

## **The complaint**

Mr W complains that Tesco Personal Finance PLC (trading as Tesco Bank) won't reimburse money he lost when he fell victim to a scam.

## **What happened**

The background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events.

Mr W responded to a pop-up advertisement he saw online for a binary options broker, who I'll refer to as 'M'. He says M promised a significant growth on invested funds and was endorsed by trusted celebrities. Between May and July 2018, Mr W made several payments towards what he believed was a legitimate investment. Relevant to this complaint are three payments totalling over £7,700 (inclusive of transaction fees) that were made in June 2018 and July 2018 using his Tesco Bank Mastercard credit card. These payments were made to two merchants 'P' and 'F'.

A few days after making the final disputed payment Mr W realised he'd likely fallen victim to a scam. He contacted Tesco Bank for assistance in recovering his funds. Tesco Bank informed Mr W it was bound by Mastercard's scheme rules and couldn't dispute the transactions as they were made to fund a trading account. Mr W unsuccessfully appealed this and later raised a complaint. During this time Mr W continued to email M requesting that it close his trading account and return his funds.

Tesco Bank responded. It explained due to the nature of the transactions there were no chargeback rights available under Mastercard's scheme rules. And the criteria required to establish a valid claim under section 75 of the Consumer Credit Act 1974 had not been met.

Unhappy with its response Mr W referred his complaint to our service. One of our investigators considered the complaint but didn't recommend it should be upheld. In summary she didn't think Tesco Bank had acted unfairly when concluding Mr W didn't have a valid chargeback or section 75 claim. Mr W disagrees and has asked for an ombudsman to review his complaint.

## **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.

Having done so, I've reached the same outcome as the investigator, for broadly the same reasons. I'll explain why.

## *Chargeback*

I'm sorry to hear Mr W has lost so much money and for the impact the incident has personally had on him. I appreciate he is unhappy with how Tesco Bank handled his dispute. I know that he doesn't think that he's been treated fairly because another financial business he'd made payments to M through has handled matters differently, and these payments have been refunded. So I understand why he feels strongly that Tesco Bank ought to have asked for evidence that he'd been unable to withdraw his funds; the terms and conditions he'd agree to; and should have raised his chargeback claims. I note Mr W believes M wouldn't have defended them and he would've received back the sum he has lost. However, firstly depending on the particular card scheme, different rules and considerations will apply. And secondly, to be clear, my role here isn't to second guess the outcome had a claim been raised. It is to simply decide in the specific circumstances of this case, whether Tesco Bank acted fairly and reasonably when declining to raise the chargeback claims.

I think it would be helpful if I start by explaining that chargeback is a voluntary scheme. There is no 'right' to a chargeback. It is for the regulated card issuer (here Tesco Bank) to decide if it has a basis upon which it can raise a chargeback claim. Tesco Bank are bound by the card scheme provider's rules which in this case is Mastercard. It is Mastercard – not Tesco Bank, who will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. As I've mentioned above our role in such cases is not to second-guess Mastercard's arbitration decision or scheme rules, but to determine whether Tesco Bank acted fairly and reasonably when choosing not to present (or presenting) a chargeback claim on behalf of its cardholder (here Mr W).

I recognise Mr W is upset that when he approached Tesco Bank it presumed, he was gambling and refused to raise chargeback claims on his behalf. He says its conduct was dismissive. However, there is limited protection under the Mastercard scheme rules if a cardholder authorised and engaged in a transaction with the intent to participate in gambling, investment or similar services. Our service has clarified this with Mastercard directly. It explained that, issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value.

In short, Mastercard consider the purpose of the Mastercard transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds. So whilst I appreciate Mr W feels strongly that Tesco Bank ought to have asked him to provide evidence of the terms and conditions of his trading account with M and that he'd tried to withdraw the funds, unsuccessfully. As the scheme rules do not permit such claims, I don't think Tesco Bank acted unfairly or unreasonably by not asking Mr W for these.

