

complaint

Mr A complains that Metro Bank PLC ("Metro") registered his details with CIFAS and closed his account, causing serious repercussions for him.

background

I issued a provisional decision on 25 November 2019, a copy of which is attached as it forms part of this final decision. Mr A accepted my provisional findings. But Metro did not. They say the proposed compensation of £5,000 is too high. They think £2,000 would be appropriate.

Metro don't dispute the timeline of events and they accept that they failed Mr A personally. But they say the level of compensation proposed in my provisional decision is too heavily weighted against how Mr A's business has been affected.

my findings

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

Metro accept that issues relating to a business can affect a director's personal life. But they say the two issues should be kept separate. They say I can't consider here any compensation which may or may not be owed to the business.

In bringing this complaint, Mr A had provided documents in support of financial losses he says his business has suffered. I explained in my provisional decision that, because this complaint has been brought by Mr A in his personal capacity, I can't make a decision about any compensation which may or may not be due to his business. So my provisional award didn't contain any element of compensation for any losses suffered by the business. Any compensation due to the business will need to be awarded to the business, following a separate complaint by the business.

A business can't experience distress. But a person who is a director of a business can. And, for the reasons set out in my provisional decision, I'm satisfied that Mr A experienced distress in his capacity as owner and sole director of the business.

The upset he experienced wouldn't fall to be compensated through a complaint brought by the business. It needs to be taken account of in a complaint by Mr A personally. So I haven't changed my mind about the fact that I can make an award here for distress suffered by Mr A in his role as director of the business.

Metro say that Mr A's main points of complaint are about how his business was affected. They say my provisional decision focuses too heavily on this. My provisional award does factor in some compensation for distress experienced by Mr A in his role as director of the business. But not to the extent which Metro suggest.

When we as a service decide to award compensation, we don't give a set amount for each mistake the bank has made and then add them together. Instead, we look at the situation overall and decide what we think would be a fair amount in the individual circumstances of each complaint. So I haven't broken down the compensation into separate amounts for each mistake, or by whether it affected Mr A as an individual or as a director of the business. I've looked at the situation as a whole. The distress caused to him as sole director seeing his

business suffering was one of the factors I took into account. But it was only one of many factors.

Other very significant factors which I referred to in my provisional findings include: (a) that Metro placed a CIFAS marker on Mr A's profile without grounds; (b) that they failed to remove it when they knew it wasn't necessary or correct; (c) that Mr A's account was closed without justification; (d) that, as a result, his accounts elsewhere were blocked; (e) that he couldn't open a new account; (f) that Mr A was left without access to a bank account for nearly eight weeks; (g) that Mr A says he had no earnings for over three months; (h) that Mr A says at times he had no access to funds including for meals; (i) that Mr A says the situation has affected his health; and (j) that Metro's handling of the situation only served to make it worse. These issues affect Mr A in his capacity as an individual. And I think some of them are even more serious than the fact that Mr A saw his business suffer.

I've considered Metro's comments carefully. But I don't think the provisional award gives undue emphasis to distress suffered by Mr A in his capacity as a director of the business. So I haven't changed my mind about the appropriate level of compensation here. In the light of all the serious repercussions outlined above, I still think that £5,000 is a fair amount of compensation overall.

my final decision

For the reasons above, and as set out in my provisional decision (attached below), I uphold this complaint. My final decision is that Metro Bank PLC must pay Mr A compensation of £5,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 February 2020.

Katy Kidd
ombudsman

copy of provisional decision

complaint

Mr A complains that Metro Bank PLC ("Metro") registered his details with CIFAS and closed his account, causing serious repercussions for him.

background

Mr A held an account with Metro. He also held two accounts (a personal account and a business account) with another bank which I'll call L. On 22 October 2018, Mr A received some payments into his personal account with L. He immediately transferred most of those funds into his Metro account and withdrew them from there that same day.

On 23 October, L was contacted by the original sending bank (which I'll call B) to say it was investigating the source of the funds. L put a block on Mr A's accounts and contacted Metro. Metro restricted Mr A's account on 23 October. On 30 October they wrote to him giving him notice that his account would be closed on 6 November. And on 1 November, Metro registered Mr A's details with CIFAS.

Both B and L concluded their investigations very quickly and were both satisfied with the source of funds. L then unblocked Mr A's accounts on 23 October. But it didn't update Metro until 5 November. And at that point, Metro didn't act on the information straight away. So they allowed the closure of Mr A's account to go ahead and didn't remove the CIFAS marker.

On 31 October Mr A says he tried to use his Metro card to make a purchase and it was declined. He called Metro to query this. The agent he spoke to told him that a letter had been sent to him giving more information about his account. She said she couldn't do anything and advised him to wait for the letter.

Mr A says that, on or around 6 November, L blocked both his accounts again. He says he approached another bank, who said they couldn't open an account for him because of a note recorded by Metro.

