

The complaint

Mr H complains that Metro Ltd unfairly registered a marker about him at Cifas, the national fraud database. He is also unhappy that Metro closed his account.

What happened

Mr H had an account with Metro which he'd opened in 2023.

On 11 January 2024, seven payments, totalling £1,800 were made into Mr H's account, from an individual I will refer to as N. After the payment was received Mr H transferred most of the money to an individual, I will refer to as Mr D.

The following day, Metro were notified by another bank that the payments Mr H had received from N were fraudulent and that their customer had been the victim of a scam.

Metro reached out to Mr H and asked him to tell them why he'd received the payments from N, and to provide any evidence he had to show he was entitled to the money. On 18 January 2024, Mr H contacted Metro. He told them that he was buying a car for a friend. But that the sale hadn't gone through. He provided screenshots of a conversation he says he had with N agreeing to buy a car for £1,800.

Metro reviewed the information but didn't think it showed Mr H was entitled to the funds. Following this Metro decided to close Mr H's account and placed a fraud marker against Mr H's name with Cifas. This was for misuse of a facility in relation to retaining fraudulent funds.

Mr H discovered the marker when he completed a subject access request with Cifas. Mr H complained to Metro and said that the marker was preventing him from opening other accounts. So, he asked Metro to remove the marker.

Metro reviewed everything including what Mr H had told them. After doing so, it said it wasn't willing to remove the marker. But acknowledged that it should have asked Mr H for more information even though it wouldn't have changed the outcome.

Unhappy with this response Mr H brought his complaint to our service. He wants Metro to remove the marker. He said the marker has led to the closure of bank accounts he had. And that he hadn't been able to open a savings account which meant he couldn't save for his future.

An investigator looked into Mr H's complaint and asked Metro and Mr H for some more information about what had happened. Mr H told the investigator that he'd received the money from N for selling items online – a car and sofa. Metro provided the investigator with the information they'd received from the other bank about the money Mr H had received from N.

After reviewing everything the investigator said that Metro hadn't done anything wrong when it had recorded the marker against Mr H's name. And closed his account. So, they didn't uphold the complaint.

Metro agreed with what the investigator said. Mr H didn't. He wants the marker removed and said that is impacting his credit file and ability to open a bank account.

As no agreement could be reached the matter has come to me to decide.

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.

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The marker that Metro filed with Cifas against Mr H is intended to record that there's been a 'misuse of facility' – relating to using his account to receive fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Mr H is guilty of a fraud of financial crime, but they must show that there are grounds for more than mere suspicion or concern. Cifas 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.*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr H'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. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate* complicity. There's also a requirement that Metro should be giving the account holder an opportunity to explain what was going on.

Here Mr H received funds into his account that were confirmed by a third-party bank to have originated from fraud. The bank reported that their customer had fallen victim to a car accident scam over social media.

In January 2024, Metro told Mr H that they had concerns about the payments that had been paid into his account by N. Metro asked Mr H to send them evidence of where the funds had come from and proof that the money belonged to him. In response Mr H told Metro he'd received the money from N because he was buying a car – however the sale hadn't gone through in the end. He sent Metro screenshots of conversations he had with N about the sale of a car. But he didn't provide anything else.

Whilst I'm satisfied Metro did provide Mr H with an opportunity to explain why he'd received the money from Mr H, I think it could have explored things a little further. With this in mind, I can see the investigator asked Mr H to provide any information he had about his entitlement to the money he received from N and what he did with it.

In response, Mr H provided a screen shot of the same photograph he'd sent Metro – which showed a car being advertised for sale for £1,800. And screenshots of conversations between him and N agreeing to buy the car.

Based on Mr H's response, I think if Metro had asked Mr H about the payments it's likely that he would have provided the same information to them.

