

The complaint

Mr C complained that Tesco Personal Finance PLC refused his credit card repayment proposal, recorded a default, didn't contact him for 12 months then transferred his debt to a debt collection agency.

What happened

Mr C held a credit card with Tesco with a limit of £9,000. He contacted Tesco in late 2019. He said due to a change in his circumstances he couldn't afford to make the required repayments. Tesco stopped charges and interest and asked Mr C to complete a statement of income and expenditure to see what he could afford to pay.

Mr C returned the statement and asked Tesco to consider a repayment proposal of £50 per month. Tesco wrote back to Mr C declining his offer. They asked for an increased offer and said they would take further action if this wasn't received. Tesco then wrote to Mr C again in December 2019 to say that his account had been terminated.

In December 2020, Mr C applied for a re-mortgage to raise funds to repay the debt with Tesco. But his application was declined. He said that Tesco had recorded information that showed him as a bad risk.

In January 2021, Mr C received more letters from Tesco. They said they were transferring his account to a debt collection agency. Mr C wasn't happy, so he wrote to them to complain. He said they hadn't contacted him at all since December 2019. He was also unhappy that they'd defaulted and terminated his account which prevented him from securing a re-mortgage.

Tesco said they'd done nothing wrong when they recorded the default on Mr C's credit file. They said Mr C hadn't offered an alternative repayment proposal in December 2019. But they did apologise for not contacting him sooner. They agreed they should've contacted him to try and arrange a payment plan with him. They apologised and offered compensation of £50.

Mr C wasn't happy with Tesco's response and thought they'd treated him unfairly. So, he referred his complaint to this service. One of our investigators looked into Mr C's complaint. She agreed that Tesco hadn't acted fairly. She thought that Tesco should increase their compensation offer by £150, change the default date recorded to June 2019 and refund all interest and charges from March 2019. She also thought they should take the debt back from the debt collection agency and agree an affordable repayment plan with Mr C.

Tesco didn't agree with our investigator's view. So, they asked that Mr C's complaint be referred to an ombudsman for a final decision.

I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 4 November 2021 – giving both Mr C and Tesco the opportunity to respond to my findings below before I reached a final decision.

In my provisional decision, I said:

Section 7 of the Financial Conduct Authority's ("FCA") Consumer Credit Sourcebook ("CONC") details how a business should deal with a consumer in financial difficulties.

So, in looking at Mr C's complaint, I've considered whether Tesco applied those rules.

I've looked at Mr C's account statements. Between May 2018 and January 2019, Mr C's balance rose to just above the limit. He made monthly payments on time for slightly more than the minimum required.

Mr C missed a payment in March 2019. So, minimum payments increased to include these arrears. Mr C then made monthly payments of between £100 and £200, but these were below the minimum required. A payment was missed in November 2019. Payments stopped from January 2020 onwards. It's also relevant that Mr C didn't use his credit card at all after 9 January 2019.

Tesco say they spoke with Mr C on 19 March 2019. He said he was expecting funds and would clear the arrears. They spoke again on 2 April 2019 when those funds weren't received. On each occasion, Tesco recorded a "*promise to pay*" marker in their records. Tesco say, "*there was no indication of long-term financial difficulty*".

Tesco show they wrote to Mr C 15 times between April and November 2019. These letters detailed Mr C's arrears and charges Tesco had made. They said what could happen if arrears weren't paid and gave details of where Mr C could get independent free debt advice. They asked Mr C to contact them. This is what I would expect Tesco to do in these circumstances.

Tesco also provided records showing they attempted to call Mr C more than 100 times between April and September 2019. It appears these calls were unsuccessful. So, I'm satisfied that Tesco tried to do everything they could to contact Mr C to discuss his account and circumstances. Tesco then sent a default notice to Mr C on 24 October 2019.

Mr C contacted Tesco in November 2019. He said his circumstances had changed and he couldn't afford the required payments. He wanted to agree a payment plan. Tesco agreed 30 days breathing space and asked him to complete a financial statement to see what was affordable. Mr C completed this and offered payments of £50 per month. But Tesco didn't accept Mr C's offer. They said Mr C's financial statement showed he had a monthly surplus of £74. They asked him to make a new offer.

Section 7 of CONC says that lenders should consider consumers in default or arrears difficulties with forbearance and due consideration. Examples include:

- Suspending, waiving, or cancelling any further interest and charges – Tesco refunded two £12 charges in November 2019. They stopped charging interest from January 2020 onwards.
- Allowing arrears to be deferred – On the basis that Tesco continued to issue statements to Mr C showing an increasing minimum payment, I've seen no evidence or letters to suggest that arrears were deferred.
- Accepting token payments – Tesco didn't do that here as they refused Mr C's payment offer.
- Inform the consumer about free debt advice with details – Tesco did that here.
- Not refuse reasonable affordable repayment proposals – Mr C offered £50 per month having calculated a disposable income of £74. This doesn't feel unreasonable to me as it only left him £24 per month to cover unforeseen costs.
- Not pressure borrowers to make unreasonably large payments – Tesco

continued to issue statements requiring an increasingly large minimum payment. By May 2021, the minimum figure requested reached £3,838.

