

## The complaint

Mr R complains that Tesco Personal Finance PLC ("Tesco Bank") reported a missed payment on his credit card, following the bereavement of a close family member.

## What happened

Mr R has a credit card account with Tesco Bank. In February 2021 Mr R sadly lost a close family member, in what he described as an 'unexpected and lifechanging event'. When Tesco Bank didn't receive a payment on the account by 17 February 2021 it notified the Credit Reference Agencies (CRAs) – and a missed payment marker was recorded. Mr R eventually made the payment for February two and half weeks late, on 6 March 2021.

Mr R was declined for a re-mortgage with some additional borrowing at the end of March 2021. It was at that point Mr R realised a missed payment on his credit card had been reported, so he contacted Tesco Bank to explain what had happened and ask for it to be removed. As a gesture of goodwill Tesco Bank refunded two late payment fees and reinstated the 0% interest rate on the card. But it said it wouldn't remove the adverse credit file data as it had a duty to report factually to the CRAs. Mr R raised a complaint about the marker, but Tesco Bank didn't change its stance.

The complaint was referred to our service for review, and an investigator here thought Tesco Bank should remove the adverse entry. In the investigator's view the late payment for February 2021 could be explained by the exceptional circumstances involved, so the marker wasn't a fair reflection of how the account had been maintained. Tesco Bank didn't agree and asked for an Ombudsman to make a final decision on the complaint.

I issued a provisional decision that said Tesco Bank hadn't treated Mr R fairly, and that I planned to award compensation to address the impact of the mistake. I've included below the part of that provisional decision which explained my rationale:

*"Tesco Bank says it is relying on guidance from the Information Commissioner's Office (ICO) to explain why it shouldn't remove the missed payment marker. Specifically the first two 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies'. Those say: "data that is reported on your credit file must be fair, accurate, consistent, complete and up to date", and also "should a payment not be made as expected, information to reflect this will be recorded on your credit file". The guidance under the second principle goes on to clarify that "If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears".*

*The ICO guidance indicates there is some discretion on the part of the lender in what it records when it says payments not made as expected 'may' be reported as being in arrears. The guidance also specifies that any data reported must be 'fair'. Tesco Bank was made aware of the circumstances surrounding the bereavement, and how shocking and unexpected they were. It was entirely understandable that in the aftermath of those events Mr R was focused on other things, causing him to be late making a payment on his credit card. I appreciate Tesco Bank wasn't aware of what had happened at the time it recorded*

*the data on Mr R's credit file, and I accept it had a duty to report accurately to the CRAs how an account is managed. But the ICO guidance is just that – guidance: it can't cover every scenario. Tesco Bank also had an overarching responsibility to treat its customer fairly, and that meant taking account of the circumstances involved. There were clearly exceptional reasons that explained why the payment was missed initially, and Mr R made the required payment soon after. So I don't consider it to be a fair reflection of how Mr R has managed the account overall. That means I find Tesco Bank didn't treat him fairly or reasonably when it decided not to remove the entry.*

*As it isn't fair in this case for Tesco Bank to record adverse data on Mr R's credit file in relation to the period immediately following the bereavement, I'm directing it to remove the missed payment marker. If that means the payment is recorded as having been made on time, then that's the fairest option in the circumstances.*

*Mr R has told us the marker meant he was declined for additional borrowing with his mortgage provider. I spoke to that lender, and it wasn't able to confirm the adverse credit file data recorded by Tesco Bank was the reason his application was declined. It provided several reasons why the lending might not have been approved – and based on the evidence I've reviewed, I'm not satisfied this marker was the deciding factor. Mr R explained that because of the declined application he didn't want to risk being turned down by other lenders, due to the impact further declines might have on his credit file. That's why he has since run up balances on his credit cards.*

*Other cheaper lending could have been available to Mr R – but I can understand why he didn't want to take the risk of applying again elsewhere before this complaint was resolved. Mr R has said utilising the credit limits on his cards could reduce his options for lending now, even after the late payment marker is removed, due to how lenders might view the proportion of his available credit used. I don't consider Tesco Bank's error was the sole reason behind the declined application with the mortgage provider, so I don't think it would be fair to hold it liable for the additional costs incurred by borrowing on credit cards. But I do think the adverse data caused Mr R to borrow in a way that put added strain on his finances, as he needed to pay higher monthly amounts on the credit cards to stem the interest accruing. I also agree it could make getting the lending he needs now more difficult.*