So, I need to consider whether based on all the information including the evidence Mr H has submitted to us, whether Metro had sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I'm satisfied they did, and I say this because:

- I've seen the evidence from Metro that confirms they were notified by another bank that the money Mr H received from N originated from fraud.
- Mr H has explained why he received the payments from N – that he had was selling N a car he'd found for £1,800. And he has sent a screenshot of photograph of a car and conversations he says he had with N agreeing to buy the car. The evidence he has supplied simply shows a car for sale. I've considered this evidence, but I'm not persuaded that this shows Mr H was entitled to the money he received from N.
- Mr H hasn't provided any evidence about his arrangement with N which would support his explanation, such as any messages between him and N prior to him receiving the funds. Such as why Mr H was acting as a car dealer for N. I find the fact there is no evidence at all just isn't credible. If this was a legitimate transaction, I'd expect there to be some evidence that led up to this arrangement which Mr H could provide. But nothing has been provided.
- Mr H hasn't been able to provide any details of the vehicle which he says he intended to buy for N - in fact he has said that the sale didn't go through. With this in mind, I would expect Mr H to have returned N's funds. But this didn't happen. Instead, Mr H immediately transferred most of the funds to another individual, Mr D, with the reference 'paying friend back.' There was no reference to a car. If this was a car sale, I can't see why Mr H would do this.
- I note too that in the screenshots of the conversation Mr H provided show that N asked Mr H to send back the money as soon as possible. Mr H hasn't offered an explanation for why N wanted the money returned. And more significantly why he quickly sent N's funds onto Mr D instead of returning them as N wanted.
- I've reviewed the information which Metro received from N's bank which set out N's version of events. N told their bank that they had fallen victim to a scam after a friend had contacted them and asked for money to help repair a car. This is a very different explanation to the one provided by Mr H. There was no mention of N wanting Mr H to buy them a car.
- Overall, this leads me to doubt the credibility of Mr H's version of events and suggests to me that Mr H was potentially involved in fraudulent behaviour.
- I've considered what Mr H says about the impact the marker has had on him. But he hasn't described being placed under any duress or being especially vulnerable. In my view, based on all the evidence, I think it's most likely he allowed his Metro account to be used for receiving fraudulent funds. And I think he was a willing participant in this and in moving the money on and spending it. And that he reasonably knew this wasn't a legitimate activity. So, I'm not convinced Mr H is an innocent party. I think the evidence shows that Mr H was involved in a misuse of facility.

In summary, the requirements around banks lodging markers at Cifas include there being sufficient evidence that the customer was aware and involved in what was going on. Mr H has received funds into his account that have originated from fraud. He has been unable to provide any compelling evidence to support his testimony that he is an innocent party of the transfer of the funds and was unaware of their origins. I also find that the suspicious circumstances of the movement/use of the money, lack of evidence of communications leading up to this arrangement, and conflicting explanations provided by Mr H and N adds weight to this argument.

Having looked at all the evidence I'm satisfied this shows there were reasonable grounds to suspect that fraud had been committed. And from evidence I've seen that Mr H was likely complicit in this. So, while I acknowledge Metro didn't ask Mr H very much about the money (as it should have) and could have done more to investigate the wider circumstances about the payments Mr H received and given Mr H more of a chance to defend his position, I'm satisfied had it done so, the marker would have achieved the burden of proof required. On this basis I didn't think it would be fair or reasonable to ask Metro to remove the marker.

I turn then to the closure of the account. It is generally for banks to decide whether to provide, or to continue to provide, account services to any particular customer. They can exercise their commercial discretion in such matters and, as long as that discretion is exercised legitimately, this service won't usually intervene. I have considered that issue here and am satisfied that Metro Bank's decision to close Mr H's account was a legitimate one. The bank did not have to tell Mr H exactly why it had decided to close his account.

Banks should however give reasonable notice before closing an account. What is reasonable depends on the circumstances, but we generally take the view that two months' notice is reasonable for a personal account. But it can be less in certain circumstances. Here Metro gave Mr H seven days' notice. Given the concerns Metro had about how Mr H was operating his account, I don't find that unreasonable. So, I don't find Metro treated Mr H unfairly when it closed his account.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 March 2025.

Sharon Kerrison
Ombudsman