

## **The complaint**

Mr P complains that Tesco Personal Finance PLC has added a marker at CIFAS, the national fraud database.

## **What happened**

Mr P says that he opened an account at Tesco Personal Finance in 2018 and allowed this to be used by a third party. And that was because he had been threatened. So, he didn't think it was fair that the marker had been added.

Tesco Personal Finance said it hadn't made a mistake in adding the CIFAS marker. And it had reviewed this in 2020, 2021 and 2022 when Mr P contacted it.

Our investigator didn't recommend that the complaint be upheld. Tesco Personal Finance had received a report that money paid into the account had been obtained fraudulently. And it had been quickly withdrawn including at a cash machine. So, it had added the marker.

Mr P had explained that he had originally agreed to allow his account at a different financial business to be used by two men who'd approached him when he was at college. He thought that this was a legal and easy way of making money. But the other financial business hadn't allowed money sent to his account to be paid out. And threats were made of violence to him and family as the men said he owed them money. So, Mr P said he opened the account at Tesco Personal Finance and other financial businesses and provided his details. He by then knew that this wasn't for legitimate purposes. But he says he didn't benefit and that other financial businesses he'd opened accounts with have removed CIFAS markers added in similar circumstances.

Our investigator said that there is a high bar for adding a marker. And she was thinking about whether Mr P was deliberately complicit. She said that Mr P knew that the accounts were being opened for a fraudulent purpose. And he hadn't thought about the risks involved and could have done more to protect himself. She didn't think his testimony was plausible. The impact of the marker wasn't something that was a ground in itself for it to be removed. And although Tesco Personal Finance hadn't spoken to him in 2018 she didn't think that this made any difference.

Mr P didn't agree and wanted his complaint to be considered by an ombudsman. He said that he hadn't left his house for a period after this happened and had mental health issues. He had been affected by this marker for four years. By now he wanted to be thinking about buying a house and couldn't as a result of the marker. He had made a report to police, but they decided not to take this further. He said he didn't get anything from what happened. And he didn't think he had any option but to allow this account to be used. Tesco Personal Finance hadn't spoken to him at the time and he didn't know why we thought that wouldn't have made a difference.

## **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 need to consider whether the report to CIFAS was made fairly. On this point, Tesco Personal Finance needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered the consumer's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that the consumer was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account in order to receive an illegitimate payment. But a marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity.

I agree with our investigator that we are only looking here at the marker at Tesco Personal Finance and not what other financial businesses may have done and why. I'm satisfied from the evidence provided that there were fraudulently obtained funds received into Mr P's account and which were paid out.

I note that Mr P first contacted this service about what happened in October 2020. At that time Tesco Personal Finance hadn't considered a complaint. I've seen its case notes about discussions with Mr P in November 2020. And in December 2020 it said it wouldn't be removing the marker. He contacted it again in September 2021 and then in January and February 2022. It issued its final response that latter month.

When he spoke to it in November 2020 he told it that he had reported the matter to Action Fraud and gave the reference number. He's provided his letter from Action Fraud and this states that he had reported 'identity theft'. He was asked by Tesco Bank why he hadn't reported what happened to police before and it noted he's said he was 'too scared'. When he contacted it in 2022 it said that it would need new information to confirm he had been threatened into acting by fraudsters and the police details of any investigation. He hasn't provided anything further.

Mr P has nothing to verify that he was threatened or that anyone else was involved in what happened. He said at one time he had messages on his phone with the fraudsters but that he lost these when his phone was stolen. There is no testimony from anyone else about him reporting he had been threatened. He has no evidence of any report to police of being threatened. And there is nothing to show that anyone other than him withdrew the money. So, while his account of what happened has been consistent he has been aware for some time of the need to support this with evidence and he's not been able to do so. The history of the case also indicates to me that Tesco Personal Finance had considered his account of what happened over time, and I think it's reasonable to conclude its assessment wouldn't have changed if it had spoken to him in 2018.

The issue here is a narrow one. And this is whether Mr P was threatened into opening this account and allowing a third party to use it and couldn't do anything about this and so would have had a reasonable excuse for acting in this way. It's self-evident from what he says that by then he reasonably knew that this account wasn't for legitimate purposes and he was complicit in what happened. I need to think about what is most likely and in the absence of any supporting evidence I don't consider that Mr P's explanation is a reliable one. And so, I think he is responsible for what happened on his account.

Tesco Personal Finance says that it applied the CIFAS marker because Mr P received fraudulent funds into his account. So, I've looked at whether it was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that it needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr P's account of events and the evidence Tesco Personal Finance has provided, I'm satisfied that Tesco Personal Finance had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr P received fraudulently obtained funds into his account and didn't report what was happening at the time.
- He was in control of who had the benefit of this money which would include him allowing someone else to access his account.
- Tesco Personal Finance had grounds to believe that Mr P had been involved in a fraud or financial crime.

I appreciate that Mr P will be very disappointed with my decision given what he's said about the impact that the marker is having on him.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 August 2022.

Michael Crewe  
**Ombudsman**