The only chargeback route available in such circumstances is limited to if the merchant does not make available on its platform funds transferred to it. Our Investigator concluded that this was not the nature of Mr W's claim. His claim is that M is operating fraudulently and wouldn't allow him to withdraw his funds. So she couldn't say that Tesco Bank has treated Mr W unfairly by not raising a chargeback.

Mr W says that was not the only context of his claim. He has said throughout that the whole investment opportunity was a set-up from the start, the trading platform was not real, it was a simulation and he did not receive what he'd been contracted to receive. He argues that he does have grounds for a chargeback claim under Mastercard's scheme rules as his funds were never in fact 'made available' on the trading platform. I'm sympathetic to his situation, but ultimately alleging that there was no real trading account is essentially saying that M were operating a scam. And this isn't something that the Mastercard chargeback scheme provides a dispute resolution process for. Further, Mastercard have confirmed to this service that all that would be required to defend a chargeback claim would be documentation showing available funds on the trading platform. I take on board the point Mr W makes that this was fictitious. But this documentation would satisfy the evidence required under Mastercard's scheme rules to show that the payments were loaded and would typically remedy the chargeback.

But given, ultimately, Mr W's claim is that he's fallen victim to a scam I don't think Tesco Bank's conclusions that his chargeback claims didn't have a reasonable prospect of succeeding is unreasonable.

#### *Section 75 of the Consumer Credit Act 1974*

Mr W says it can be argued that there has been a breach of contract by M. In that it purported:

- To provide a trading platform
- To provide opportunity to access funds after deposit
- To segregate funds so that individual client funds can be identified

I've considered what Mr W has said. However, section 75 gives a debtor the right to pursue a 'like claim' for a breach of contract and/or misrepresentation against a creditor as they would have against the supplier of goods or services. For a section 75 claim to apply there are a number of criteria that need to be met, one of which is a valid debtor-creditor-supplier (DCS) agreement between the parties.

I've seen a copy of Mr W's credit card statement which shows three payments totalling over £7,700 (inclusive of transaction fees). Mr W was therefore responsible for repaying the amount owed to his credit card provider and so he is the 'debtor'. As Mr W's Tesco Bank credit card was used to make these payments, Tesco Bank was the 'creditor'. And from everything I've seen it is clear M was the 'supplier'. However, the payments Mr W disputes weren't made to M – they were made to P and F.

For Mr W's claim to be covered under the joint liability provision of section 75 I would need to see evidence that would satisfy me that P and F were a party to the contract between Mr W and M as there is no right under section 75 to pursue a like claim against a third party (such as P and F) who was not privy to the debtor-creditor-supplier relationship.

I've not seen any evidence linking P and F to the supplier – M, so it follows that Mr W doesn't have the required DCS agreement in place to make a section 75 claim. So I can't fairly say Tesco Bank ought to have done more under section 75.

### *Intervention*

Tesco Bank does have a duty to protect customers against the risk of financial loss due to fraud. So for completeness I've also thought about whether I think it could've reasonably done anything more to prevent Mr W's loss at the time the payments were processed. And I don't think it could have. Looking at Mr W's prior account conduct and the payments in question, I don't think these would have stood out to Tesco Bank as being suspicious and/or sufficiently unusual or uncharacteristic where I'd have expected it to intervene.

I realise Mr W feels that F's name ought to have given rise to concern that the firm was fraudulent. However, from what I've seen F is a legitimate firm, so there wouldn't have been a reason for Tesco Bank to have intervened at the time the payments were processed. If anything, it might have been a relevant consideration if I think Tesco Bank had a reason to intervene – but as I can't say it did, for the reasons given above I don't think Tesco Bank could've reasonably prevented Mr W's loss.

I understand Mr W will be very disappointed with my conclusions however, for the reasons I've outlined above I can't fairly ask Tesco Bank to refund his loss and I won't be asking it to do anything further here.

### **My final decision**

Despite my natural sympathy for Mr W's loss 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 W to accept or reject my decision before 7 March 2022.

Sonal Matharu  
**Ombudsman**