

The complaint

Mr M is unhappy Tesco Personal Finance PLC (trading as Tesco Bank) won't refund money he lost as a result of a scam.

What happened

Mr M was contacted by email by someone he believed was a senior colleague in the company he worked for. The email was received to his work email address and during the working day. It asked him to purchase gift cards for clients. Unfortunately for Mr M, the email had actually come from a fraudster.

Mr M had only recently started the job and was worried about not complying with the request, so he purchased a number of gift cards and provided their codes to the fraudster over a popular messaging application.

Mr M initially made five £100 card transactions in quick succession at a supermarket. Next, about an hour later, he made a £1,000 payment at a different retailer and, finally, two further £250 transactions about an hour after that at a third retailer. Following the last transaction Tesco blocked him from making any further payments. The following day he spoke to Tesco and the scam was revealed.

Mr M complained that Tesco had failed to pick up on unusual and out of character transactions. Tesco said that as the payments had been authorised by Mr M they wouldn't reimburse them.

One of our investigators upheld the complaint in part, they were of the view that the activity was suspicious enough in nature that Tesco ought to have intervened sooner. So, they recommended that the £1,000 payment, as well as the two transactions which followed ought to be refunded.

Tesco disagreed. In summary, it said:

- It did have security systems in place – as evidenced by the block it applied. It was unfair for the investigator to have arbitrarily suggested a different point at which it ought to have intervened
- Occasional larger spending on a credit card is not unusual
- The obligations the investigator suggested aren't regulatory and, in fact, its regulatory obligations require it to process payments
- It isn't the role of our service to decide how Tesco should operate its security systems
- Mr M should take some responsibility for what happened – given that he didn't question the unusual requests to repeatedly buy gift cards from different retailers.

As no agreement could be reached the case was passed to me for a final decision.

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.

There's no dispute Mr M used his security credentials to authorise each payment. So, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr M is presumed liable for the loss in the first instance.

However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Tesco should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've reviewed the activity which took place on Mr M's credit card in the six months before the scam and I can't see any comparable activity. The fraudulent activity clearly stands out as being remarkable and I think it ought to have prompted Tesco to intervene.

But it's not really in dispute here that the activity which took place on Mr M's account was unusual – it was enough to prompt Tesco to block further transactions after the second £250 payment. The dispute here is about whether that intervention came soon enough and whether our service, in any case, ought to be deciding at which point an intervention should have come.

I've already set out above the basis on which we might decide whether a business has done enough to protect its customer from financial harm from fraud. While it may not be our role to instruct Tesco how to operate its security systems, it is our role to consider whether Tesco has met the obligations I've set out.

Having done so, I'm satisfied the intervention should have come earlier. The activity on Mr M's account is not just unusual for him – but is consistent both with a known scam and unauthorised use of the card. The five £100 payments are all made in a short space of time and are all for the same round amount. When the use of the card continued about an hour later – this time with a much larger transaction, I think Tesco ought to have recognised Mr M was at risk of financial harm from fraud and intervened before allowing this payment to go ahead. I don't agree that my view on this is arbitrary – as Tesco suggest. While there may well be customers who use their cards in this way legitimately – it seems far from typical and, in my opinion, a strong potential indicator of fraud.

Had Tesco intervened, I've seen nothing to suggest that Mr M wouldn't have revealed what he was doing – he had not, for example, been told to mislead the bank. And, given that Mr M

was falling victim to a relatively well-known scam, I think Tesco would have been able to quickly identify what he was doing and prevented any further loss.

I've also thought about Mr M's role in what happened. In doing so, I've taken into account the fact he'd started his job relatively recently and was still in a probationary period. It appears he was understandably very keen not to refuse to carry out what appeared to be legitimate instructions coming from a superior.

It's also clear that Mr M wasn't familiar with this type of scam. So, while I accept that the requests were unusual – particularly those to visit more than one retailer – I don't think Mr M was negligent by failing to recognise that he was falling victim to a scam.

Overall, I don't think Tesco acted fairly by refusing to refund all of the disputed transactions and it should settle the complaint in the way I've outlined below.

My final decision

I uphold this complaint in part and instruct Tesco Personal Finance PLC to:

- Refund to Mr M's account the value of payment six, seven and eight - £1,500
- Rework the account as if those transactions had never taken place
- If that results in a credit balance, pay 8% simple interest per annum on that credit balance from the date it would have been created had the refunded transactions not taken place, to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 March 2022.

Rich Drury
Ombudsman