

The complaint

Mr M complains that Tesco Personal Finance applied a late payment marker to his credit record without taking into account his circumstances and this has adversely affected his business

What happened

Mr M moved his personal bank account from one provider to another and had to manually change all of his direct debits and payments.

In the process, one of his direct debits, for a loan repayment to Tesco, wasn't set up correctly and a payment was missed.

Tesco contacted Mr M and advised him that his payment was overdue, and he made two payments immediately, the overdue payment, and the final payment which he made early. He later became aware that Tesco had applied a late payment marker to his credit record. Mr M tells us he has an otherwise perfect credit record, and this has impacted his personal and business banking, and so he asked Tesco to remove the marker.

Tesco refused to remove the marker, saying they had correctly reported the missed payment and it was Mr M's responsibility to ensure that payments were made. However, the awarded Mr M £25 as they said that he should have been advised when he made the payment that the late marker would still be applied.

Mr M brought his complaint to us.

Our investigator didn't uphold Mr M's complaint. He thought that Tesco had fairly applied the late marker as they have a duty to correctly report to credit reference agencies.

Mr M didn't agree with the investigator's findings, and so the matter came to me to review. I issued a provisional decision on the complaint. My provisional findings were as follows: *Looking at the loan history as a whole, Mr M has made all of his payments by direct debit on time until 25 January 2022. There have been no other late or missed payments. In addition, as soon as he realised that the payment had been missed, which was 15 days afterwards, Mr M made not only that payment, but the final payment which was due in February to clear the loan, paying it off early.*

By way of explanation of how the missed payment occurred, Mr M has told us that he was forced to change current accounts in January 2022 as he had paid off his mortgage, and was unable to retain his personal bank account with his provider as it was a mortgage linked account. He chose to move to another current account provider but was unable to take advantage of the Switch Guarantee as the accounts were not of the same kind, and so he had to manually set up all his direct debit payments again. For whatever reason, the payment to Tesco wasn't set up in time for the payment on 25 January 2022 and so it was missed.

I can see that Tesco have applied the late payment marker as a result this, and I understand their obligations to report late and missed payments correctly to the credit reference agencies. And so, in this regard they haven't done anything wrong, so I appreciate why they are not minded to remove it.

However, they do have the discretion not to report the late payment marker if the circumstances are such that reporting it wouldn't be fair or proportionate, and Mr M has asked Tesco to consider exercising that discretion in his case and remove the marker. I'm not satisfied that Tesco have taken full account of the circumstances and exercised their discretion fairly in this case.

It does seem to me that looking at the whole history, the circumstances of the missed payment, the swift resolution by Mr M, and the significant impact it has had, that if Tesco exercised their discretion fairly and proportionately, the marker would have not been reported, or could have been removed. And so, on that basis, I am minded to uphold this complaint and direct that Tesco remove the late payment marker.

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 sent Mr M and Tesco a copy of my provisional decision.

Both have replied. Tesco have disagreed with my provisional decision. They don't accept that Mr M has any mitigating circumstances which mean that the default should be removed, and that they have considered the circumstances, but they consider it fair and reasonable to report the late payment. They also say that "It simply doesn't matter that Mr M consistently made his payments on time up until this occurrence or paid his final payment. The fact of the matter is, a payment was received late and was reported correctly and accurately to the CRA's, which we are obligated to so".

The ICO's Principles for Reporting of Arrears, Arrangements and Defaults to Credit Reference Agencies says that if a consumer doesn't make a regular expected payment according to the terms and conditions of the loan, the account *may* be reported to the CRA's as being in arrears. It also says that any reporting should be done fairly.

Whilst I accept Tesco have a duty to report accurately, and the reporting of this late payment is accurate, I don't agree that it is fair and reasonable to report it in the circumstances, looking at Mr M's account management as a whole and the reason for the late payment. It seems to me to be wholly disproportionate in circumstances where Mr M has missed one payment date, in error, due to complications during moving his personal account. He has remedied the late payment within 15 days, as well as paying off the rest of the loan in full. I disagree with Tesco that these circumstances "simply don't matter".

Mr M has also replied. He accepted my provisional decision but has asked me to consider awarding compensation for the impact that the late payment marker has had on his business. I have considered this, but I won't be making any award in respect of the alleged losses for two reasons. Firstly, the subject of the complaint only relates to Mr M's personal banking arrangements, and so I can only consider any impact it may have had on him personally, not any detriment to his business, and secondly, as I have said, Tesco's report of the late payment is accurate as Mr M's loan payment wasn't paid in accordance with the terms and conditions of the loan, and I would only consider making an award for financial detriment where an error has been made by Tesco.

In view of this, I'm making my final decision for the reasons I've summarised above.

Putting things right

To put things right, Tesco should remove the late payment marker from Mr M's credit file.

My final decision

My decision is that I'm upholding Mr M's complaint and direct Tesco Personal Finance PLC to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 December 2022.

Joanne Ward
Ombudsman