

The complaint

Mrs W complains Tesco Personal Finance PLC trading as Tesco Bank unfairly declined her fraud claim and didn't provide enough assistance when she was in persistent debt.

What happened

The Investigator has set out a clear and detailed background to the complaint, so I don't intend on repeating all the details here. Instead, I will provide an overview of the key points.

Mrs W held a Tesco credit card which she says she cleared the balance for in March 2014. There was no activity on the card for a year and then in March 2015 a new credit card was requested and spending on the card began in April 2015. During this period direct debit payments were made for the minimum payment and ad hoc payments were made towards the balance.

Mrs W says she was unaware she had an outstanding balance on her credit card until she was contacted in December 2019. Mrs W says she thought the card had been cleared in March 2014 and she didn't think she had made the transactions on the card from April 2015 onwards. Tesco reviewed Mrs W's comments and the unauthorised transactions she had claimed on the account. It found that based on the available evidence it was satisfied the transactions had been made and authorised by Mrs W.

Mrs W also raised concerns about the outstanding balance on the credit card and the amount she had repaid in interest. Tesco says it had provided Mrs W with the necessary information about the account and the repayments due. It also said it had met its obligations under the persistent debt guidelines.

As part of its review of Mrs W's concerns Tesco offered Mrs £175 in total for its service shortcomings as Mrs W experienced delays and unclear communication.

Dissatisfied with Tesco's response to her complaint Mrs W brought her complaint to our service. An Investigator reviewed Mrs W's concerns and found that Tesco had fairly considered the disputed transaction claims Mrs W had made. They also found Mrs W's account had been handled in line with regulatory guidance around persistent debt. However, she agreed the service received had been poor and recommended Tesco pay an additional £200 in recognition of this.

Tesco accepted the Investigator's findings, but Mrs W remained unhappy and asked for her case to be reviewed by an Ombudsman.

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.

. When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider good industry practice at the relevant time.

Firstly, I am sorry to see Mrs W has had cause for complaint. I don't underestimate the worry and anguish this situation has caused, and also the stress of dealing with the complaint about it.

I'm aware that I've only summarised Mrs W's complaint points. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I can assure Mrs W I have read everything she has provided. I will deal with the key points Mrs W has raised in turn.

Disputed transactions

Under the relevant regulations – the Payment Services Regulations 2009 in this instance, Mrs W is liable for transactions she has authorised – either by carrying them out herself or giving permission for another party to carry them out on her behalf. The PSRs also set out that where a payment isn't authorised by the account holder, they may still be liable for it if they've failed with intent or gross negligence to adhere to the terms of their account or keep their personalised security credentials safe.

Tesco has considered Mrs W's testimony alongside the technical information it holds about Mrs W's account and the transactions to reach the view that Mrs W has authorised the transactions. I can't say with complete certainty how the transactions took place, but I must decide whether Tesco concluding that Mrs W most likely authorised the payments she is disputing, based on the information available to them, is fair.

Firstly, I have to consider Mrs M's comments around her account, card and PIN. There has been a great deal of discussion with Mrs W to clearly establish her circumstances at the time of the transactions. Mrs W has explained she wasn't well at the time, and she hasn't been able to accurately and consistently recall the details asked of her. Mrs W says she may have carried out the transactions, but due to her health at the time she can't say for certain. On the other hand, Mr W says she thought the card was paid off in March 2014 and was unaware of the outstanding debt until December 2019.

I've considered Mrs W's comments alongside the transactions themselves. Firstly, a new card and PIN were requested via online banking, and at the time Mrs W hadn't reported any issues with her account security. The card and PIN were issued to Mrs W's address on file so based on Mrs W's comments it is difficult to establish a point of compromise for both the card and the PIN.

The transactions themselves seem to be spread over many months, and they were generally in the area near Mrs W's registered address. I have to keep in mind this pattern doesn't match what is typically seen in cases of unauthorised use. Usually if a third party somehow obtains a card and PIN, they spend the available credit quickly to maximise their gain before the card is reported lost or stolen. The transactions in Mrs M's case vary in value and appear to take place at very different times of day to a range of merchants. I also note some transactions were made for a cruise, and Mrs W says she has been on this type of holiday in the past. It seems implausible that an unknown third party would've taken these risks to carry out the transactions in this manner and that their spending would be in keeping with Mrs W's normal spending habits.

During the same period direct debit payments were made to the account as well as ad-hoc payments. In particular in July 2015 Tesco contacted Mrs W about recent spending going over the credit balance. In response an ad-hoc payment was made. Again, I think it's highly unlikely a third party would clear the outstanding debt, and the repayment of the balance suggests there was an awareness on Mrs W's part of the usage and balance on the card.

Overall, having considered everything, all of the available evidence points to it being more likely than not that Mrs W provided authority for the transactions. I realise that this is not the outcome Mrs W was hoping for, and she will be disappointed by the decision I've reached about this part of her complaint. As such, I cannot fairly and reasonably require Tesco take any further action in relation to this matter.

Persistent Debt

Mrs W has raised concerns about the outstanding debt on her account. Mrs W says she has made regular payments towards the balance, but the interest payments mean she has paid back significantly more than the initial amount spent.

Given the transactions on the card have been deemed to be authorised by Mrs W, I've gone on to consider whether Tesco managed the debt, and Mrs W's account fairly and in keeping with its regulatory obligations.

