

## The complaint

Mr F complains that Tesco Personal Finance Plc won't refund payments he made using his credit card towards an investment scam.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some of the key events here.

In 2018 Mr F made payments using his Tesco credit card. Mr F says the payments were to invest in online trading with a merchant I'll refer to as 'M'. The payments themselves appeared on his statements as going to another merchant I'll refer to as 'E'. Including transaction fees, the payments totalled around £8,000. There were also modest credits received back onto Mr F's card from E. Mr F says these were withdrawals that M encouraged him to make to reassure him everything was legitimate. Mr F says he didn't get the service he paid for as M were operating a scam – he says his money was never traded. In August 2019 Mr F asked Tesco to help him get a refund.

Ultimately Tesco said they were unable to assist. They said that there was no option for a refund under either the chargeback scheme or Section 75 of the Consumer Credit Act 1974 (s.75). Mr F complained and when Tesco maintained their position, he referred his complaint to our service.

One of our Investigators recommended that the complaint should be upheld. In summary she thought that Tesco should provide Mr F with a refund under s.75. Tesco said the conditions for s.75 hadn't been met and so the matter was passed to me to decide.

In May 2022 I issued a provisional decision in which I said:

*"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'm intending to reach a different outcome. So I'm issuing this provisional decision to give everyone a further opportunity to comment.*

*Tesco are bound by the card scheme provider's chargeback rules which in this case is Mastercard. Whilst there is no 'right' to a chargeback, I generally consider it to be good practice that a chargeback be raised if there is a reasonable chance of it succeeding. But a chargeback can only be made within the scheme rules.*

*Under the Mastercard scheme rules there is limited protection for payments going to any sort of investment. Our service has clarified with Mastercard that there may be a chargeback route to pursue if the merchant doesn't make available on its platform funds transferred to it.*

*I understand Mr F's argument that M didn't have a real trading platform and so never 'made available' his funds. I'm sympathetic to his situation, but alleging that there was no real*

*trading account is essentially saying that M were operating a scam. And this isn't something that the Mastercard chargeback scheme provides a dispute resolution process for.*

*Further to this Mastercard have confirmed to our service that all that would be required for a merchant to defend a chargeback would be evidence showing available funds on the customer's account. I think this is something the merchant easily would have been able to provide. So, I don't think Tesco acted unfairly when declining to raise a chargeback, as I think their conclusion that there was no avenue for them to pursue that had any prospect of success, was reasonable.*

## **Section 75**

*I've also considered s.75 which gives a debtor the right to pursue a 'like claim' for breach of contract and/or misrepresentation against a creditor as he would have against the supplier of goods or services. For this to have been a valid option there must have been an unbroken chain between the debtor (Mr F), creditor (Tesco) and the supplier (M). I'll refer to this as the 'DCS' chain. And any claim being made would have to have related to a breach of contract and or a misrepresentation between Mr F and M in relation to a contract that was funded by the Tesco credit card.*

*But in this case, none of Mr F's payments went directly to M. From his card statements I can see that the payments all go to E. I've researched this and have found no link between E and M. There is no right under s.75 to pursue a like claim against a third party (such as E) who was not privy to the debtor-creditor-supplier relationship. I've considered that Mr F has supplied documentation that he filled in to confirm authorising the deposits and for them to go to M. But this isn't sufficient to evidence that E were party to the contract he had with M. If Mr F has further evidence to support this, I'd be happy to consider this if he provides it in response to this provisional decision. But as things stand, I don't think there is sufficient evidence to support that the DCS chain was unbroken. And without this, there isn't a valid claim under s.75.*

## **Intervention**

*Mr F's payments that he says ended up with M were all made in July 2018. The first warning I've been able to find about M is on the Financial Conduct Authority website where it was first published in September 2018 (after all the payments had been made). Also, the payments were all made to E and so it wouldn't have been apparent to Tesco that the intended beneficiary of the payments was M in any case.*

*However, Tesco still have obligations to be alert to unusual and out of character transactions with a view to protecting their customer from financial harm from fraud and scams. The final two payments to E that Mr F made were each for £3,821.76. They both also attracted a foreign exchange fee and they both took place on 27 July 2018.*

*It isn't uncommon for people to use credit cards for one off or occasional spending that is larger than their typical monthly spend. And Mr F's payments were still within his available credit limit. But I think the second of the payments on 27 July 2018 ought to have given Tesco cause for concern. Combined with the previous payment it represented spending of over £7,600 on one day. Having looked at the previous statements for Mr F's card, this is clearly unusual and out of character.*

*So, I think Tesco should have held the second payment and contacted Mr F before releasing it. I don't think Tesco ought to have intervened prior to that point. I'd have expected Tesco to have asked him probing questions about the nature of the payment he was making and if appropriate to have provided him with a warning about common scams. I've gone on to think*

*about whether Tesco doing this would have made a difference. Ultimately, I don't think it would have done, I think Mr F would have gone ahead with his payment even if warned of the potential for a scam.*

*Mr F's testimony is that the withdrawals he made were instrumental in convincing him that he had a genuine investment. These took place before the larger payments I've mentioned above. As Mr F presumably had checked the withdrawals had arrived on his card before making the larger payments, he would have seen that his payments and credits were going to E and not M. So, I don't think this is something he would have been unaware of or would have questioned further if Tesco had pointed it out.*

*I also think that Mr F would have genuinely been reassured by his ability to make a withdrawal. In short, I don't think any reasonable level of questioning by Tesco would have resulted in Mr F deciding not to go ahead with his payment. And even if he'd been prompted to make further enquiries at that time, the warnings I've mentioned above weren't published or available at the time of the payment. So, I can't say it's likely Mr F would have discovered information at that time that would have prevented him going ahead.*

*Overall whilst I think Tesco should have intervened in the payment I've described above, as I'm not persuaded that intervention would have made a difference, I can't fairly ask them to do more."*

Mr F responded to my provisional decision with some comments and evidence that I'll address below. Tesco didn't respond. Now both parties have had an opportunity to comment, I can go ahead with my 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.

Mr F believes the further evidence he's provided shows a link between E and M and establishes that the DCS chain is intact. Mr F provided two emails, one actually indicates that his payment went to a different company 'P' and included details of how it would appear on his statement (which were incorrect as it appeared to go to E). The other is an acknowledgement email from M that said his deposit had been processed and applied to his account.

I've considered both of these but I don't think either email evidences that E were party to the contract between Mr F and M. As such I'm not persuaded it's been evidenced that the DCS chain is unbroken and therefore there can't be a claim made under s.75.

Mr F has also challenged what I said about any intervention from Tesco making a difference. He says he is certain he would have withdrawn his money at once had he been warned of the possibility of a scam. Again, I've considered this but I'm not persuaded to change from the outcome explained in my provisional decision. I think Mr F was already somewhat alert to the possibility of a scam due to the small withdrawals that were made which indicated to him that M were genuine. I don't think the evidence supports that the possibility of a scam is something he wouldn't have even considered prior to an intervention by Tesco. And we still have the fact that the warnings referenced previously weren't published at the relevant time.

Despite my natural sympathy for Mr F's loss, there isn't a reasonable basis upon which I can tell Tesco to do more.

**My final decision**

For the reasons outlined above, my final decision is that I don't uphold this complaint.

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

Richard Annandale  
**Ombudsman**