

The complaint

Mr B complains that Tesco Personal Finance PLC has treated a transaction as a cash transaction, when he says it doesn't fall within Tesco's definition of cash transactions. He also raised questions over how he was notified of what counts as a cash transaction.

What happened

Mr B told us he bought an expensive watch. He paid £3,480 using his Tesco credit card. That was a deposit, half of the full purchase price, and he entered into a 24-month finance agreement to pay the rest. He then discovered that he'd been charged a fee of £138.86 plus interest of £2.23 on the transaction by Tesco.

Mr B cast doubt on how Tesco had notified him of a change to his terms and conditions which expanded the definition of cash transactions. And he also said that, even using this expanded definition, the purchase shouldn't have been treated as a cash transaction. Mr B wanted Tesco to pay him back what he'd been charged. He wanted Tesco to pay compensation too, for the time he'd put into making this complaint, and to punish it for its behaviour in this complaint.

Tesco said it had issued a notice of variation in April 2018, telling customers of changes to their terms and conditions. That notice said Tesco would be changing the types of transactions that it classifies as cash transactions, and also the fees it would charge for that. Cash transactions now include things like gambling, investments, and repaying borrowing. All such transactions now incur a 3.99% handling fee, and interest is charged on them.

Tesco at first said Mr B had been notified of this change when a leaflet was sent with his statement in April 2018. But when Mr B said that he got paperless statements, Tesco said it would've been an attachment sent with his online statement.

Tesco has since shown us the statements that Mr B received in April 2018 and April 2019, both of which mention changes to his terms. And it's sent us the pdf document it says he would've been alerted to at the time. It says that there was a link to this document in the email he received to tell him his statement was available to view online. And it sent us a copy of the template email saying that, which it issued in April 2018. Tesco also said that a separate issue it had flagged in April 2019 had again included a reminder about what counts as a cash transaction.

Tesco said that the business that Mr B paid this money to, had sent Tesco information that this was a payment for finance, so the fee was chargeable. And it said that Mr B had purchased this watch using a credit agreement. So it said that the deposit he paid upfront formed part of that agreement. It thought this definitely fell within its definition of cash transactions. Tesco said it wouldn't make any changes or pay Mr B back.

Our investigator didn't think this complaint should be upheld. She thought that Mr B had been alerted to the change to his terms and conditions. Even if he hadn't, he would've seen on his statements a notice saying a change had been made, so he should've asked Tesco about this. But she did think Tesco had told him about the change.

Our investigator thought that Mr B's purchase was a cash transaction. She thought it came within the definition of repaying borrowing. That means it incurs a fee, and interest. So she didn't think Tesco had done anything wrong.

Mr B didn't agree. He said Tesco had changed its story about how he was notified of the change to his terms. He said we hadn't commented on that. He said he didn't get statements by email, they were available to view online. He thought it was wrong that he should be expected to chase up a hard copy of this change to his terms, and thought if he'd opted for paperless statements, an electronic document containing details of any changes to his terms should be sent to him. Mr B said our investigator hadn't been consistent in her use of language either, referring to things being sent to him, when he was only sent a link.

Mr B said that the current terms and conditions for his account didn't say anything about cash transactions either. He asked how he would know about this if he'd taken his card out more recently.

And Mr B said he didn't think this transaction should've been classed as repaying borrowing. He said the transaction he'd entered into to buy the watch was like a mortgage, and the deposit was money he paid upfront. He said that we were implying this was money he'd borrowed from the finance company, then immediately repaid. So he said if that was the case, we'd presumably be able to show that the finance company had given him this money before he repaid it. He said that wasn't consistent with his credit agreement, which he sent to us.

Our investigator didn't change her mind. She said she agreed Tesco's explanation of how it alerted Mr B to changes could've been clearer, but she still thought he was told about the changes. She still thought that if someone doesn't receive a variation of terms, but does get a warning about such a change, then the customer should ask about this. And she also still thought that didn't apply here, because Mr B did get the variation information. She said she couldn't comment on what would happen if Mr B had only taken out a card more recently, as that was a hypothetical situation. She hadn't changed her mind.