The Financial Conduct Authority's (FCA) persistent debt rules are set out on the FCA handbook, CONC 6.7.27. They came into force in March 2018, and they say (in summary) that firms such as Tesco must look at the accounts of borrowers to ensure they're reducing their debts and therefore, not paying too much interest. And so – where a borrower is paying more in interest and fees than they are paying towards reducing the amount of the debt, then a repayment plan should be put in place to deal with this. And, where this can't be agreed, the card may be suspended – to stop customers from increasing their debts further. The intention of the rules is to ensure that customers are protected from paying too much interest – and in some cases, never actually repaying their debts. This typically happens if customers only pay the minimum amount each month, while still spending on their cards.

Mrs W has said that as soon as his account fell into the category of persistent debt, Tesco had an obligation to assist her by reducing the interest rate. CONC states that at 18 months of persistent debt, credit card providers are required to write to customers. Should they remain in persistent debt for 27 months, they should notify customers that they are in persistent debt and encourage them to pay more. And if a customer doesn't take sufficient action and remains in persistent debt after 36 months, the rules require a credit card provider to help a customer repay more quickly in a way that does not adversely affect their financial position – typically by setting up a repayment plan over a reasonable period of time. And this could include reducing or waiving the interest rate on the account as well as waiving fees and charges but is not guaranteed. In Mrs W's case once the 36-month mark was met, her card was suspended.

Tesco has provided copies of the letters it sent to Mrs W – some of which were issued before the persistent debt regulations came into force. These letters clearly set out that making minimum repayments only will increase the amount of interest Mrs W will pay overall. The letters also encourage Mrs W to get in touch to discuss the best options for repayment going forward. Further, as Mrs W was making the necessary payments and the account wasn't in arrears or passed to collections there was no requirement for Tesco's to suspend interest or charges on the account.

Overall, I'm satisfied Tesco followed the relevant regulatory guidelines at the time for the debt on Mrs W's account and I do not find Tesco did anything wrong that it needs to put right with regards to its management of Mrs W's account.

Customer service issues

Mrs W says she has experienced on-going service issues with Tesco. In particular Mrs W says had she known about the outstanding debt sooner, she could've cleared it and paid less in interest.

Tesco's notes indicate statements were issued to Mrs W's registered email address. Its notes don't indicate any requests to change Mrs W's email address or communication preferences. I can see that letters were also issued via post from July 2021. Without any contact from Mrs W, Tesco had no reason to suspect Mrs W wasn't receiving correspondence. I am also mindful that Mrs W was making the minimum payments from 2015 onwards on the card, which indicates an awareness of an outstanding balance.

I've also considered the timeline of events, and the time taken for Mrs W's concerns to be looked into. Mrs W says she realised there was an outstanding balance in December 2019, but it appears this was only formally flagged as an issue with Tesco in September 2020. Following this a fraud review of the transactions began in a final response was given to Mrs W in September 2022. And it was only in October 2022 that Mrs W received a full response to the communication issues and persistent debt concerns she had raised.

Mrs W maintains she has been in touch with Tesco numerous times over the last few years to try and resolve the problems she has experienced. Tesco's notes from this period are sparse, and it's not clear exactly why it took so long for the disputed transactions to be fully reviewed. It seems most of Mrs W's contact with Tesco was by phone, so it's been difficult to establish a clear trail of what happened in this intervening period. In any event, I don't doubt Mrs W made attempts to find a way forward and I think the service provided by Tesco was poor. Given Mrs W's complaint issues, Tesco should've taken pro-active steps to provide Mrs W with a clear response. Tesco has offered £175 for its service failings, and the Investigator recommended an additional £200 be paid to reflect the distress and inconvenience caused to Mrs W. Tesco accepted the recommendation, but Mrs W didn't think the award went for enough.

I appreciate Mrs W's comments about the delays she has experienced and the impact the complaint has had on her. Reaching an award for distress and inconvenience is seldom straightforward. The issues involved are subjective by their very nature and the impact on the consumer can be difficult to determine. In Mrs W's case I think a total of £375 is a fair offer and in keeping with our service's approach to compensation.

Mrs W has continued to pay the outstanding monthly payments due on her card whilst her complaint was reviewed, and she feels that she has now paid more interest. Although Mrs W had raised a complaint, her obligations under the credit card agreement remained. And as explained above, as the debt on Mrs W's card isn't being removed, it remains her responsibility to repay. I would encourage Mrs W to utilise the debt advice Tesco offers regarding the outstanding balance if she has concerns about how to clear the outstanding balance in the long run.

In summary, I don't think Tesco acted unfairly in declining Mrs W's fraud claim and her complaint about its handling of the outstanding debt on her account. However, I do think its service fell below reasonable standards, and it should compensate Mrs W for this. I know this will not be the outcome Mrs W was hoping for and she will be disappointed with the

decision I've reached. But I hope my decision provides some clarity around why I won't be upholding her complaint in full.

Putting things right

Tesco Personal Finance PLC trading as Tesco Bank should ensure it has paid the initial £175 it offered Mrs W for distress and inconvenience. It should also add an additional £200 to the payment in recognition of the impact it's delays, and poor service had on Mrs W.

My final decision

My final decision is that I uphold this complaint, and direct Tesco Personal Finance PLC trading as Tesco Bank to put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 April 2024.

Chandni Green
Ombudsman