

The complaint

Miss S is unhappy that Tesco Personal Finance PLC is holding her liable for a credit card she says was taken out by her ex-partner which she had no knowledge of. She is being held liable for the debt on the account which she disputes. Miss S says she didn't benefit from the money transfers that were made fraudulently by her ex-partner. She is asking Tesco to write off the debt.

What happened

I previously issued my provisional decision on this case. It was my intention to come to the same outcome as our investigator, but I explained my reasoning for this in more detail. Because of this, I wanted to give both parties the chance to respond.

I have copied my provisional decision below. Which also forms part of this final decision.

In October 2019 Miss S contacted Tesco to dispute a credit card taken out in her name in 2017. In her complaint form to our service she said her now ex-partner had applied for this credit card without her knowledge. She said when she confronted her ex-partner she admitted it and also had paying it off, but was no longer willing to pay the debt. During their relationship Miss S said her partner had "used her bank account for a little while, due to some financial issues she had with her own bank" and referred to "sharing her bank account" with her partner prior to bringing the complaint.

Miss S said when she made an initial call to the bank in October 2019 it was then that she was made aware several money transfers from the credit card had credited her current account. Miss S says if she had known her partner was making the money transfers from a credit card - fraudulently taken out in her name - she would have reported it sooner. Miss S has told us, in later correspondence, that she was in an abusive relationship and her ex-partner had full control of her finances. She says that's why she didn't notice repayments were being made to the credit card from her current account.

Tesco says the account was opened in 2017 using all of Miss S's correct details. A card and PIN were sent to her home address as well as welcome letters. The account was set up for e-billing between June 2017 and October 2019 and regular statements were sent to Miss S's email address – this is the same email address she has used to correspond with our service.

Tesco says the money transfers were made using mobile banking (using the same mobile Miss S used to contact Tesco about the dispute) and a monthly direct debit was set up from Miss S's sole current account (held at a different bank). A default letter was later sent to Miss S's home address in November 2018. A joint current account was opened with Tesco in February 2019 with Miss S and her ex-partner as the account holders. The accounts had separate mobile log-in profiles.

Miss S has said she didn't receive any letters, statements or emails from Tesco, as her partner had access to and control of all of these. But she did receive a letter about a missed

payment which she says led to her discovery of the credit card (and other debts) her ex-partner

had accrued in her name. She says she didn't receive any statements on her current account either which is why she didn't notice the credits and repayments relating to the Tesco credit card.

Tesco provided call recordings of what it believes are between Miss S and Tesco in December 2018 and January 2019. The investigator provided the general content of these calls in his findings so I won't repeat them in full here, but in summary the caller:

- *Is calling about one money transfer made on the credit card for £100.*
- *Seems to be aware of the account and its general use but is querying this one transfer.*
- *The caller has some issues initially passing security but goes on to pass this.*
- *Acknowledges a repayment on the card is due soon and is calling because they noticed the balance wasn't as expected.*
- *The caller is asked if anyone else has access to the card or if she could have sent the money to someone else to which she says no.*
- *Is questioned by the Tesco representative about the name of the payee which the caller denies knowing.*
- *The Tesco representative says the transfer was made via the account holders' mobile device and asks the caller who else could have access to this – the caller says no-one as they use their thumb print and the log in information for the app which no-one else knows.*
- *The caller is questioned about a previous money transfer of £850 and says she can't recall it but if it went to her bank account then it must have been her.*
- *A formal dispute is raised about the £100 transfer.*

Miss S raised a complaint with Tesco in October 2019 to dispute the opening of the account and all the money transfers - saying they weren't made by her and she shouldn't be held liable for the debt. Tesco looked into Miss S's fraud claim and decided to hold her liable for the debt. It said it didn't think there was any real way she couldn't have known about the account. It believed Miss S was involved in the management of the account as several of the money transfers credited her sole current account, so it thinks she had considerable use of the funds.

Miss S was unhappy with the outcome and brought the complaint to our service. One of our investigators looked into things and didn't uphold the complaint. He said, having listened to the calls made to Tesco (in December 2018 and January 2019), he was satisfied they were made by Miss S. The investigator has shared these calls with Miss S who says she doesn't believe that caller is her but someone impersonating her. But also goes on to say if they were made by her, she was taken advantage of and coerced into making them and that's why she doesn't recall them.

The investigator said whilst he had sympathy for Miss S's situation, he thought it was more likely than not that she had knowledge and access to the Tesco credit card account, given the conversations she'd had with Tesco over the phone, combined with the account opening, and account activity. Post and emails were sent to Miss S's home address and her email account and whilst the investigator acknowledged some of these could have been intercepted by Miss S's ex-partner it didn't seem likely that Miss S hadn't seen any of them and had no knowledge of the account as she says.