On 7 November, Mr A called Metro. He wanted to know why they had closed his account. He told them his accounts with L had been blocked. He explained that he couldn't pay bills or Direct Debits and was left without access to any bank accounts.

The adviser suggested he write to Metro's head office. She also said she would liaise with another department to find out more and would call him back straight away. Mr A didn't get a call back, so on 8 November he called again and spoke to a different agent. In this call he asked for a call back from the original agent but never received one.

Mr A logged a complaint with Metro on 15 November and asked them to remove the CIFAS marker. He also called them on 15 and 21 November and was advised to write to their head office. Metro issued their final response letter on 21 November. They didn't uphold the complaint and said the CIFAS marker would remain in place.

Mr A wrote to Metro again on 12 December. On 27 December, he called again and was told they had removed the CIFAS marker that day. He asked for this in writing so that he could show other banks. The agent said she couldn't do this and told him he would need to make a data subject access request. She also told him he'd need to go into a branch if he wanted to open a new Metro account.

On 2 January 2019, Metro responded to Mr A's letter of 12 December. They re-iterated their decision to end their relationship with him and said this was because they had been informed that the funds paid into his account on 22 October were fraudulent. They also said they hadn't registered a CIFAS marker against his name.

Mr A contacted Metro again on 11 January and logged a complaint about closure of his account. Metro wrote back the same day saying they couldn't uphold the complaint because they had followed the correct procedure.

After that, Mr A brought his complaint to this service. At that stage, Metro acknowledged that the CIFAS loading should have been removed on or shortly after 5 November and that, due to human error, it wasn't. They also acknowledged that they knew the fraud claim had been withdrawn by B and L the day before Mr A's account was due to be closed, but hadn't stopped the closure. In light of this, they offered compensation of £250 for the inconvenience caused by their mistakes.

Mr A says that offer doesn't reflect the very significant impact of the situation. He says the effect on his business has been severe and he's provided documents relating to the financial losses he says he's suffered. He says he wasn't able to pay his business rent for three months, or pay Direct Debits and other business payments. He says that, as a result, services which he relies on for his business were suspended and various business contracts have been adversely affected. Mr A also described the effect this situation has had on him personally. He says he had no earnings for over three months and no access to a bank account. And he's described the very significant personal distress this caused him.

Our investigator recommended compensation of £1,750. But Metro didn't agree to this. They say that Mr A's account is a basic cash account for personal use only. They don't accept that the documents Mr A's provided show financial losses, or that any losses were caused by their mistake. So they think the recommended compensation is too high.

Mr A wasn't happy with our investigator's view either. He says that, because Metro didn't remove the CIFAS marker, L re-blocked both his accounts, causing the repercussions outlined above. And he doesn't think the compensation reflects what he's been through. He says his business is still suffering and that the situation is still having a very great personal impact on him. He's seeking redress in the region of £30,000.

my provisional findings

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

Metro accept they made mistakes here. But I don't think they've recognised the serious repercussions those mistakes had for Mr A. In this decision, I'm going to focus on the consequences of Metro's actions so that I can decide on the appropriate level of compensation here.

The financial losses Mr A complains about seem to relate mainly to his business, which is a separate legal entity to him personally. And this complaint is from him personally, relating to his own personal account. I realise this will be disappointing to Mr A, but I can't make a decision here about any compensation which may or may not be due to his business. Any compensation due to the business will need to be looked at as part of a complaint by the business, and with any redress then being paid to the business.

However, because Mr A is a director of the company (the sole director), any distress and inconvenience caused to him in that capacity and as owner of the business will need to be recognised by payment of compensation to him personally. So I'm looking here at the amount of compensation which needs to be paid to Mr A personally, both in his capacity as an individual and as director/owner of the business.

The key issues here seem to me to be as follows: (a) the placing of the CIFAS marker, (b) the delay in removing the CIFAS marker, (c) closure of Mr A's Metro account, and (d) the way Metro dealt with the situation. I'll look at each of these in turn.

placing of the CIFAS marker

I think Metro were over-zealous in placing the CIFAS marker on 1 November. Although it's right that they should take allegations of fraud seriously, I wouldn't expect a business to apply a CIFAS marker simply because it suspects fraud.

The fraud claim was withdrawn by L and B on 23 October. It's unfortunate that L didn't tell Metro straight away. But I'd have expected Metro to gather more information themselves before placing the marker. They'd been told by L on 23 October about the investigation into the funds. But it wasn't until 1 November that Metro placed the marker. I think it's fair to say they should have checked the latest position before placing the marker. It would have been reasonable for them to have contacted L for an update. If they'd done so, they'd have known that the funds were genuine and there were no grounds for applying a marker.

So I think the CIFAS marker was placed by Metro unnecessarily and without sufficient grounds.

delay in removing the CIFAS marker

If Metro had removed the CIFAS marker as soon as they heard from L on 5 November, I don't think the consequences would have been too significant here. But their failure to act promptly means that from 1 November until 27 December, there was an unnecessary CIFAS marker recorded on Mr A's profile.

