

The complaint

Mr V complains that Metro Bank PLC unfairly closed his account, lodged a fraud marker against him and denied him access to his funds.

What happened

Mr V advertised his car for sale and entered into discussions with a potential buyer about it. Dozens of messages were exchanged between them and eventually a price was agreed. The buyer explained to Mr V that the funds were coming from different accounts and an attempted payment to Mr V was stopped by the sending bank.

A second payment was made to Mr V which the buyer said was her “sister” which was successful. Mr V handed over the car and a short while later, Metro received two reports from different banks that their account holders had been victims of a scam. The reports concerned the failed payment and the second successful payment from the buyer’s “sister”.

Mr V provided details of his chats with the buyer to Metro, but they didn’t consider this evidence. Metro believed that Mr V was involved in some form of scam.

Metro removed a portion of funds from Mr V’s account and returned them to the sending bank. They then closed Mr V’s account and lodged a CIFAS marker against him. CIFAS are a national fraud prevention organisation.

Mr V complained to Metro about their treatment and after looking into what had happened, they didn’t change their position. Mr V then brought this complaint to the Financial Ombudsman Service for an independent review.

Mr V’s complaint was looked into by one of our investigators who thought that Metro had acted reasonably when they closed Mr V’s account and returned the funds. The CIFAS marker had been removed by Metro by this point so wasn’t specifically mentioned.

Mr V disagreed with the investigator’s outcome and asked for a further review of his complaint. It’s now been passed to me for a decision.

I issued a provisional decision where I said:

In making this decision I’ve taken into account Metro’s own terms and conditions, relevant industry guidelines and good practice, regulations such as the Payment Service Regulations 2017 (PSRs), legislation such as the Consumer Rights Act 2015 (CRA); as well as what I consider to be fair and reasonable.

CIFAS

Even though the CIFAS marker has been removed, the original lodgement of it and the assessment made by Metro is relevant to the rest of Mr V’s complaint. So, I’ll need to consider Metro’s actions when they dealt with the situation as a whole.

Once Metro had received two fraud reports from different banks concerning Mr V’s account,

they decided to close it, return the remaining funds to one of the sending banks and lodge the marker against Mr V. He denied being involved in this and produced various copies of messages he'd had with the buyer to support the case that he was also the victim of a wider scam. Metro said to our service that they didn't consider those messages as evidence because they couldn't be corroborated.

I found it difficult to understand why Metro wouldn't consider those messages in support of Mr V's situation. He was able to send dozens of examples of his conversations with the buyer which set out the events. If Metro had looked at the evidence Mr V held, they may well have come to a different opinion about what had happened.

That's because the messages describe detailed discussions and arguments about the price, what name the car was to be registered in, a warning from Mr V to the buyer to hold off paying him the full amount before they'd seen it, and an admission from the buyer that the account they were using wasn't their own one. Also, there were various messages after the sale that reveal Mr V was also a likely victim here.

Mr V went on to find out details about the buyers and it's apparent from his enquiries and other people's experience that the persons who arranged to "buy" his vehicle were concerned with other similar schemes to defraud people.

Mr V provided details about his vehicle and evidence of changes to its ownership with a government organisation. Metro later said that they didn't believe the vehicle existed, this despite evidence of the changes of ownership from an official government site.

Metro were required to meet specific levels of evidence before they lodged a marker with CIFAS. The two main requirements 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 such that the member could confidently report the conduct of the Subject to the police (but there's no obligation to make that report).*

I'm satisfied that Metro had enough to satisfy the first condition based on the two fraud reports they'd received. As regards the second condition, the evidence Metro considered was only part of the story and whilst the receipt of two fraud reports was no doubt unusual, the context of them doesn't seem to have been considered. The evidence supports Mr V's version of events, that he wasn't responsible for the scams on the two accounts that produced the fraud reports and indeed was also a victim of a wider scam.

So, I don't think that Metro had enough to satisfy the second condition and it wasn't reasonable for them to lodge a marker against Mr V. Metro eventually removed the marker and CIFAs confirmed it was no longer recorded in mid-February 2022, so I don't need to further consider the removal of it. I will consider any evidence provided by Mr V about the impact of the marker lodged against him whilst it was in force. Metro have confirmed the marker was lodged in December 2021 and removed in February 2022.
Account Closure

Metro closed Mr V's account giving him seven days' notice. In their terms they provide for circumstances that allow them to close the account immediately or with two months' notice.

Metro took the position that Mr V was involved with the receipt of fraudulent funds and from that flowed the closure notice. Metro's assessment of the situation wasn't made with the

complete evidence available to them, which would have shown that Mr V was likely as much a victim as the account holder that sent the funds to him.

So, I don't think their decision to immediately close the account was a fair one. Mr V may well have received scammed funds, but the evidence indicates he wasn't aware of the source of them at the time. He can't be held responsible for how a third party acted.

If Metro had considered the evidence Mr V possessed, they would have seen that Mr V asked the buyer about the different name on the account and was given an explanation about it being the buyer's "sister". I don't think it was unreasonable for Mr V to accept that at the time and it doesn't support Metro's decision to close the account in the way they did.

