

Complaint

Ms C is unhappy that Metro Bank PLC added a Credit Industry Fraud Avoidance System (CIFAS) marker against her name. She says this has led to her having her bank account closed. And she wants Metro to remove her CIFAS marker.

background

Ms C opened an account with Metro Bank in 2017.

In July and September 2017 two payments were made into Ms C's account:

- 12 July 2017 £6,707.62
- 21 September 2017 £5,566.14

Soon after receiving the September payment Metro received a SWIFT notification from another Bank, I'll call B, who said their customer didn't authorise the payments to Ms C's account. Before Metro could retrieve the funds just over £5,566.14 was transferred out of Ms C's account to three payees via faster payments. As a consequence Metro decided to close her account.

Metro also thought Ms C had misused her account so applied a CIFAS marker. Metro didn't ask Ms C any questions about the payments into her account before making the decision to close the account and apply the CIFAS marker.

Ms C says that she only became aware Metro had loaded the CIFAS marker when another bank closed her account in 2018. Ms C complained to Metro, asking for the CIFAS marker to be removed. Ms C told Metro:

- she'd been approached by an acquaintance, I'll call A, at a gathering which took place at her home address
- A advised he'd give her money as part of a saving scheme for a house deposit.
- she gave A her Metro sort code and account number and he started depositing money into her account
- she withdrew this money and saved it in her house
- only when Metro blocked her account did she realise this might not be a legal scheme
- she tried to contact A but couldn't get hold of him – and because she was embarrassed she deleted his contact details and all messages from him

When Ms C complained to Metro they responded to say that when they receive a report on fraud they have an obligation to act – and they thought the markers were added fairly.

Ms C wasn't happy with Metro's response so complained to our service.

One of our investigators looked into Ms C's complaint and asked both Ms C and Metro further questions.

Metro provided evidence that three new payee's were set up on the 12 July 2017 prior to the first transfer of the fraudulent funds on the same day. On this day two faster payments were made to two of the new payees, and an account to account transfer was made to the third.

£2,400 was also withdrawn in cash. Ms C had £0.16 in her account prior to the fraudulent funds being received on the 12 July 2017, after these transactions she had a balance of £27.78. The same three payees' were credited with faster payments after the fraudulent payment on the 21 September 2017.

Our investigator didn't uphold the complaint – having looked at the circumstances of the events and the way in which the fraudulent payments were used he thought Metro had sufficient evidence to load the CIFAS marker.

Ms C didn't agree with the investigator's opinion and asked for her complaint to be passed for an ombudsman for a 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. In doing so I've come to the same conclusion as the investigator. I'll explain why below.

Metro said it applied the CIFAS marker because bank B said their customer didn't authorise the payments made into Ms C's account. So I've looked at whether Metro was fair to apply the marker, based on the evidence it had and the investigation it carried out and what the rules say about applying such markers.

CIFAS guidance says the business must have carried out checks of sufficient depth to meet the burden of proof set by CIFAS, which at that time was that Metro needed to have enough information to make a formal complaint to the police or other relevant law enforcement agencies. And that any filing should be for confirmed cases of fraud, rather than mere suspicion. In addition, CIFAS guidance set out businesses are expected to retain the evidence they rely upon when applying a CIFAS marker for at *least* six years.

Having reviewed Ms C's account of events and the evidence Metro have provided, I'm satisfied that Metro have sufficient evidence for the CIFAS marker to be recorded on her file. In coming to this view, I've taken into account the following reasons:

- Metro have provided evidence to show the inward payments received on the 12 July 2017 and 21 September 2017 were fraudulent
- Ms C had an opportunity – once her Metro account was closed and she identified the scheme may not be legal – to return the fraudulent funds to Metro. But, as she told our investigator, she benefited from the funds spending the money on car repairs
- Ms C hasn't provided evidence to demonstrate any form of contact with A
- I'm satisfied Ms C's explanation – that her online banking details may have been obtained at her house during the party – is unlikely
- there were multiple online banking log ins between July and September 2017 and a high number immediately prior to and after the fraudulent funds were deposited
- Ms C hasn't explained how her mobile phone was accessed to set up the new payee's or the last 4 digits of her Metro debit card were obtained – both of which were required to set up new payees

Taking everything into account, I find that Metro have met the burden of proof required by CIFAS to add the marker. So I'm not going to ask them to remove the CIFAS marker.

my final decision

My final decision is I don't uphold Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 19 September 2019.

Jeff Burch
ombudsman