Mr A says that, although L was satisfied with the source of funds and had unblocked his accounts on 23 October, it re-blocked both his accounts on 6 November. Mr A says that was because of the CIFAS marker placed by Metro. L has confirmed that it re-blocked Mr A's business and personal accounts from 6 November until 28 December 2018. The information L has provided includes details of its confidential internal processes and isn't something I'm able to share with the parties. But from what L has told me, I'm satisfied that it was Metro's CIFAS loading which led it to re-block Mr A's accounts for this period of time.

So, as a result of the CIFAS loading placed by Metro, Mr A was denied access to banking facilities with both his existing banks. He says he then tried to open a new account at another bank but wasn't able to do so because of the CIFAS marker. I haven't seen any documents relating to this. But I've heard Mr A's account and I've no reason to doubt what he says. It's entirely understandable that with his Metro account closed and his accounts with L blocked, he'd have tried to open a new account elsewhere. And it's understandable that the third party bank wouldn't have wanted to accept Mr A as a new customer when it saw the CIFAS marker.

So I find that Metro's actions meant Mr A was left without access to a bank account. He told Metro this on 7 November.

account closure and access to funds

Mr A says he tried to use his Metro card on 31 October 2018, but the payment was declined. His statement confirms that he withdrew the transferred funds in full on 22 October, leaving the account with a zero balance. So I don't think Mr A would have been able to use his Metro card to make the purchase on 31 October even if his account hadn't been restricted. That's because there were no funds in the account by then and there was no overdraft facility.

As to closure of the account, when Metro wrote to Mr A giving him seven days' notice, they said they were doing so under clause 11.2 of their terms and conditions. And their letter of 2 January 2019 said "*As we have been informed of fraudulent funds paid into your account held with us at Metro Bank, we have taken the decisions [sic] to end the relationship with you as a customer as per 11.2 of our service relationships with personal customers*". The clause does allow Metro to withdraw services "*if we think that... there has been fraud or other suspicious activity involving your account (or we suspect this is the case)*".

When Metro wrote to Mr A on 30 October 2018 giving him notice of his account closure, this clause had been triggered. But before the notice period had expired, Metro knew that the funds weren't suspicious and the fraud claim had been withdrawn. So they no longer had reason to think or suspect that there had been fraud involving Mr A's account. They actually knew this wasn't the case. But they still went ahead with the account closure. In light of the information given to them by L on 5 November 2018, I don't think Metro had grounds for closing Mr A's account the next day.

compensation

Metro offered compensation of £250. But I agree that's not enough to reflect the impact of their actions. They placed a CIFAS marker on Mr A's profile without grounds and then failed to remove it when they knew it wasn't necessary or correct. His account was then closed without justification. His accounts elsewhere were consequently blocked and he wasn't able to open a new account. He was left without access to a bank account for nearly eight weeks. And the way Metro handled the situation only made things worse for Mr A.

I've listened to Mr A's calls to Metro. I don't think the way he was treated was at all satisfactory. He was passed around and never able to speak to someone who could discuss the situation with him in any detail. His concerns weren't treated seriously or with an appropriate level of urgency. And when he wrote to Metro, the issue wasn't investigated properly. If it had been, the mistakes with the CIFAS marker and closure of the account would have come to light and could have been dealt with earlier. Having made mistakes in the first place, Metro made them worse and their further actions meant that the consequences for Mr A were prolonged and made more serious.

I've also taken into account the serious personal impact Mr A says this situation has had. It's caused him great distress and affected him in many ways. This could have been avoided if Metro had acted on the information they'd been given and taken Mr A's concerns seriously.

Mr A says the situation has had financial consequences for his business. As I've explained above, I can't make a decision here about the impact on the business because I'm only looking at the effect on Mr A personally. If Mr A wishes to seek compensation for his business, that will need to be looked at as a separate complaint.

But I think the compensation for Mr A personally needs to be substantial. The level of distress caused to Mr A here has been severe. The inconvenience has also been very great. Mr A was left without access to banking facilities for several weeks. I think most people would encounter all sorts of practical difficulties in that situation, as he did. He also saw the effects on his business and experienced the distress and inconvenience of dealing with that. And Mr A says he had no earnings for over three months.

I haven't seen details of any fixed earnings which Mr A expected to receive. I understand that he would have paid himself from income earned by the business, but I'm not aware that he had a fixed salary which he paid himself each month. Any lost income for the business will need to be looked at separately. If Mr A has evidence of income he personally lost, he should send that for me to consider before I issue my final decision. In this provisional decision, my award for distress and inconvenience takes into account what Mr A has said about there being times when he had no access to funds, including for meals.

Taking all of this into account, I think compensation of £5,000 is appropriate here.

my provisional decision

For the reasons above, and subject to any further information I receive from the parties which changes my mind, I intend to uphold this complaint and direct Metro Bank PLC to pay Mr A compensation of £5,000.

Katy Kidd
ombudsman