*This situation has been hanging over Mr R for a long time, and Tesco Bank didn't treat him fairly at an already stressful time. So I'm persuaded the mistake has caused Mr R significant distress and worry over a sustained period. Taking into account all the above, I consider a compensation payment of £750 is warranted in the circumstances."*

Mr R responded to say the amount of compensation I'd provisionally decided Tesco should pay wouldn't put him back in the position he would have been, but for the mistake. He reiterated that when he and his wife applied for a mortgage with additional borrowing in March 2021 they had passed the initial affordability checks but was declined on the final credit scoring check. So Mr R still believes the missed payment marker was the reason the lending didn't go ahead. He told us that since then the couple's credit card utilisation would mean they'd now face paying higher rates of interest. As I appeared to agree the adverse data had caused the couple to borrow that way, Mr R felt that £12,000 (which he'd used to clear their credit card balances) would be fairer compensation in the circumstances.

Tesco also didn't agree with my provisional findings. It said our service had repeatedly told it the contents of the ICO's guidance on reporting arrears constituted good industry practice. As Tesco had followed that guidance, saying it had acted unfairly in this case by doing so would be an absurd conclusion. It argued very strongly there was no discretion within the guidelines – and that it isn't up to a lender to pick and choose what it reports. Tesco said that me telling it to knowingly report incorrectly and inaccurately was concerning. So it

considered a notice of correction would be more appropriate in the circumstances. Lastly, Tesco raised that it didn't think our service would normally award compensation in scenarios where a bank had followed a technically correct process, but we still determine it should've done something different.

### **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've carefully reviewed the responses and know both parties feel very strongly about the issues involved. But having considered everything, I'm still upholding this complaint – and for the same reasons I gave in my provisional decision. I'm also not deviating from what I said was needed to put things right – and I'll explain why. Before I do, I'm acutely aware that my decision is likely to disappoint both sides, so I want to reassure Mr R and Tesco that I haven't reached it lightly.

The ICO's guidance does constitute industry best practice – and it is something that financial businesses should refer to when making decisions about how to report arrears. But the ICO's guidance doesn't tell businesses what to do in specific scenarios or make decisions for them. They are principles to help guide decisions. Tesco has argued that it followed that guidance, so it can't have treated Mr R unfairly. I don't agree that reporting a missed payment, given the exceptional circumstances behind why it was late, did represent a '*fair, accurate, consistent*' reflection of how Mr R had managed his account. I also don't consider Tesco treated Mr R fairly or reasonably by recording adverse data on his credit file in those circumstances.

I understand Tesco followed its process, and reported things literally, but in my view the mistake was not deviating from that process when presented with reasons that would have meant it was appropriate to do so. Our approach, where there's been a mistake, is to try and redress the impact resulting from it – and here the best way for me to do that is by awarding compensation. I have to be fair to both sides, though, and the rest of this decision explains the award I'm making.

Mr R is seeking a much higher award, and I don't doubt anything he's told us about how hard things will be going forward – or that £750 compensation won't put him back in the position he was prior to the missed payment marker being recorded. It's worth reiterating that only Mr R is Tesco's customer in the context of this complaint. So while I accept this situation has also affected his wife, and I was very sorry to learn of her recent health struggles, I can only make an award to him.

I also want to clarify that while I understand why Mr R decided to borrow on credit cards following the decline, I also have to acknowledge that was a choice. Cheaper ways of borrowing were likely available, as having one missed payment on someone's credit file wouldn't be a barrier to all lending. Ultimately, I've decided, on balance, the missed payment marker wasn't the overriding reason for the declined mortgage application – and I have to be proportionate when reaching my decision. I'm in no way intending to lay any blame at Mr R's door for the choices made. But if Tesco didn't cause the decline, then its responsibility for what happened after that must, out of fairness, be limited.

I do think compensation is warranted though, as not treating Mr R fairly at an already extremely distressing time would've had a particularly acute impact on him. This situation has also been hanging over him a very long time now, and he's had to expend considerable effort in trying to get it resolved. Taking account of all the above, I consider £750

compensation fairly reflects the significant distress and inconvenience caused by Tesco's error.

### **My final decision**

My final decision is I uphold Mr R's complaint about Tesco Personal Finance PLC, and direct the lender to:

- remove the late payment marker, relating to the February 2021 payment, from his credit file; and
- pay him £750 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 June 2022.

Ryan Miles  
**Ombudsman**