

## **The complaint**

Mr L complains Tesco Personal Finance PLC (trading as Tesco Bank) won't refund transactions he didn't make or otherwise authorise.

## **What happened**

The details of this complaint as well known to both parties, so I won't repeat them in full here. But the key points are:

- A card linked to Mr L's account was added to an online entertainment platform, which I'll call G, on Mrs L's phone.
- Mr and Mrs L's son was using Mrs L's phone to play an online game using G.
- Mr L says his son had asked to buy an upgrade for the game and Mrs L had input a password to approve the payment for the upgrade, this payment was for £4.49.
- Mr L says they then received a notification to say a payment of £44.99 had been made and so checked his account, where he discovered that over £400 of payments had been made
- Mr L reported these as fraud as he said neither he nor Mrs L had approved the payments with a password, and that they had not told their son the password to the account with G
- Tesco declined to refund the payments as it said they were not in-line with any fraud trends and the credit card had been added to G, which Mr and Mrs L's son had access to as he had possession of Mrs L's phone during the period in question.
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Our Investigator upheld the complaint, they weren't persuaded Mr L authorised the transactions or otherwise consented to them. Tesco disagreed with the Investigator's findings, so the 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 agree with the conclusions reached by investigator for the following reasons.

Under the Payment Services Regulations (PSRs), except where a payer has acted fraudulently, the payer isn't liable for any losses incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract.

There isn't any provision within the PSRs which holds Mr L liable for a transaction made via a distance contract if it was unauthorised, even if he acted with gross negligence or intent. And the terms and conditions of Mr L's account also state that any unauthorised payments made via a distance contract will be refunded.

All of the transactions in dispute here were online payments. So under the PSRs, Tesco can only hold Mr L liable for the payments if he either authorised the transactions or he acted fraudulently. There is no persuasive evidence, nor has Tesco sought to argue, that he acted fraudulently.

Therefore my consideration is solely in relation to whether Mr L authorised the transactions. The payments were made using legitimate card details which were used with an online account with G. So the question here is whether Mr L allowed the card details to be used in this way to make these transactions and therefore consented to the transactions being made.

I've listened to the conversation Mr and Mrs L had with Tesco when the disputed payments came to light, they were clear from the beginning that they had set up the account with G so that a password had to be entered to approve each transaction. During this call they didn't indicate that they had ever willingly given the password to their son to use. And Mr and Mrs L have then been consistent in their description of what happened throughout this complaint. Tesco's notes say that Mr L said his son had 'pressed some buttons' to make the payments, but that is not what Mr L said, that is something the staff member he spoke to suggested but that Mr L disagreed with.

I appreciate that Tesco feels Mr and Mrs L's testimony is not enough to show that the payments were not consented to. But we are an informal dispute resolution service, so we've not forensically investigated the account with G and how it worked. Mr and Mrs L have told us how the account was set up and how they approved payments their son asked them to make, and Tesco hasn't provided evidence to show the disputed payments were consented to. I can't know exactly what happened here, but I have not seen enough evidence to convince me that Mr or Mrs L allowed their son to make these payments.

On this basis I consider it more likely than not that Mr L did not consent to these payments being made. It follows that these payments should therefore be treated as unauthorised and, as per the PSR's and the terms of Mr L's account Tesco is therefore not able to hold him liable for them and they should be refunded to him.

### **Putting things right**

To resolve this complaint Tesco should:

- Refund the disputed payments made to G totalling £416.29
- Pay 8% simple interest (calculated from the date the payments were made until the date of settlement)

### **My final decision**

I uphold this complaint. Tesco Personal Finance PLC (trading as Tesco Bank) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 March 2023.

Sophie Mitchell  
**Ombudsman**