

The complaint

Mr D complains Metro Bank PLC loaded a marker against him, on a national fraud database. He doesn't think it's treated him fairly.

What happened

I issued my provisional decision on this case, inviting both parties to let me have any further comments and evidence before I reconsidered the matter. In my provisional decision I set out why I didn't think Metro needed to do anything to resolve the complaint. A copy of my provisional decision is below.

Mr D held an account with Metro.

In June 2023, he spoke with the bank, after a scam. In this scam, he'd paid a third-party (X) loan processing fees to try and secure a loan. X purported to be a lender and he told Mr D that his credit score was low for the loan, but he could build it up by sending him payments to then send to their accounts.

After reviewing information from Mr D about this and speaking with him, Metro was satisfied Mr D had got caught up in a scam. At the same time, it told him not to engage with X as a real lender wouldn't send money to him in this way. Metro also explained that if this happened again, it might close the account and there could other consequences too.

However, Mr D re-engaged with X on WhatsApp. And over the course of a couple of months, X and Mr D spoke about the prospect of him still getting the loan. X said he'd need to send him some funds and asked Mr D to use them to buy bitcoins and then send that back to an electronic wallet.

In relation to this, Mr D received £986 into his Metro account – he sent that to an account he had with another bank before buying the bitcoin and sending it to X. However, the £986 payment was later identified as fraudulent because the bank from which it had come notified Metro that its customer had been the victim of a scam.

Metro restricted the account, and requested information from Mr D to show he was entitled to the funds. When it didn't get a response, it completed its review and decided to close the account. At the same time, it loaded a misuse of facility marker at Cifas as it thought Mr D had been complicit in fraud.

Mr D found out about the marker after he did a Data Subject Access Request (DSAR) to see what information was held about him. He complained to Metro and said he'd not done anything to cause this. Metro looked at the information but didn't think it had made a mistake in the steps it had taken, particularly, as it had given Mr D a warning about fraud and scams before.

Mr D asked us to look at what had happened, and he told our Investigator why he'd re-engaged with X. He said he'd been foolish to get involved again, but he'd blindly believed X was helping him to get the loan. He added that the funds paid in on the second occasion

were so that X could be satisfied he had a UK bank account.

Initially, the Investigator didn't uphold the complaint because he said Mr D didn't have any supporting evidence to show this is what had happened and that he hadn't benefitted from the fraudulent funds, when he'd moved them to his bank account elsewhere. Mr D disagreed. He maintained he'd been a victim in all of this and said he'd go back and see what he could find.

He then sent us several screen shots, showing the conversations that had taken place between him and X between July to September 2023, and a screen shot of him buying the bitcoins with the money and sending that back to X.

The Investigator reviewed the information and changed his mind, upholding the complaint. He said with the information, Mr D's account of what he said had happened was persuasive. He acknowledged that he had fallen victim to the scam before but said there was evidence he was in financial difficulty at the time, and a promise of a loan he'd been seeking was a key factor and explained why he may not have understood what was really going on. He recommended Metro remove the fraud marker to resolve the complaint.

Mr D accepted the outcome, but Metro didn't. It said it had taken steps to educate Mr D on scams and he'd disregarded what it had said. It was also concerned, that the loan Mr D was discussing with X varied over time from £10,000 to £350,000 but none of this had rung alarm bells. In took the view, that in the circumstances, Mr D would have known it would be wrong to accept funds into his account regardless of the story X had given him. It believed Mr D had been a witting participant in the scam on the second occasion.

When an agreement couldn't be reached, the case was put forward for a decision, in line with our process.

What I've provisionally 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've looked at everything afresh, but my decision is that I don't intend to uphold this complaint.

The marker that Metro has filed 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's not required to prove beyond reasonable doubt that Mr D 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.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Mr D's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Mr D 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 to receive an illegitimate payment. But a marker should not 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 to understand their level of knowledge and intention.

I've seen evidence from Metro that it received a report saying that funds which entered Mr D's account was because of a fraud. He doesn't dispute this either.

I've thought carefully about what Mr D understood he was doing when he received and transferred the £986 and whether there was anything about the circumstances to suggest that he would know that it might not be an illegitimate payment. And the decision I've come to is that Mr D would have known the funds were likely to be fraudulent and he shouldn't be sending them on. I've based this decision on what I consider to be key evidence. This is Metro's call with him in June 2023 about the earlier scam, involving the same person, X.

In the call, the advisor asked Mr D who he understood the funds had come from. He replied it's the person he's been speaking with on WhatsApp, X. The advisor tells him how funds have come to be in his account and that the customers have made a report to their bank.

The advisor agrees to unblock the account on this occasion because it looks like the same thing has happened to Mr D. But they also talk to Mr D about money mules, telling him what they are; criminals will use people to transfer stolen funds for them which are then used to fund different crimes. The advisor explains that any involvement in this, results in being associated with criminal activity for which there are serious consequences, which can include "legal and criminal action". He wraps up the call by giving Mr D some important information that he says he wants him to take on board:

- never let anyone use the account;
- "never ever accept money into" the account "on behalf of someone, doesn't matter how well you know them"; and
- be very careful of unsolicited offers and easy money because the interest rate is currently high and the rate, he'd been given on the loan was unrealistically low.

Mr D confirms he will keep this in his mind.

I've reviewed the WhatsApp messages Mr D has provided as well, and whilst these show he was in financial difficulty, keen for a loan, and he used the funds to buy bitcoins for X, this isn't enough to show he was unaware that what he was doing was illegitimate and likely fraudulent, particularly considering what he'd been told in June about money mules. Indeed, I think from the call (which hadn't happened that long before) Mr D knew he shouldn't be taking money (and certainly not arranged through X) and agreeing to move it on for him.

Thinking about this, when Mr D took the steps, he did, I'm satisfied that he did so with the knowledge and risk that that he shouldn't. As I have said, I accept he may have been in some financial difficulty, but the history here shows he was strongly counselled against participating in any such activity and told what any involvement from him could amount to.

I think this may also explain why he didn't provide information to Metro when his account was restricted for a second time.

Weighing everything, I think Metro had enough information to load the misuse of facility marker and deciding to close the account. I'm sorry to disappoint Mr D but it follows that I intend to find the marker shouldn't be removed.

My provisional decision

My provisional decision is that I don't uphold this complaint.

Responses

Metro didn't add anything further. Mr D responded to say that he had read and understood my provisional decision and didn't have anything further to add. He enquired about whether Metro had responded, and we updated him.

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.

Given the responses, I see no reason to depart from the conclusions I set out in my provisional decision. Nothing compelling has been presented disagreeing with it. So, I have fully adopted that decision as part of this final decision.

Because of the reasons that I gave, I find Metro was entitled to record the misuse of facility marker and close Mr D's account. And there's no basis to require its removal now or for it to re-open the account.

This now brings our review of this complaint to an end.

My final decision

My final decision is that I don't uphold this complaint and won't be requiring Metro Bank PLC to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 April 2025.

Sarita Taylor
Ombudsman