

The complaint

Mr L complains that Tesco Personal Finance PLC won't refund transactions he made to a company running an online gambling site, who I'll refer to as 'A'. Mr L believes 'A' is a fraud and that he didn't authorise some of the transactions.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here. But briefly, and based on the submissions of both parties, I understand it to be as follows.

In April 2021 Mr L set up an online account with 'A'. He's told us that he made deposits into the account using his Tesco credit card (along with making other deposits to 'A' from two accounts he held with other providers).

Mr L has said that he accumulated some winnings, but when he tried to withdraw funds he was unable to. He's said 'A' initially asked him to provide various forms of identification and then told him that it had attempted to process a payment to his bank, but that his bank had rejected it. Mr L has said he checked with his bank, who confirmed to him that it had not rejected any payment and had no record of any payment being attempted.

Mr L has said that having then gone back to 'A', he was blocked from his account. Mr L has added that following this some transactions appeared on his Tesco credit card that he said he didn't recognise. Mr L told us that there were also unauthorised transactions on the other two accounts he had used to place deposits to 'A'.

Mr L raised the matter with Tesco. Tesco initially refunded the transactions that Mr L disputed, but then debited them back onto Mr L's account. It looked into Mr L's concerns, but didn't uphold his complaint. In summary it said there were no obvious indications that led it to believe 'A' was running a scam website and it thought it more likely than not Mr L had made the transactions. Alongside this, Tesco said it didn't consider there were grounds to raise a chargeback on the purchases, as there wasn't a prospect of success. This was because the scheme rules didn't provide allowances to raise a chargeback on the basis of being unable to withdraw funds from 'A'.

Unhappy with Tesco's response, Mr L brought the matter to this service. One of our Investigators looked into things. Our Investigator didn't think the complaint should be upheld. In summary our investigator was persuaded that 'A' was running a legitimate website. She added that she didn't think the payments from Mr L's account were particularly unusual, compared to how he typically ran his account, so she didn't think Tesco missed an opportunity to intervene.

Our investigator added that she thought it more likely than not the transactions Mr L disputed had been authorised. In summary, she thought this because the payments were frequent and low, which wasn't the hallmark of a scammer, who would be more inclined to get as much as they can as quickly as possible. And she added that the nature of the transactions were in line with payments Mr L agreed he'd authorised. As well as this, she said it wasn't

clear how 'A' would have been able to obtain Mr L's card details, in order to make the payments. Our investigator also thought Tesco acted fairly when not raising a chargeback.

Mr L didn't accept our Investigator's view, he maintained the payments were unauthorised and fraudulent. As agreement couldn't be reached the complaint has now 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.

Mr L has mentioned that he also lost money from accounts he held with different providers and that this money has been refunded to him. But when reaching my decision, I can only consider the facts and the individual circumstances surrounding the payments Mr L made from his Tesco account. So I won't be considering the payments that were made from the other service providers here.

I would like to reassure the parties that although I have only set out the key points, I have read and considered what's been provided. Having done so, I agree with the conclusions reached by the investigator, I'll explain why.

The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Tesco could have delayed the payments while concerns about the payee were discussed with Mr L.

So, I would need to be satisfied that 'A' was operating a scam when these transactions were made in order to expect Tesco to have done anything further here. When determining this, I've borne in mind that certain traders may use sales methods, or communication styles that can be seen to be unfair. Including, when considering financial losses and disputes over winnings or withdrawals. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam. While the ways and means of these businesses can be viewed as unreasonable or even unethical – that doesn't necessarily mean they amount to the high legal threshold or burden of proof for fraud.

I've taken into consideration the concerns Mr L has raised about the techniques 'A' employed. But overall I'm not persuaded there is enough evidence for me to safely say 'A' was fraudulent or operating a scam. As a result, Tesco's duty to intervene wasn't triggered. Therefore, I don't consider Tesco acted unfairly by failing to intervene in these payments.

Did Mr L authorise the transactions in dispute?

The regulations relevant to this complaint are set out in the Payment Services Regulations 2017 (PSRs). Broadly speaking, these set out that a consumer can only be held liable for a transaction that they've authorised. It isn't generally disputed in the facts of this case that Mr L's Credit Card details have been used to make these transactions.

What is in dispute is if Mr L's consent was given for the payments to be made. Mr L has acknowledged that he did make a number of deposits to 'A', using his Tesco credit card, but he argues that at some point (around mid-June 2021), he didn't make any further deposits (this following a dispute that had materialised over him trying to withdraw some funds from 'A').

My role is to consider whether Tesco has acted fairly and reasonably in holding Mr L responsible for the disputed transactions. In doing so I must consider the evidence available to me and use it to reach a conclusion on whether I think the bank's actions have been fair. From what I've seen, I don't think it's unreasonable for Tesco to conclude that Mr L authorised the transactions. This is because:

- The pattern of spending doesn't fit that of somebody with an intent to defraud. The transactions are relatively low in value and spread over a number of days. It seems unlikely that an opportunistic fraudster would make transactions in this way. I think somebody with an intent to defraud would want to gain as much benefit as they could and as quickly as they could before the fraud is detected.
- I am also mindful that the pattern of spending for the disputed transactions is similar to the transactions that Mr L doesn't dispute. In that there are multiple transactions on the same day for similar amounts. These characteristics are not consistent with the typical hallmarks of fraudsters.
- There doesn't appear to have been a clear point of compromise of Mr L's card details. To make the transactions it required the full details of Mr L's card. While 'A' asked Mr L to provide his card details, it was clear in asking Mr L to cover the CVV number. Again, this is not the typical hallmarks of a fraudster, who would more likely endeavour to gather all the information from the card. But importantly here, without the full details it is difficult to see how a third party would have been able to successfully pull the payments from Mr L's account.

Having considered everything, all of the available evidence points to it being more likely than not that Mr L made the transactions himself. I realise that is a very difficult message to give, but that is what the available evidence leads me to believe here. This means that Mr L can be held responsible for them. As such, I cannot fairly and reasonably ask Tesco to refund them.

Finally, I've considered that Tesco did not pursue a chargeback. A chargeback is a voluntary scheme run by card scheme providers – in this case, Mastercard. It arbitrates on disputes between a customer and a merchant where they haven't been able to resolve matters themselves. The arbitration process is subject to the rules of the scheme – which are set by Mastercard – and there are only limited grounds on which a chargeback can be raised. Chargebacks raised outside of these grounds are deemed invalid. And in the circumstances of this case, there are no provisions within the scheme rules relating to the dispute that Mr L has raised and the type of transactions he made. It follows, I do not think Tesco has acted unreasonably by failing to pursue a chargeback claim in these circumstances.

My final decision

For the reasons I've explained, I don't uphold Mr L's complaint against Tesco Personal Finance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 February 2023.

Stephen Wise
Ombudsman