Mr B wanted his complaint to be considered by an ombudsman, so it was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Mr B sent us a finance agreement, showing he paid £3,480 as a deposit, and the remainder of the purchase price was covered by interest free credit. So he says that the 50% deposit he paid was nothing to do with the finance agreement he entered into for the remaining amount he owed.

But I don't think that's right. The finance agreement that Mr B sent us covers the full purchase price of his watch, including the deposit. And the transaction he made on his credit card wasn't a payment to a business that sells watches. It was a payment to a business that provides finance to retail companies, to allow customers to buy expensive products on credit.

Mr B has compared this transaction to a mortgage, where a house buyer pays the deposit, then borrows the rest from the bank. But that isn't the sort of transaction he entered into here. Here, everything he paid, including the deposit, went through the

finance company. Although the first 50% he paid upfront is shown on his finance agreement as a “deposit” it’s still part of that finance agreement. And that’s why Tesco has treated this deposit as falling within its definition of cash transactions.

If Mr B had paid half to the business that sold watches, then just borrowed the other half, then I would’ve expected Tesco to treat this as an ordinary purchase.

Mr B also said that if we thought that the deposit was part of the finance agreement, we’d presumably be able to show that the finance company had given him this money before he repaid it. But that’s not how this transaction works. The finance company has paid for a watch for Mr B. Mr B then pays the finance company for it. He pays half that money straight away, and the other half later, in instalments.

That finance company never passes any money to him, that he pays back. It passes money to the high street watch seller. In return for that, Mr B gets the watch, and Mr B then pays the finance company back.

For these reasons, I don’t think Tesco made a mistake when it treated this as a cash transaction.

Mr B says that he wasn’t notified that Tesco’s definition of cash transactions had been widened. And he says it still isn’t explained in his terms and conditions now. He’s also drawn our attention to the different ways that Tesco has said he was alerted to this change. I realise it would’ve been better if Tesco’s explanations had been clearer about how Mr B was notified of the change to his terms and conditions. But I think its evidence on this point has been clear and consistent. I’ve set out above the documents it sent us. I think Mr B was properly notified of this change.

Mr B also wanted to know how he would be made aware of what counted as a cash transaction, if he had only just taken out this card. I can’t be sure how that would be done. As our investigator said, that’s a hypothetical situation. But I can see that the document Mr B sent us doesn’t purport to be a complete record of all the terms that apply to his account. It says “*This, together with your credit card agreement, makes up your contract with us.*” So I don’t think I can assume from this, that Tesco isn’t telling new customers about how cash transactions work. And even if it were, I could only look at what has happened in Mr B’s case. I’ve explained I think he was notified of this change.

I know Mr B will be disappointed, but I don’t think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Tesco said it agreed, and had nothing to add. Mr B sent a detailed reply.

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.

Mr B sent a detailed response, which breaks down into three heads.

The explanations Tesco gave Mr B about how he was notified of the change to his terms.

Mr B said, that when I’d commented on how he was informed about the change to his terms, I’d said “*I think [Tesco’s] evidence on this point has been **clear and consistent***” (emphasis

added). So he thought that I must believe that Tesco, in changing its explanation three times about how he was told of this change – was “clear and consistent”.

Mr B said he found that extraordinary, and it suggested to him that the burden for evidence required from Tesco by our service had been set so low as to be non-existent. He said if this was acceptable to our service then that cast doubt on whether my assessment of the facts was objective and independent.

I certainly don't think that it's clear and consistent for Tesco to have changed its mind about exactly how it had notified Mr B of the change to his terms and conditions. That wasn't helpful, and I do think it's regrettable, for example, that Tesco didn't take the time to check how Mr B received his statements before writing to tell him how he'd been notified of this change.

