

## Complaint

Miss S is unhappy that Metro Bank PLC (“Metro”) recorded a fraud prevention marker against her. She says that she was also a victim of a fraud and it’s unfair for Metro not to remove the marker.

## Background

During the period between December 2021 and March 2022, Miss S’ Metro account received 17 payments totalling around £3,252 from a third-party. Miss A then transferred these funds onto another third-party Metro subsequently received a notification from the bank which sent the funds stating that its customer had been scammed into making these payments into Miss S’ account. Metro reviewed Miss S’ account and as a result of its investigation, it decided to close Miss S’ account and record a fraud prevention marker.

After learning that Metro had recorded a fraud prevention marker against her, Miss S complained to Metro. Metro looked at Miss S’ complaint and didn’t uphold it. As Miss S remained dissatisfied, she referred the matter to our service.

One of our adjudicators looked into Miss S’ concerns. He didn’t think that Metro had done enough to show that Miss S was complicit in fraud and so it unfairly recorded the fraud prevention marker against Miss S. Metro didn’t agree and so the complaint was passed to an ombudsman for a final decision.

## My findings

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

The marker that Metro has filed with 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, it isn’t required to prove beyond reasonable doubt that Miss S is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance 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 Metro must first be able to show that fraudulent funds entered Miss S’ account, whether they were retained or merely passed through. Secondly, Metro also needs to have strong evidence to show that Miss S was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include Miss S allowing someone else to use her 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 complicity.

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

In order to determine Miss S' complaint, I need to decide whether I think Metro had enough evidence to show fraudulent funds entered Miss S' account and that she was complicit in this. It's important to note Metro had to have enough evidence to meet both parts of test for it to have acted fairly and reasonably.

Having considered matters, it is clear that Metro received a fraud notification regarding a number of payments made into Miss S' account. So I can understand why Metro had concerns about the usage on Miss S' account. However, as I've already explained, this in itself isn't enough to register a fraud prevention marker against a customer. Metro also has to produce sufficient evidence to show Miss S was complicit in fraud. And I don't think that it has done that here.

I think it would be helpful for me to start by setting out that Metro does appear to have carried out an investigation into Miss S' actions, once it received the notification from the third-party bank. Miss S provided some further information, which on the face of things doesn't seem unreasonable, and it isn't entirely clear to me why Metro didn't consider this to be enough to accept Miss S' version of events.

Miss S has also explained that she agreed to accept these payments from one of her friends who said that she was receiving them from her uncle. She has also provided copies of messages from around the time which, on the face of things, appear to confirm this. Our adjudicator found Miss S' version of events plausible and he thought that Miss S was unwittingly involved in fraud, rather than it being the case that she was complicit in it.

I've considered this matter. And I do have concerns over why Miss S didn't question why her friend simply didn't receive the payments in question directly from her uncle – especially as this took place over a period of three months. So I can understand why this would be an issue for Metro. But I think that Miss S' friend receiving the payments into different accounts, in her name, does give more credibility to the explanation that she was having problems with her banking at that time and that's why she needed Miss S' help.

Most importantly, I can also see that Miss S immediately transferred all of the funds on to her friend as soon as they were received into her account. So I've not seen anything to suggest that Miss S benefitted from the fraudulent funds. And I would question why she'd knowingly participate in a fraud she wouldn't benefit from. I say this while especially mindful that not immediately transferring these funds would have prevented her from having a standing order returned as unpaid in December 2021.

As I've explained, it is Metro's responsibility to demonstrate that Miss S was knowingly involved in fraudulent activity. And I think that it has failed to do that here. Overall and having considered everything, I don't think that Metro had sufficient evidence to meet the test for recording a fraud marker against Miss S. In my view, the evidence Miss S has supplied does indicate that she didn't knowingly participate in fraud. As this is the case, I think that it was unfair for Metro Bank to record a fraud prevention marker in the circumstances that it did. So I'm upholding Miss S' complaint and Metro needs to remove any and all fraud markers it has recorded.

**My final decision**

For the reasons I've explained, I'm upholding Miss S' complaint. Metro Bank PLC should remove any and all fraud markers it has recorded against Miss S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 February 2023.

Jeshen Narayanan  
**Ombudsman**