Returned funds

Several weeks after receiving the payment for the vehicle, Metro removed £366.11 from Mr V's account and returned it to the sending account that had been scammed.

The payment received by Mr V was reported as the result of an Authorised Push Payments (APP) scam. The APP Voluntary Best Practice Standards produced by UK Finance in October 2017 sets out standards for sending and receiving banks to follow when processing a claim for an APP scam. Although not all banks were party to this, I consider the guidance to have been good industry practice at the time.

There are several relevant principles here:

- The sending bank should notify their customer that because they authorised the transaction, the right to the funds is with the recipient.*
- The receiving bank will need to investigate and establish (to the extent it is able) whether the account is fraudulent and if funds remain.*
- The receiving bank will need to find evidence that the recipient has obtained the funds fraudulently.*
- Following the receiving firm's investigation, identified funds should always be repatriated back to the sending firm at the risk of the receiving firm, subject to various exceptions. One of these exceptions is where there is a credible complaint or dispute from the recipient of the funds.*

Therefore, good industry practice at the time said the receiving bank should investigate whether their consumer had received the funds fraudulently. If they haven't, the receiving bank is under no obligation to return the funds to the sending bank.

In this case, Mr V had a credible complaint. He played no part in the scam that had defrauded the sender, so didn't receive the funds as a party to the fraud. It follows then that Metro weren't under an obligation to return the funds to the sending banks.

I've also reviewed Metro's terms and conditions. The term Metro have relied on says:

8.2

If we are made aware that a payment into your account may be fraudulent or a mistake, we may take or recover this payment from you. This may happen even if:

- the funds are included in the balance of your account;
- you have used them to make a payment; or
- you have transferred or withdrawn all or part of the funds.

Under the CRA a term may be considered unfair if it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer (Section 62(4)). The CRA also says that an unfair contract term will not be binding on a consumer (Section 62(1)).

Based on the facts of Mr V's complaint, I'm persuaded that the above term creates a significant imbalance in the rights and obligations under the contract, which was detrimental to Mr V.

The term says Metro can seek to recover payments that may be fraudulent or a mistake – which in essence says that Metro have no obligation to actually consider whether they think their customer received a payment fraudulently or not. It doesn't create any obligation on Metro to investigate or consider the context of the payment, or to notify Mr V if they intend to remove the funds. And it also allows Metro to remove those funds, even if it creates a debt for Mr V, which the bank can then apply charges on.

This is enough for me to conclude that the term is unfair – it allows Metro to create obligations on Mr V that are significantly detrimental to him. On that basis I don't see that he should be bound by this term.

In any case, I think Metro's actions – although guided by a desire to help genuine victims of fraud – lead to an unfair outcome for Mr V. He acted in good faith in accepting the funds for the payment for his vehicle. Metro were under no obligation to return the funds to the sending banks, and I'm not satisfied they had the contractual right to use Mr V's funds to do so. In effect Metro have indemnified themselves using Mr V's money, without any prior agreement to do so, which I don't find to be fair or reasonable.

Account movements

Metro reported that they restricted the account once they received notice about the scams which resulted in several direct debits being returned unpaid. Metro had a responsibility to investigate the scam reports and initially restricting the account wasn't an unreasonable action for them to take. But, because I think they failed to properly investigate the scam, their actions created a situation that led to difficulties for Mr V, particularly with payments for vehicle insurance. This no doubt caused Mr V stress and worry. He advised he was abroad at the time he found out and was concerned about the risk to one of his vehicles.

Overall

I think that on balance, the current evidence shows that Metro failed to investigate the scam reports leading them to misapply a CIFAS marker against Mr V. They then closed his account without notice, based on this incomplete picture. I don't think that Metro acted fairly when they removed funds from his account, when the evidence indicates he was also a victim, rather Metro's view that he was part of the scam.

I'll review any further evidence Mr V wishes to provide if he believes the marker and Metro's general conduct towards him caused him additional financial loss. I'm currently intending to uphold this complaint and make an award of £500 for the stress and inconvenience caused by Metro. Also, to instruct them to repay the £366.11 they removed from his account and

apply simple interest at 8% for the period the funds were taken from the account until they're repaid.

My provisional decision is that I'm currently intending to uphold this complaint against Metro Bank PLC as outlined above.

I invited Mr V and Metro to give me any more evidence and information they wanted me to consider before issuing my final decision. Mr V didn't respond, and Metro 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 neither party had anything further to add and Metro 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

Metro should now pay Mr V £500 for the stress and inconvenience they caused him plus refund £366.11 they removed from his account. This to include interest at 8% simple for the period the funds were removed from the account until the date they're repaid.

My final decision

My final decision is that I uphold this complaint against Metro Bank PLC and they're instructed to settle it as I've set out above.

If Metro considers that it is required by HM Revenue & Customs to withhold income tax from the interest payment, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 31 January 2023.

David Perry
Ombudsman