

The complaint

Mr A complains that Tesco Personal Finance PLC failed to refund transactions he didn't make and that they incorrectly recorded information with the credit reference agencies and wrongly lodged a marker with a fraud prevention agency.

What happened

Mr A has explained that he opened a credit card to build his credit score. He stated he was owed some money from a person who I'll refer to as F. They wanted to pay him back and suggested they could use the credit card to do that. Mr A gave the details of his card to F and there were then a series of disputed transactions on the card. Mr A noticed them and contacted Tesco about them.

Mr A admitted that he'd been naïve and a young man at the time, but he wasn't responsible for making any of the payments from his card. Tesco required Mr A to repay the outstanding balance. Several payments from different credit cards were used to pay off the balance and Tesco then received information that these were a result of fraud and reversed several transactions. Tesco paid the funds back to the card holders, which left an outstanding balance on the credit card and Mr A said he tried to ignore this for a while. This meant that there were missing payments on the account and Tesco reported this to the credit reference agencies.

Mr A said he tried to contact F and eventually got in touch with his father. Mr A had a series of email exchanges with the father which ultimately didn't lead anywhere.

Mr A then arranged to repay the outstanding debt which was eventually settled. Mr A asked Tesco to remove the earlier reports they made to the credit reference agencies. Tesco declined to change the information they'd supplied as it was an accurate reflection of how the account had been operated. Tesco then closed the account and lodged a marker with CIFAS - a fraud prevention agency because they were informed some of the incoming payments used to pay off the debt were from stolen credit cards.

Mr A complained to Tesco, who investigated the situation but didn't change their position. Mr A was unhappy with how Tesco had dealt with his complaint and brought it to the Financial Ombudsman for an independent review.

Mr A explained that he'd reported the matter to Action Fraud but hadn't notified the police. He maintained that he wasn't responsible for any of the disputed transactions and he didn't realise his credit card was going to be used in this way.

The complaint was looked into by one of our investigators who thought Mr A wasn't responsible for authorising the transactions and he shouldn't be held liable for them. He recommended that all charges should be removed and that any adverse information should be removed. In later correspondence with Tesco, our investigator thought that there wasn't enough evidence to support the marker with CIFAS and recommended that Tesco remove it.

Tesco disagreed with the investigator's outcome and asked for a further review of the

complaint which has now been passed to me. I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Authorisation

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Tesco can hold Mr A liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, Tesco have supplied evidence that shows the payments were sent using Mr A's mobile app, using his account number. I'm satisfied the evidence shows the disputed transactions were authenticated.

Consent refers to the way in which Tesco and Mr A agreed to operate the account to allow Tesco to make payments on Mr A's behalf. For example, Tesco's terms and conditions set out that if a payment is arranged through mobile/internet banking and the account holder uses their security details to confirm the payment, then Tesco accept that the instruction to make the payment is authorised by the account holder. So, because Mr A's mobile app was used to set up the money transfers - I'm satisfied that consent was given and the disputed transactions were authorised. But, there are exceptions where it wouldn't be appropriate for Tesco to hold Mr A responsible, for example if the mobile app or his card details were used without his permission.

Mr A's version of events is that he loaned money to someone (but later explained it was to purchase clothes) who he later said he didn't know their full name or where they lived (F). This was despite saying that he'd visited his father's house and had a lengthy email discussion with him (father) about his son's debt. Mr A was asked on several occasions to provide evidence of the loan of this money, which Mr A said was several thousand pounds. He's not been able to provide any evidence that a loan was made.

Mr A's case is that he was owed money and F suggested he could pay it off with Mr A's credit card. Mr A later said he was naïve when he gave the person his card details, but I don't think that's the case here. That's because Mr A opened the credit card so he could improve his credit rating, but he didn't make any purchases with the card. The card was only opened for a relatively short time before it was used to make large money transfers. The first disputed transaction was for just under this amount and was then paid down using other credit cards, which were later reported as fraudulent payments from unauthorised credit cards. Then, a further money transfer was carried out, again paid down with suspect credit cards. Tesco's audit data shows various named individuals all linked to Mr A's address who were in receipt of the transferred funds, so it seems implausible that Mr A wasn't aware of the outgoing money transfers.

The person who was using the account clearly knew the credit limit and was arranging for stolen cards to be used to repay the debt on Mr A's card. Mr A later told Tesco that the cards used to pay off his outstanding balance belonged to family, but when he was asked to provide their details, he claimed someone was impersonating him on a call to Tesco. Tesco's information is that they called Mr A's registered mobile when this conversation took place and he disconnected the call when they asked him more detail about it. So, it seems unlikely that Tesco called anyone other than Mr A because the call was made to the registered number they had for him and he was able to pass security.

