. I'm also intending to uphold Mr D's request for his legal fees (£1,260.00) to be repaid by Metro. I'm not currently intending to make any further awards unless I receive evidence that the marker caused Mr D further losses.

I understand Mr D has provided details of difficulties with mortgage applications as a result of the marker. I did note the date of the various discussions about this were around the time of the removal of the marker. So, I'd only be able to consider redress based on the impact to Mr D whilst the marker was in force.

I invited Mr D and Metro to give me any more evidence and information they wanted me to consider before issuing my final decision. Both Metro and Mr D 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.

Having done so, and as both parties accepted my provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to settle this complaint, Metro should now pay Mr D £500 for their handling of this case and the impact it had on Mr D. Also to refund his legal bill which amounted to £1,260.00.

My final decision

My final decision is that I uphold this complaint and Metro Bank PLC are instructed to settle it as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or

reject my decision before 6 January 2023.

David Perry
Ombudsman