

The complaint

Mr W complains that Tesco Personal Finance PLC has registered a marker at CIFAS, the national fraud database.

What happened

Mr W had an account with Tesco which was closed in 2018. He found out that Tesco had registered the marker and through a representative complained about this in 2019. He says this marker had caused him difficulty in accessing financial services and in his everyday life. He wants compensation for this and for his legal fees to be paid.

Tesco said the main reason that it recorded the marker was because of a chargeback request Mr W made for a payment of £1,012.18 on 31 January 2018. He had spoken to it that day to say that an original attempt to make this payment which had been blocked by Tesco had been genuine. And so, it was then processed when Mr W made it again. But on 15 February 2018 he had called and asked that a chargeback be raised for this payment as he was in dispute with the loan company involved. Tesco contacted that company and decided that there was no basis to challenge the payment. Tesco said that Mr W had made a number of other claims including for fraud on his account and that it reviewed his account in February 2018 and gave him notice to close his account. It said it had grounds to apply the marker.

Our investigator recommended that the complaint be upheld and the CIFAS marker removed and Mr W be paid £300 in compensation. While he noted that Mr W had made other claims and had disputed other payments from his account, he was only looking here at the circumstances relating to this CIFAS marker. Mr W had made a complaint about the closure of his account and the way other payments had been dealt with. But he hadn't referred the complaints about those in time after Tesco had issued final response letters. And he hadn't raised other issues to this one with Tesco first.

Our investigator said that the bar for applying a CIFAS marker was a high one. He'd listened to both of the calls Mr W had with Tesco about this payment. And he'd also contacted the loan company. It told him that Mr W had arrears on his loan and that a default notice for £676.63 was issued on 24 January 2018. It had spoken to Mr W about the loan on 25 January 2018 and said that there were arrears too which resulted in the required payment. The loan company had responded to a request for information from Tesco and hadn't received a chargeback request. Mr W had then told Tesco in the call of 15 February 2018 that the loan had finished and that he didn't owe anything and that he didn't know why the money came out of his account. He'd clearly been inconsistent.

There was a difference between a claim of fraud and a chargeback over a dispute. Mr W had said he raised this issue with Tesco to protect his position as he was in dispute over this money. He subsequently accepted that this money was due. Mr W was unlikely to make a financial gain because even if Tesco had recredited the payment he would still owe the money to the loan company. So, it was difficult to conclude that this was part of a criminal act. He should be given the benefit of the doubt here.

Mr W hadn't provided a full copy of his credit report but an extract from a third-party provider. This showed he had a default at another financial business. Mr W said that this was due to the CIFAS marker, but he'd not shown when the default occurred. He clearly was in arrears on his loan account. And he'd taken a guarantor loan which was also showing in arrears. There was insufficient information to show that it was the marker Tesco recorded that resulted in him having difficulty accessing financial services. We wouldn't generally look to pay legal expenses and there were no exceptional reasons to do so in this case. And so, he thought that a payment of £300 for the inconvenience caused was reasonable.

Tesco didn't agree. Tesco said that it had reported this matter to CIFAS in line with that organisation's expectations. There was a clear pattern of Mr W attempting to manipulate the system to gain financially and we shouldn't be applying a different standard. Mr W may have thought it would absorb a fraud claim and as his car loan was in arrears and there was a risk of repossession he had a financial incentive. It repeated that he had made a number of other unsubstantiated claims in the period since his account was opened.

Mr W also provided through his representative a summary of his position. Tesco had not provided a clear enough explanation of why the marker was justified. The burden on it was a high one and it should not be able to provide a justification after the event. Mr W had not seen all Tesco's evidence but had responded as best he could. There were multiple opportunities for Tesco to explain the position. And Mr W would have been prepared to settle the complaint with the lower compensation recommended but that was not his position now as Tesco had not agreed to that resolution. He wanted an ombudsman to review that compensation and his legal costs. The marker had been in place for two years and had caused embarrassment and inconvenience for him and the need to access 'subprime' financial products. This was a complex complaint and realistically he would not have got anywhere without a legal representative. He remained willing to provide any more information but did not think Tesco should have more time.

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 think there has been ample time for Tesco and Mr W to provide all the evidence and submissions for this complaint and I won't be asking for anything further.

I need to consider whether the report to CIFAS was made fairly. On this point, Tesco needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

Tesco made the submission to CIFAS on the basis of 'fraudulent claim – chargeback' based on this loan payment. I've listened to the call Mr W made to Tesco on 15 February 2018. He asks if it is possible to raise a dispute. The member of staff from Tesco had clearly looked at his case notes and said his existing claims had been 'alarming'. She asks very little about this payment and for example how it was made on 31 January 2018 when Mr W had clearly confirmed it as genuine. So, the grounds to think that he was disputing this as fraudulent rather than a dispute over the amount owed were never really established in my view. Tesco didn't raise a chargeback but asked the merchant about the payment. All I can see it said in response was what Tesco already reasonably knew and that was that Mr W made this in a call after the first attempt had been declined. Tesco didn't seem to receive any of the information our investigator subsequently did about the background to the payment or the arrears.

Like the investigator I'm struggling to see what Mr W was trying to gain other than that he was unhappy with the amount he was being asked to pay. That's not inconsistent with him earlier feeling he had to make a payment to cover what the loan company told him were the arrears. He found out in the call with Tesco that the money wouldn't be refunded to him straightaway and knew obviously that he'd made the payment himself only a couple of weeks earlier. Had the payment been refunded he'd have still owed the money on the loan and he accepts with hindsight there was no basis for a chargeback to succeed. But a point also is that Tesco never actually raised a chargeback. So, taking all this into account I don't think there is sufficient here to find it most likely that he was attempting a criminal offence. He was instead under financial pressure with this loan and I accept on balance he didn't think he owed all this money at the time.

I appreciate that there is a wider context. But that's not here been the specific basis for this marker. I know Tesco takes the view that this context is a way of it interpreting Mr W's actions as fraudulent. But for the reasons I've already given this wasn't in my view the most likely approach he took here especially as this was for a loan payment. I characterise this as a merchant dispute over what was owed and not a fraud dispute. I'm forming my own view based on all the evidence and information and what Mr W has said and not only on the submission Tesco has made to CIFAS.

I've looked at whether Tesco was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Tesco needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed or attempted, rather than mere suspicion.

I don't consider that this high bar has been met here for the reasons I've given.

Putting things right

Mr W's representative has indicated that the legal costs are substantial. We rarely think it necessary for professional costs to be incurred in bringing a complaint to our service which is free for consumers. Having reviewed this and the nature of the complaint I don't consider that there were any exceptional grounds here for us to award any part of those costs.

In view of those legal costs I'm puzzled why Mr W expressed concern at having to pay for a full credit report and also said that he couldn't access a computer to do so. He reasonably knows that the extract he's given us doesn't show the history of payments for his other accounts or even as our investigator has said when a default occurred at a different bank. Other businesses will take into account a wide range of information and a CIFAS marker shouldn't lead to automatic refusal. On any view Mr W had payment difficulties and I'm unable to conclude on the evidence that this marker from Tesco alone was the reason he couldn't access other than a guarantor loan and a limited bank account he had to pay for.

He has been caused inconvenience and distress by what's happened. And I agree with the recommended amount of £300 and that the marker should be removed.

My final decision

My decision is that I uphold this complaint in part, and I require Tesco Personal Finance PLC to remove the CIFAS marker and to pay Mr W £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 February 2021.

Michael Crewe
Ombudsman