

The complaint

Mrs H complains that Tesco Personal Finance PLC (trading as Tesco Bank) has refused to refund payments from her credit card account that she did not authorise.

What happened

Mrs H let her grandson use her phone to make some purchases on Google Play using her credit card details. On 3 October 2021 Tesco contacted Mrs H as it had seen a large number of transactions to Google Play and these payments were out of character for Mrs H's account. Mrs H confirmed that those transactions were genuine.

Over the next month or so nearly 150 further payments were made to Google Play, totalling over £3000. When Mrs H realised what had happened, she contacted Tesco and explained that her grandson had made these payments without her permission.

Tesco declined to refund the payments that Mrs H was disputing, it said she had given her grandson permission to use her phone to make these kinds of payments, and so had authorised the payments. It said that it would not class this as fraud unless Mrs H reported her grandson to the police. Tesco also said that as Mrs H had already told it that previous payments to Google Play were legitimate, it had not flagged that these later payments were unusual or out of character.

Mrs H was unhappy with Tesco's response and so referred her concerns to us. One of our investigators looked at what had happened and felt that Tesco should have noticed unusual activity on the account by 17 October, so she said that Tesco should rework Mrs H's account to reflect what would have happened if payments to Google Play from 17 October onwards had been stopped. Tesco didn't agree, and so this complaint has been passed to me for a 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.

Having done so, I've reached the same outcome as our investigator, and for largely the same reasons.

I acknowledge that Mrs H willingly gave her grandson access to her card details on her phone so that he could make payments via Google Play, and I agree that this means she essentially gave him authority to make the payments in dispute here.

Under the Payment Services Regulations, we consider the issue of the relationship between the account-holder, Mrs H, and the person making the transactions. In this case that's her grandson. I think, taking into account all the circumstances of this case, Mrs H authorised her grandson to act as her agent: to make transactions on his behalf. She may not have thought about it in this way of course. She wouldn't necessarily have considered that by giving her grandson permission to use her card details via Google Play on previous

occasions, he could therefore go on to use the card details again for payments Mrs H hadn't specifically told him he could make. So I don't doubt there were individual transactions which Mrs H didn't authorise. But because of the nature of their relationship, she was giving her grandson apparent authority to carry out those transactions she subsequently disputed. In order to remove her apparent authority after giving her grandson her phone with the card details Mrs H would have needed to do something to ensure he couldn't use them again after the payments she had agreed to. But I've not seen anything to suggest that Mrs H did that.

But even with this in mind, Tesco still had a responsibility to flag any unusual or out of character payments that could be an indication of potential fraud or another issue with the account. And while I appreciate that Tesco has said Mrs H confirmed on 3 October that the payments made so far to Google Play were genuine, I don't think this means Tesco can then go on to say that it was reasonable to presume all payments to Google Play after that date must also have been genuine, regardless of how out of character for the account they may have been.

The first batch of payments, which initially raised concerns with Tesco, was nine payments over two days, totalling around £75. These are the payments that Mrs H confirmed were genuine. By 10 October this had escalated to 34 payments in one day, some of which were declined by Tesco, totalling around £200, and by 17 October almost £500 of payments went to Google Play in one day. I think by this stage the pattern of spending, which was a significant change to the initial spend with Google Play – and was out of character given the usual operation and level of spending on the account – should have indicated to Tesco that something might have gone wrong. And if Tesco had stepped in at this point and asked for confirmation that the transactions were still genuine, then it's likely that any further spending could have been prevented.

So with this in mind, I think it would be fair and reasonable for Tesco to refund to Mrs H the payments made from 17 October 2021 onwards as I think this is the point where the account usage was unusual enough to have flagged to Tesco that it needed to do more to ensure the transactions were genuine.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs H's complaint for Tesco to put things right by:

- Refunding the transactions made to Google Play from 17 October 2021 onwards
- Reworking the interest applied to Mrs H's account to reflect what she would have paid if the above transactions had not been made

My final decision

I uphold Mrs H's complaint, Tesco Personal Finance PLC (trading as Tesco Bank) should put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 5 October 2022.

Sophie Mitchell
Ombudsman