But what I do think is clear and consistent is the evidence Tesco sent us showing how Mr B was notified of the change. I have mentioned above the items it sent us –

- statements that Mr B received in April 2018 and April 2019, both of which mention this change. The 2019 statement contained a link to the pdf. The 2018 statement didn't. But Tesco sent us the template email it issued then, which did have a link to this document
- the pdf documents it issued in 2018 and 2019 giving notification of the change.

I think that's good evidence that Mr B was notified of this change.

The definition of a “cash transaction”.

Mr B said Tesco includes within its definition of “cash-like” transactions “*Finance payments such as repaying borrowing (e.g. loans, mortgages and credit cards) – this includes student loans, store cards, car finance repayments, Klarna etc.*” These transactions incur a cash transaction fee.

Mr B said Tesco had decided to provide examples as to what it believes are “Finance payments”, because the term itself was generic. The example given relates only to “repaying borrowings”. Mr B said this didn't mention paying a deposit on a purchase agreement, which was very common. He said because it was so common, people would look at the card regulations to decide if this sort of deposit was covered by the ambiguous term “Finance Payment”. And Mr B thought that because Tesco hadn't included a deposit within its examples, it would be reasonable for an individual to believe that elements like a deposit (which he maintains is clearly not a repayment) are not included in the definition, so won't be subject to a fee.

I don't agree with Mr B's analysis here, for two reasons. Firstly, I think that when Tesco has set out examples of what it considers “finance payments” it has provided a non-exhaustive list of examples. So just because something isn't listed in those examples, doesn't mean it falls outside of the definition. Secondly, I do think that a deposit like the one Mr B paid is a finance payment. I'll deal with this point below, as that's Mr B's third argument.

Whether the transaction Mr B entered into was within the definition of a “cash transaction”

Mr B said that if we look at the credit agreement for this transaction, which he'd sent us, that would confirm that the “amount of credit” i.e. “borrowings” that have to be repaid to the finance company, excluded the deposit paid. He said it clearly shows this on the face of the agreement.

So Mr B thought that Tesco had just accepted the explanation from the finance company involved in this transaction about its nature and applied a fee and interest. And he said it was

refusing point blank to retract that even when overwhelming evidence as to its nature had been provided to the contrary.

I don't think this evidence is quite as strong as Mr B believes it to be. The agreement he entered into is for a total of £6,960. There is one upfront payment of half the balance. That has to be paid to the lender at the start of the agreement. Although the agreement separates out the initial payment (which it terms a deposit, because it's paid straight away) and the monthly payments (which it terms "repayments") I think that all these payments, including the first, are "finance payments". They are all payments made under a finance agreement, to a finance company.

Mr B also said I'd missed the point about the deposit payment. He thought I'd actually confirmed his point when I said "*That the finance company never passes any money to him, that he pays back*". He said that would eliminate this transaction being a loan. I'd already said it wasn't a mortgage, and Tesco wasn't claiming it fell under any of the other examples in its list. So Mr B didn't think I could possibly be right to say that Tesco hadn't made a mistake, by treating this as a cash transaction. He thought this showed bias.

But again, I don't agree. Firstly, Mr B is treating the examples that Tesco gave as an exhaustive list. I've already said it isn't. Tesco doesn't have to show this payment counts as one of the examples it gave. So it doesn't have to show that this payment was either a loan, mortgage or credit card payment. It only has to show this is a "finance payment".

And I think this was a finance payment. As I explained in my provisional decision, Mr B has entered into borrowing, which he has to repay. In this case, the money he has borrowed isn't paid to him. It's paid to the high street watch seller. Then Mr B gets the goods he wanted, the watch. And because the whole price of the watch is covered by this finance agreement, I still think Tesco didn't make a mistake when it treated his payment as a cash transaction.

I realise Mr B is unlikely to be persuaded by my arguments, but I have considered the points he made carefully, and reconsidered this case as a whole. I haven't changed my mind. I still don't think this complaint should be upheld.

My final decision

My final decision is that I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 December 2020.

Esther Absalom-Gough

Ombudsman