

The complaint

Miss A that Metro Bank PLC recorded information about her with the fraud database, Cifas.

What happened

Miss A had an account with Metro.

On 18 October 2022, Miss A received a payment of £160,000 into her personal account. The following day, Miss A visited a metro branch and withdrew £50,000 in cash.

Miss A has said the payment was an interest free loan from her mother, after her mother had sold her house. She's said the loan was to repaid back to her mum over twenty years. The loan was to be repaid each month, with a minimum repayment of £300.

Following this Metro were notified by another bank that the payment had been transferred as a result of a scam. Metro blocked Miss A's account and asked her for proof of entitlement to the funds. In response, Miss A sent Metro a copy of a loan agreement she said had been signed by her and her mother. She also provided a copy of her mother's bank statement showing the funds being transferred.

Metro spoke to Miss A and asked her some questions about the money. Miss A told Metro that she had withdrawn the £50,000 because she wanted to buy a car. However, because of the block on her account she wasn't able to go through with the purchase. She said that she had wanted to withdraw £160,000 but hadn't been able to do so because of limits on how much she could take out from the account. Metro asked Miss A to contact her mother and arrange for her mother's bank to contact them to verify Miss A's explanation. This never happened.

Metro looked at everything and decided to close Miss A's account and register Miss A with Cifas for misuse of facility relating to receiving and retaining fraudulent funds.

Miss A complained to Metro. She said that the Cifas marker was causing her great difficulties as she was unable to open another bank account and had another account closed. She said she wasn't involved in any fraud and maintained that the money was a loan from her mum. Metro reviewed their decision and declined to remove the marker. They said the information they provided to Cifas was correct, so they would not be asking Cifas to remove the marker. Metro also said they had closed Miss A's account in line with the terms and conditions of the account.

Unhappy with this response Miss A brought her complaint to our service. One of our investigator's looked into what happened and didn't recommend that Miss A's complaint be upheld. This was because she felt on balance that Miss A was most likely complicit in receiving and retaining fraudulent funds. And so, she said Metro had enough evidence to register a marker with Cifas against Miss A.

Miss A disagreed. She maintained that she'd not done anything wrong, and that the money

was a loan from her mother. She provided a copy of the loan agreement that she'd provided to Metro in support of her explanation.

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.

I'll deal first with Metro's decision to block and close Miss A's account. Metro has extensive legal and regulatory responsibilities they must meet when providing account services to customers. They can broadly be summarised as a responsibility to protect persons from financial harm, and to prevent and detect financial crime.

Having looked at all the evidence, I'm satisfied that Metro acted in accordance with these obligations when it blocked and reviewed Miss A's account. And it was entitled to do so under the account terms and conditions. Metro was also within its rights to close Miss A's account and did so in line with the account terms and relevant regulations. So, I can't say Metro have done anything wrong when it closed Miss A's account.

I've then turned to Metro's decision to record a Cifas marker against Miss A. When a business is a member of Cifas it can record a marker against an individual customer when that customer has used their account fraudulently. This type of marker will stay on record for six years and will usually make it difficult for a customer to take out new financial products as Miss A says she has encountered.

The marker that Metro have filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using Miss A's account to receive and retain fraudulent funds. In order to file such a marker, they're not required to prove beyond reasonable doubt that Miss A is guilty of a fraud or 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 such that the member could confidently report the conduct of the subject to the police."*

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Miss A'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.

So, I need to consider whether Metro have 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 that they were entitled to do so. And I'll explain why.

Firstly, I am satisfied the £160,000 that came into Miss A's account on 18 October 2022 arrived there as a result of a fraud. I have reviewed the notes and reports from the other bank and Metro's reaction, and it's clear that the original owner of these funds was the victim of a scam. But this alone is not enough for Metro to register a Cifas marker against Miss A. I also need to be satisfied that Miss A was deliberately dishonest regarding these funds. And

having reviewed everything I'm persuaded that it is more likely than not that she was. I say this because:

- The large payment into the account was followed by Miss A attempting to withdraw the whole balance in cash. However, this wasn't possible due to bank limits, so on 19 October 2022, Miss A quickly withdrew the maximum allowed - £50,000. So, I am satisfied that Miss A has profited from the fraud and appears to be the main beneficiary.
- Miss A has said that she made the £50,000 withdrawal because she wanted to buy a car and that she'd get a better price if she paid cash – but she hasn't provided any evidence to support this, which seems highly unusual. Based on the evidence it seems to me that Miss A was a willing part of the fraud or acting as a money mule.
- During a phone call with Metro, Miss A said she intended to use the remaining funds for financial difficulties, such as buying food and a mobile phone for her son – this seems unlikely given the size of the payment. And if Miss A was in financial difficulties, I think it's unlikely that Miss A would have been spending £50,000 on a car.
- Metro also asked Miss A to arrange for her mother to contact her bank so that they in turn could contact Metro. I don't think this was an unreasonable request and isn't something that would have required much effort or time on Miss A's part – especially if what Miss A has said about her entitlement to the funds is true. It would be quite straightforward for Miss A to do this. But I haven't seen any evidence that Miss A did this. Again, I find this surprising, given what she's said about her legitimate claim to the funds.
- Miss A has provided a copy of a loan agreement purporting to be signed by her mother. But this loan agreement is dated 6 November 2022 – which is around three weeks *after* Miss A received the money into her account – which I find quite odd. I would expect a loan agreement to be drawn up before any funds were advanced.
- The repayments also do not add up - £160,000 over 20 years at 0% interest would be around £666 a month yet the loan agreement states it would be £300 a month repayment. On the basis that Miss A only repaid £300 a month then only £72,000 would be repaid over the term of the loan – which is less than half the amount supposedly loaned.
- Having looked at the loan agreement I note too that the amount to be loaned appears to have been altered, which adds further doubt to the credibility of Miss A's explanation and the authenticity of the loan document.

So, when I weigh everything up, I'm not persuaded by Miss A's version of events. Having looked at all the evidence, I am satisfied that Miss A received the proceeds of fraud and spent a sizeable portion of the funds, such that it couldn't be recovered, and appears to have been the main beneficiary. She's not been able to evidence she was entitled to the money. So, I think it was fair and reasonable for Metro to register Miss A with Cifas for misuse of facility. So, I won't be asking Metro to remove the marker.

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 Miss A to accept or reject my decision before 11 March 2024.

Sharon Kerrison
Ombudsman