I'd question whether any "loan" was made to this person, but even if there was, by allowing his credit card details to be used by another person, Mr A was allowing them to make transactions on his behalf – known as "apparent authority". What that means is that by his actions, Mr A effectively gave permission to this person to use his account – which Mr A remains liable for. Mr A has denied being responsible for them, but I don't think the evidence shows that – at the very least he's responsible for the debt by allowing another person to use his card.

But, I think his involvement is more than that because the transactions were made to persons using his address, so I think it's unlikely he wouldn't have been aware of them as they were made using Mr A's online banking app, which he confirmed he sometimes used. There's no explanation how someone other than him could have accessed it or why the money transfers were linked to Mr A's address.

I don't think it's plausible to lend someone several thousand pounds and then arrange to give them all their credit card details to be repaid. That could have been done in numerous other legitimate ways, whether a bank transfer or by a cash payment. The payments into the account only served to reduce the credit balance in order to send more money to an account linked to his address. They weren't made as any form of repayment to Mr A. There's no evidence of any loan by Mr A or any repayment of such a loan. What the evidence shows is that a credit card was opened and used to make money transfers, then fraudulent payments from various credit cards were used to pay off the debt.

So, whilst I'm sure Mr A will disagree with me, the evidence leads me to the conclusion that Mr A was more likely than not responsible for these transactions and my current thinking is that I don't intend to uphold this element of Mr A's complaint.

Credit Reference Agencies

Mr A wanted Tesco to amend their reports they'd made to the credit reference agencies. Tesco have an obligation to report how Mr A managed his account and they're required to report this accurately. Mr A has agreed that his management of the account wasn't up to the required standard and Tesco's reporting reflected this. I appreciate he later repaid the outstanding balance, but unfortunately this doesn't mean that the earlier reporting was wrong or needs to be changed. My current thinking is that I won't be upholding this aspect of Mr A's complaint and I won't require Tesco to do anything further.

CIFAS Marker

Tesco obtained evidence from the other credit card companies that the payments made to Mr A's card were fraudulent. In order for Tesco to lodge a fraud marker against Mr A, they have to meet certain standards. The relevant ones here are that Tesco have to be satisfied that a fraud has taken place, which they did when this was confirmed by the other credit card companies.

The other aspect that Tesco must address is:

"That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the Subject to the police..."

Mr A has denied being involved in this enterprise and if that couldn't be shown, then I think Tesco wouldn't meet the above standard. So, I've examined the evidence from both parties to consider if Mr A was likely knowledgeable about what was going on or just caught up in F's apparent fraudulent activity. Tesco have shown that the account was just used for

transferring funds to individuals associated with the same address used by Mr A. There were no attempts to build credit which is the explanation Mr A gave for opening the credit card. Mr A told Tesco that the credit card payments were made by family – although he later denied this. I've already made a finding that I think it unlikely it was anyone other than Mr A who told Tesco this information. And this information wasn't accurate because the credit card payments were reported as fraudulent, so I think this indicates a level of knowledge about the source of the funds.

Mr A couldn't provide any evidence that he'd given money to F, who he says used his card details. I've considered the email exchange with F's father, whilst extensive, doesn't explain what happened.

Mr A's version of events have been inconsistent and the reasons he gave haven't been supported by relevant evidence. The links to his own address for the outgoing payments and the use of stolen credit cards leads me to conclude that I think it was reasonable for Tesco to lodge a marker with Cifas as they've met the standard required. I currently don't intend asking Tesco to amend their reporting.

I invited Mr A and Tesco to give me any more evidence and information they wanted me to consider before issuing my final decision. Tesco didn't respond and Mr A stated that he hadn't made a transaction on his phone.

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'll address Mr A's comment about the use of the mobile app to make the disputed transactions. When Tesco supplied their evidence about the activity on Mr A's account, it's apparent that the disputed transactions were made via Tesco's banking app.

Mr A has already confirmed he used the app although he maintains he didn't make any of the disputed transactions. I've already made a finding that it was more likely than not Mr A who was responsible for making these. There's no evidence of F having access to the banking app and Mr A had earlier confirmed he'd only given F his card details, rather than allowing F to use Mr A's mobile banking access. So, I don't think it likely it was anyone other than Mr A using his own banking app to make these money transfers which he later disputed.

I don't think it's plausible for F to pay back a loan (for which there's no evidence of it existing) using a credit card that Mr A said he opened to build his credit (but maintains he never used) and the money transfers from it went to an account associated with Mr A's own address.

I've not seen anything that would change my original assessment and this final decision confirms what I've set out in my provisional decision. So, for the avoidance of any doubt I think it was reasonable for Tesco to hold Mr A liable for the payments made from his account, that the reporting to the credit reference agencies was appropriate and they met the standards required by CIFAS. I don't uphold this complaint and won't be asking Tesco to do anything further.

My final decision

My final decision is that I don't uphold this complaint against Tesco Personal Finance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or

reject my decision before 16 June 2022.

David Perry
Ombudsman