

complaint

Mr C complains Metro Bank PLC unfairly placed a Credit Industry Fraud Avoidance System (CIFAS) marker against his name. He says this has stopped him from being open to bank account. He wants Metro to remove the marker and compensate him for the distress and inconvenience this caused.

background

Mr C opened a current account with Metro in November 2015.

In March 2016, three payments were made into Mr C's account:

- 7 March 2016 £15.00
- 11 March 2016 £20.60
- 15 March 2016 £2,900.00

On 15 March 2016, Metro Bank was contacted by another bank, which I will refer to as bank A, who said their customer did not authorise the payments to Mr C's account. Following this notification, Metro returned £2,905.50 to bank A. And it decided to close Mr C's account.

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

Mr C says it was only in 2018 when he tried to open a new bank account that he discovered Metro had placed a CIFAS marker against his name. He said he didn't know anything about the payments into his account. Mr C complained to Metro. He accepted Metro had closed his account but wanted Metro to remove the CIFAS marker.

Metro said it had complied with the terms and conditions when it closed Mr C's account. And told Mr C if he wanted to challenge the CIFAS marker he should contact bank A or provide proof of his entitlement to the payments along with a summary of events. Metro said it hadn't done anything wrong. And it had complied with an indemnity which it had received from bank A and had returned the money to the sending bank. Unhappy with this response Mr C brought his complaint to our service.

Our investigator reviewed Mr C's case and asked Mr C and Metro some additional questions about the payments. Mr C said he'd opened the account when he was 16 years old and intended to use it to have his wages paid into when he got a part time job. He said he'd never used the account and kept his bank card, PIN and online banking details in a school bag. Mr C said he forgot about the card. And didn't realise it wasn't in his possession until he received Metro's letter in March 2016.

Mr C says someone must have got access to his bank card and banking information. He hasn't been able to provide any specific information as to when this was or who this might be. Mr C says he never contacted Metro at the time because his parents told him to focus on his education.

Metro said it wasn't able to return all of the £2,935.60 as £30 had been withdrawn using a cash machine prior to it receiving bank A's request. Metro said it believes Mr C made this cash withdrawal so it said the CIFAS marker had been correctly applied.

An investigator looked into Mr C's complaint. She thought Metro was unfair when it applied the CIFAS marker. She asked Metro to provide evidence it had carried out an investigation at the time to make sure the marker was applied correctly. And evidence to show that Mr C was responsible for the £30 cash withdrawal. But due to the passage of time Metro said it was unable to provide anything. So the investigator said Metro should remove the marker. She also said Metro should pay Mr C £150 compensation for the distress and inconvenience the marker caused him.

Mr C accepted what the investigator said. Metro disagreed. It said Mr C hadn't kept his bank card and details safe. And by not taking adequate care of his details he had facilitated the subsequent events. Metro said the withdrawal of £30 was made close to his home so it's likely Mr C authorised the payment as his genuine card and PIN were used.

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

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 says it applied the CIFAS marker because bank A said their customer didn't authorise the payments made into Mr C's account. So I've looked at whether Metro was fair to apply the marker, based on the evidence it had, 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 sets out businesses are expected to retain the evidence they rely upon when applying a CIFAS marker for at *least* six years.

Having looked at what's happened here, I haven't seen any evidence that Metro contacted Mr C *at the time* and asked him for information about the three payments made to his account. And it hasn't shown that it contacted bank A, which raised the indemnity for any clarification. So in this particular case, I don't think Metro carried out sufficient checks to satisfy the burden of proof required to apply the marker.

Metro has pointed out that Mr C's account received £1,500 in January 2016 which was withdrawn at £300 intervals over a number of days. Metro says this activity is suspicious. Whilst I appreciate Metro's position, it hasn't been able to provide any evidence to support its suspicions – such as *these* funds being confirmed as fraudulent. I've also kept in mind that Metro didn't raise any concerns it may have had about these payments with Mr C at the time.

I think Metro should've contacted Mr C as this would've given him the opportunity to explain the circumstances surrounding the payments into his account. Had it done so, Mr C would've been able to explain more about the activity on his account. And what he knew about the payments. He would've also been able to provide Metro with information about where he kept his bank card and other banking information. And that he no longer had his bank card and banking credentials.

The information Metro held was the indemnity it had received from bank A. But Metro didn't explore the possibility that someone else got access to his card and PIN. And were able to use them without his knowledge. So I don't think it had enough evidence to satisfy the criteria set out in the CIFAS guidelines. Metro has also confirmed that due to the passage of time it no longer has the evidence to show Mr C authorised the £30 cash withdrawal. So I agree with the investigator that it was unfair for Metro to put the marker against Mr C in these particular circumstances and it should now be removed.

Mr C has told the investigator that as a result of the CIFAS marker being applied it was difficult for him to open a bank account. I can see that Mr C was able to open a basic bank account. But I've kept in mind that at the time Mr C was about to go to university and needed an account to receive his student loan and receive any salary from work he was able to obtain to help him through his education. From what Mr C has said I don't doubt that the marker recorded by Metro has impacted on him. So I think Metro should pay Mr C £150 compensation for what took place. I think that amount fairly reflects the level of distress and inconvenience caused to him.

my final decision

For the reasons I've explained, I uphold this complaint.

I require Metro Bank PLC to contact CIFAS and ask them to remove the CIFAS marker Metro placed on Mr C's record and to pay Mr C £150 for the distress and inconvenience caused by applying the marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 July 2019.

Sharon Kerrison
ombudsman