I found nothing to suggest that Mr C submitted a revised repayment offer. So, Tesco wrote to Mr C on 30 December 2019 with a notice that his account had been terminated. Tesco recorded the default with the credit reference agencies in January 2020. Tesco were entitled to do that.

The Information Commissioner's Office (ICO) says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind. Mr C didn't cover minimum payments from February onwards. So, I would expect a default to be registered here by August 2019 – 6 months from when the first arrears occurred. But Tesco didn't do that.

This means the default won't be removed from Mr C's credit file until January 2026 rather than August 2025. I think Tesco need to address this.

Mr C said his repayment offer was all he could afford. I'm persuaded that was the case. So, I don't think that Tesco acted fairly when they refused this.

Tesco didn't contact Mr C again until December 2020 when they sent a further payment reminder. This was followed by letters telling Mr C that his debt had been passed to a debt collection agent. While Tesco are entitled to transfer the debt, I don't think they acted fairly by not contacting Mr C for 12 months. Tesco have accepted this, apologised, and offered compensation of £50.

I don't think Tesco's lack of action feels fair here. I think they should've done more to support Mr C. Had they accepted his original offer; his debt would've been reducing. While I accept that the amount offered was less than they wanted, Mr C's circumstances could've been reviewed at regular intervals.

I agree with our investigator that Tesco should increase their compensation offer given their shortfalls in support. They left Mr C in the dark by not following up with him. I'm sure Mr C would've been very worried about the situation and Tesco didn't help with that. I also agree that Tesco should amend the default date with the credit reference agency. But I think this should be changed to August 2019, as I've explained above.

I also think it should've been clear to Tesco that Mr C was in financial difficulties earlier. While they say they'd spoken to him in March and April 2019, the use of his account was enough to suggest this. I think it was clear by April 2019 when Mr C had missed a payment and didn't pay the minimum required after. He'd also failed to clear arrears despite his "*promise to pay*". The account was over the limit and he'd stopped using his card. So, I don't think Mr C needed to expressly say anything for Tesco to reach that conclusion.

While our investigator thought charges and interest should be refunded from March 2019, I don't agree. I think it would've been reasonable to stop these from May 2019 onwards.

I also don't agree with our investigator that Tesco should take Mr C's account back from the debt collection agency. I think they were entitled to transfer it in these circumstances, and I don't believe this will adversely impact Mr C. He should be able to agree an affordable repayment plan with the debt collection agent without incurring additional costs.

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.

In my provisional decision, I asked both parties to respond with any new information or comments they wanted me to consider.

Mr C acknowledged receipt of my provisional decision. He said he wasn't currently in the best of health and could only afford repayments of £50 per month. He confirmed he is prepared to establish a payment plan on that basis.

Tesco said they feel the outcome they reached was fair and reasonable. They said Mr C wasn't in arrears until March 2019. But payments were received in April, May and June 2019 that would cover the average payment. So, they believe Mr C was only ever one month in arrears. They said the default was deferred to give Mr C time to propose an appropriate payment arrangement.

While I accept the facts of what they've said, it remains that Mr C continued to be in arrears as a result of the missed payment in March. And despite his promises to pay, he was unable to clear these. Having considered Tesco's terms and conditions, I'm satisfied this constitutes a breach and Mr C would therefore be considered to be in default of the agreement.

Tesco also said they'd never reject a payment from a customer and Mr C was welcome to make even token payments at any time. While that may be true, Mr C wanted to agree a formal payment arrangement, and Tesco turned down his offer. So, in the absence of any other arrangement, I can appreciate why Mr C didn't make further payments.

Tesco pointed out that the first default trigger – the missed payment – didn't happen until March 2019. So, they don't believe it would be fair to refund charges and interest from May 2019. They said they wouldn't be expected to freeze Mr C's account until the termination date.

I don't agree with Tesco on this point. Section 7 of CONC is clear on the forbearance and due consideration that should be considered in the circumstances where financial difficulties were apparent. Mr C stopped using his card from January 2019. His account balance exceeded the limit available to him and he failed to clear his arrears in March and April 2019, despite promises to pay that were made. I believe this was sufficient to suggest he was struggling and in financial difficulty. So, for Tesco to comply with the requirements of CONC, I believe the application of interest and charges should've been suspended earlier than they were.

On a final point, I've reconsidered the default date suggested in my provisional decision. I suggested the default should've been recorded from August 2019. But Mr C's first action of default was in March 2019 – the missed payment. In view of the ICO's guidance, I've decided that any default should've been recorded no more than six months from that point. So, I shall be reflecting that within my final decision.

Ultimately, other than the default date change, I've not been provided with anything that persuades me to change my provisional decision.

Mr C should be aware that I'm not asking Tesco to take his account back from the debt collection agency. So, he should ensure that any offer of repayment is made to them – not Tesco.

My final decision

For the reasons set out above, I require Tesco Personal Finance PLC to:

- Pay compensation of £150 to Mr C in addition to the £50 already offered.
- Amend the default date registered with the credit reference agencies to September 2019.
- Refund the amount owed with all charges and interest applied from May 2019 onwards.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 January 2022.

Dave Morgan
Ombudsman