Miss S disagreed in summary she said:

- Before hearing the call recordings, she said she had no recollection of the phone calls between her and Tesco and questions if they were made by her or someone impersonating her.
- After listening to the calls, she said they did not sound like her and had concerns that the caller failed initial security questions and thinks this was a tactic by the caller to obtain the information needed to answer the questions.
- She wasn't aware the credit card had been used in connection with the current account at the time.
- She didn't receive any emails or statements from Tesco prior to Oct 2019.
- She didn't have online access to the credit card and didn't change or reset any details following a call with Tesco.
- Because she had previously said that her current account was used for bills this did not mean she had benefitted from the money transfers - her wages had been used to pay the bills.

What I provisionally 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 come to the same conclusions as the investigator for largely the same reasons. But I have reviewed additional information and commented on this evidence.

Relevant considerations

The regulations most relevant to this case are the Payments Service Regulations 2009 & 2017 (PSRs). It's the PSRs that set out when a customer and when a bank is responsible for transactions on an account. A customer will normally be responsible for any transactions they authorise.

In broad terms, the starting position in law is that a bank is expected to process transactions and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. Based on all the evidence I've seen I'm persuaded Miss S consented to and therefore authorised these transactions and Tesco is entitled to hold her liable for the debt. I'll explain why.

The account opening and activity

I agree with the investigator that it's possible and reasonable for Miss S's ex-partner to have had access to Miss S's personal information. But she would have also needed access to her phone, post and email in order to carry out these disputed transactions without Miss S's knowledge or consent. And that doesn't seem likely, given the frequency of the communication between Tesco and the account holder. Miss S would have needed to relinquish her mobile device several times over the course of two years, as well have all emails and post intercepted from Tesco during the same period. I think it's unlikely that Miss S wouldn't have seen any correspondence from Tesco during this time.

In addition to this Miss S's current account (held at a different bank) was in receipt of several of the money transfers. I can see there is a lot of activity on this account between her and her ex-partner as well as household bills being paid but also general day to day spending. Miss S hasn't said she didn't have any access to this account. It appears her wages were paid into the account so if she had access to the account – as it seems likely she did - it seems unlikely that she wouldn't have seen the credits or debits relating to the Tesco credit card - even if she didn't receive the statements for this account as she says.

I've also considered that Miss S says that this all occurred because she was under duress but Miss hasn't been consistent when explaining what happened. Either she did know about the card and the transfers and was forced to continue with them, or she didn't know anything about them. If she was coerced, she hasn't ever explained this to Tesco and this is different to the complaint she originally raised with them and our service.

The calls with Tesco in December 2018 and January 2019

I've listened carefully to the calls made to Tesco, the calls Miss S has had with our service and genuine calls she made to Tesco where she raised the dispute in October 2019, and I'm satisfied it's the same person.

Miss S has said that she doesn't think it was her making the calls but if it was her then she would've been under duress and that's why she can't recall them. Having listened to the calls here are my thoughts on them:

- *If it wasn't Miss S why would someone else call up to question a money transfer and then raise a dispute about it? These aren't the actions of someone using the account wanting to go undetected - as Miss S says her ex-partner was doing. Or the actions of someone who is using the account by force or duress.*
- *During the call with the bank in January 2019 Miss S's partner is named as the recipient of money transfer which is being disputed. The caller is asked repeatedly if she knows this person and the caller says no. Miss S has since confirmed the recipient of the funds was her ex-partner who she also held a joint account with, at the time of the call. Miss S claims that if it was her making this call then this is evidence that she was under duress at the time and that's why she lied. But if she was under duress during this call then it doesn't make sense why she would call up to query the transaction in the first place and raise a dispute about it.*
- *The caller is fully aware of the account, that money transfers were being made and that repayment was also being made. Because I'm persuaded this was Miss S on these calls, I'm not sure why she has said she didn't know about the account and the transfers.*

Miss S's version of events

Miss S didn't raise the dispute with Tesco until October 2019. But as I've concluded above, I'm satisfied she made the calls to Tesco in December 2018 and January 2019. So, it would appear that she knew and disputed some of the activity some 10 months before disputing the overall opening of the account and all the spending. Miss S hasn't said why there was a delay in raising the dispute. And this contradicts her earlier statement that if she'd known about the transfers, she would have reported it sooner. But I think she did.

There are two further money transfers after the dispute is raised in January 2019. It's not clear why or how these would have been possible if Miss S was aware of the fraudulent opening of the account and its use in December 2018.

