

## The complaint

Mr O is unhappy with the way that Tesco Personal Finance Plc ("Tesco") has handled his credit card account, particularly as it has sold the debt on to a third party.

## What happened

We looked at an earlier complaint between Mr O and Tesco in relation to this credit card account and issued a final decision. So I'll only be making a decision about what's happened since then.

Tesco last received payment from Mr O in October 2017. So, in August 2019, it sold the debt on to a third party. Mr O was unhappy his debt had been sold on and said he was due to receive some money which he was going to use to pay the balance off.

Mr O has told Tesco about his mental health problems and feels it has ignored these. He said this matter has caused him a significant amount of stress. He also said Tesco had sent him letters which were misleading and upsetting. So he wanted Tesco to take the account back, remove the default from his credit file, and pay him compensation.

Tesco said it hadn't heard anything from Mr O since October 2017, and had exhausted attempts to agree an arrangement with him. So it didn't agree that it was wrong to sell the debt on. It said that Mr O could still clear the debt through the new owner. And, once he'd done so, it would be reported as 'partially satisfied' with credit reference agencies. Tesco referred to its terms and conditions which state:

*"We may transfer the rights and duties we have under this agreement to another lender or company in the future. We'll only do this if we reasonably believe they'll treat you at least as well as we do."*

Tesco also explained that while it was aware of Mr O's mental health problems, it hadn't been provided with sufficient evidence to say that this has always affected his ability to manage his finances. And it said that, as it hadn't been able to communicate with Mr O in recent years, it wouldn't be able to review his situation, or complete an 'income and expenditure' even if it were to buy the debt back.

Our investigator considered this complaint. He referenced Section 12 of the Lending Standards Board guidelines which say:

*"Firms should follow a robust due diligence process when selecting third parties for debt collection or when selling a debt. ... If a customer has provided appropriate and relevant evidence of an ongoing mental health or critical illness that affects the customer's ability to repay their debts, the debt(s) should not be sold."*

He thought that, while Tesco hadn't signed up to the Lending Standards Board, the guidelines were still a good indicator of the industry standard. He felt that Mr O's mental health problems, which had been impacted further by the loss of two family members, had likely hampered his ability to make payments towards his credit card. He thought that Tesco should have completed an 'income and expenditure review' to understand the fairest way to treat Mr O, and that it shouldn't have sold the debt on. He said Tesco should buy the debt back, manage it in-house, and pay £150 for the distress and inconvenience caused.

Mr O agreed but Tesco didn't. It reiterated that it hadn't received sufficient evidence of how Mr O's mental health affected his ability to manage his finances - and said it would reconsider its position if this was provided. And it explained further how it hadn't been able to make contact with Mr O, so had sold the debt to a firm – whose speciality is dealing with customers in financial difficulty – to collect a balance that Tesco had failed to collect.

### **What I provisionally decided – and why**

I issued my provisional decision on this case in March 2020. I said:

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

*While I know this will come as a disappointment to Mr O, I'm minded to disagree with our investigator. I don't think this complaint should be upheld - I'll explain why.*

*Before I do, I'd just like to say how sorry I am to hear about the passing of Mr O's close relatives. I can imagine this would've had a significant impact to him, and would've impacted his mental health further. And I'm sorry to hear about how difficult things have been for him.*

*While taking the above into account, I do need to think about whether Tesco has done anything wrong here. And, while Mr O has had an incredibly difficult time, it doesn't necessarily follow that Tesco has been unfair or unreasonable in selling the debt on.*

*Tesco provided a credit facility to Mr O, and it has a right to try to recoup the amount it's lent to him. Credit providers are expected to act positively and sympathetically where a consumer is in financial difficulty. But it's not unreasonable for a business to request information about the extent of the difficulty. And it doesn't mean Tesco has to cease all efforts to recover the money. Seemingly, Tesco made attempts to contact Mr O, in an effort to review his financial circumstances. But when nothing came of this after almost two years, it sold the debt on.*

*I've taken into account the guidelines set by the Lending Standards Board, but I think that Tesco exhausted reasonable attempts to contact Mr O. And it can't be expected to simply write-off the debt, or continue trying to pursue it, when its reasonable attempts had failed to get anywhere. So I don't think it was wrong to sell the debt on.*

*Thinking about the consequences of it doing so, I note that Mr O isn't in a significantly worse position. The amount of the debt remains the same, and Mr O owed the money, regardless of which business he owed it to. I can't see that there's been financial detriment caused by the debt being sold on. And, while a default was applied to his credit file, I don't think it was unfair of Tesco to apply this, given the aforementioned actions of Tesco.*

*A new debt owner might apply different terms to the debt or use alternative methods to recoup it. But I note that Mr O said he'd be able to repay the debt when he received a sum of money. And, from what he told us, it would appear that he's now in receipt of that money. So, in theory, he could now repay this debt. And, if that isn't possible, he could contact the*

*new debt owner to make it aware of his circumstances and try to agree an appropriate way forward. Tesco has indicated that the debt owner will treat him at least as well as Tesco has done so far. And I haven't been told about anything that would lead me to think this untrue.*

*I'd also point out here that I haven't been given any evidence of letters sent to Mr O that were misleading or upsetting.*

*So, based on what I've seen so far, I don't think it would be fair or reasonable to suggest that Tesco was wrong to sell the debt on. In my opinion, it would be unfair to expect Tesco to keep hold of the debt when it seems to have been unable to have any meaningful communication with Mr O, or attempts from him to pay, for quite some time. So while I appreciate Mr O's difficult circumstances, I don't think Tesco has been given enough information about his mental health or financial problems for me to conclude it was unfair for the debt to be sold on. Nor have I seen anything which persuades me that Mr O is worse off – either financially, or in terms of the support available to him – as a result of Tesco selling on the debt. And for that reason, I'm not minded to uphold the complaint.”*

I invited both parties to respond to my provisional decision. Tesco didn't have anything further to add. Mr O responded to express how strongly he felt that Tesco should've placed his account on hold. He pointed out that an appropriate organisation had contacted Tesco to do this and reiterates that it sold his debt on anyway, and he provided documentation around this.

### **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 know Mr O feels strongly that Tesco has treated him unfairly by selling his debt on. I don't doubt that Mr O has ongoing mental health issues, and I'm very sorry to hear about this. But I do have to take into account that the evidence I've seen, including that provided in response to my provisional decision, is from 2017. And, while this evidence makes it clear that Mr O is having mental health and financial problems, there's not enough to say that it was his mental health that was affecting his ability to meet his repayments. Instead, it appears that his income was the issue here.

It still stands that Tesco would've been required to treat him positively and sympathetically. But I'd point out here that it wasn't until August 2019 that the account was sold on. And, as I noted previously, I haven't seen or been told about any meaningful communication between the end of 2017 and August 2019. I know Mr O had a lot going on during this time and I can see why finances might not have been at the forefront of his mind, but I do have to think about what Tesco was made aware of for this period which was almost two years. And, in this case, it doesn't seem to have been made aware of very much. So I maintain the position that Tesco can't be expected to keep the account indefinitely without receiving payments, and without hearing from Mr O.

So I see no reason to reach a different outcome to my provisional decision. Ultimately, I think it was fair for Tesco to try to recoup its money in this case, particularly as it wasn't made aware of how Mr O's circumstances affected his ability to pay. And I can't see that Mr O has been treated unfairly as a result, given that it was sold on to a business that it expects would treat him at least as well as Tesco would've done.

**My final decision**

For the reasons given above, I don't uphold this complaint against Tesco Personal Finance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 5 May 2020.

Melanie Roberts  
**Ombudsman**