Tesco says it has no record of Miss S's personal circumstances and it has never been made aware that Miss S was in an abusive relationship. Given that she is asking it to write off a debt which she says was accrued through force and coercion it's surprising she hasn't ever explained this to Tesco. In her initial complaint to Tesco she says, it had been brought to her attention that a credit card had been opened in her name and she didn't know anything about it but believed it was taken out by an ex-partner. Miss S says her ex-partner took out seven other cards and a loan in her name and after confronting her she said she wouldn't be

paying it back. But Miss S has changed her version of events several times. I don't think her explanation is consistent with the account activity and her actions throughout the course of credit card being in use.

Summary

I think it's more likely than not that Miss S was aware of and involved in the account opening and money transfers and as such either made the transactions herself or consented to them being made. I think it's likely that Miss S's relationship has since broken down and she is left with a debt she feels isn't solely her responsibility. But because I'm persuaded that she consented to and authorised the account opening and transactions on the account, I'm satisfied Tesco is entitled to hold her liable for the debt.

Tesco didn't respond to my provisional findings. Miss S did and in summary she said:

- She didn't think the information had been reviewed efficiently as I had said that she was asking for the debt to be written off, which she's not specifically said. She has mentioned she wants to settle the matter fairly as she believes neither her or Tesco are at fault.
- Miss S says she's mentioned several times and agrees that her wages were paid into the same account where several of the money transfers were credited. It was her main bank account and she had used it for years, but her ex-partner had full possession of the card, during the majority of their relationship and would arrange to pay the bills if they weren't already set up as direct debits. Miss S said just because there was activity on the account this doesn't mean it was her.
- She has referred to the call where her ex-partner's name was mentioned and the caller denies knowing them. She says she would have said she knew her if she had made the call, which makes her think it was her ex-partner making the call or someone acting on her behalf.
- Miss S says from the start, she informed Tesco that she was in an abusive relationship and explained this to our service. She's also provided evidence from the police to support this. Miss S that by saying she didn't share this with us and Tesco from the outset I haven't considered all the facts of her complaint carefully.

Following Miss S's responses, I've considered the complaint again.

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.

Overall, I'm not persuaded Miss S has raised anything new or persuaded me that I need to reach a different outcome here. I'll address her points in turn and explain why I'm not uphold the complaint.

If Miss S isn't seeking for the debt to be written off, then it's not clear what alternative she is seeking. She hasn't offered to repay any of the debt and she's unhappy with Tesco's decision to hold her liable for the debt – which is what prompted her to bring the complaint to our service. Here I'm considering whether it's fair for Tesco to hold her liable for the debt and I've taken everything she and Tesco have said and provided, into account, when deciding what is fair and reasonable in the circumstances.

I have carefully considered Miss S's comments about her account and looked at how it was used. As I've already said, Miss S hasn't said she didn't have any access to this account at

all. Considering her wages were paid into the account and the volume of day to day activity I think it's likely she did have some access to it, although I appreciate that could have been limited. And if she didn't have any access to the account then she hasn't explained what she did for money or day to day spending or for things like food and shopping during a two-year period. But because I'm persuaded, she had some access to the account, I also think it's likely she would have seen the credits or debits relating to the Tesco credit card - even if she didn't receive the statements for this account as she says. This is also supported by my further comments below on the calls made to Tesco.

I've already covered my thoughts on the calls in some detail, so I won't repeat them all here. But Miss S's explanation doesn't satisfy me it wasn't her in those calls. It sounds like her voice and I haven't been persuaded otherwise. Also, it still doesn't explain why her ex-partner would call up to dispute a payment she had made to an account in her own name. This just doesn't seem the most likely explanation. As I've said I'm still persuaded it's Miss S in the calls. I think she was calling as she didn't know about this particular transfer, but the call persuades me that overall Miss S was aware of the account in general and the transfers.

I asked Tesco if it was aware that Miss S was in an abusive relationship and it said it didn't. I accept it's possible Miss S could have told Tesco but didn't make a note of this, but that would seem unusual given the serious nature of a conversation like this. And when Miss S first brought her complaint to our service she said when she discovered all the debt in her name, she thought this could have been in connection with her ex-partner as no-one else knew her details. It wasn't until later that Miss S said that her ex-partner had full control of all her finances and that she was in abusive relationship. So I have carefully looked at the evidence when concluding that Miss S's version of events hasn't been consistent on this point.

For the reasons I've already explained I'm not persuaded to change my findings from those set out in my provisional decision. I'm satisfied Tesco is entitled to hold Miss S liable for the debt.

My final decision

For the reasons set out above, I don't uphold Miss S's complaint against Tesco Personal Finance PLC. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 22 March 2022.

Sophia Smith
Ombudsman