

The complaint

Mr C is unhappy that Tesco Personal Finance PLC (trading as Tesco Credit Card) has refused to refund two payments he made using his credit card, after falling victim to a scam.

What happened

Towards the end of March 2021, Mr C received an email from his boss asking him to buy £1,000 worth of gift cards for a client. Unfortunately for Mr C, the email had actually come from a fraudster.

Mr C initially tried to buy the gift cards online, but was unsuccessful due to the high value of the transaction. At the fraudster's suggestion, he then tried and managed to make the purchase in a supermarket. He shared the gift card codes with the fraudster and then complied with a further request to buy another £1,000 worth of gift cards. He also spent £3 on some food.

Mr C became suspicious when he received a further request to buy gift cards and called a work colleague – previous attempts to contact his boss by phone had been unsuccessful. The employee told him that several members of staff had received similar emails and Mr C realised he'd fallen victim to a scam.

Mr C reported the scam to Tesco, seeking to recoup the £2,000 he'd lost to the fraudster. But Tesco refused to refund the money even after our investigator recommended it do so. So the case has come to me.

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.

There's no dispute Mr C authorised both payments. So, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr C is presumed liable for the loss in the first instance. But the matter doesn't end there.

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Tesco should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I've reviewed the activity which took place on Mr C's credit card in the months leading up to the scam and I can't see any comparable activity. Tesco's records also show Mr C's attempt to make three purchases via two popular online stores less than an hour before the supermarket purchase, which were all declined. Tesco says it has more stringent fraud checks for online purchases compared to in person purchases (which are verified by the credit card chip and PIN) like the ones Mr C was subsequently allowed to make in the supermarket. I take its point, but when the activity on the day in question is looked at as a whole, I think the supermarket purchases stand out as being remarkable and I think they should have prompted Tesco to intervene.

Had Tesco intervened when Mr C attempted the first £1,000 purchase I've seen nothing to suggest he wouldn't have been entirely honest about why he was spending this money. I say that, not least, because the scammer hadn't told him to lie if anyone questioned him about what he was doing. I'm also conscious that this is a relatively well-known scam, so I think Tesco would have been able to quickly identify what he was doing and prevented any losses.

I've also thought carefully about Mr C's role in what happened. He tells us he'd only been working for the company for a few months which, at that time, was pushing hard to increase its client base. He was worried about not complying with the request and had bought, and been reimbursed for, smaller client gifts in the past. He read the email on his phone as he was attending a hospital appointment when it arrived and it appears to come from his boss – he couldn't see the full, originating email address. He tried to phone and sent a text message to his boss, but there was no answer and he assumed this was because his boss was busy with the client. In the circumstances, I can understand why Mr C was keen not to carry out what appeared to be legitimate instructions coming from his boss.

I also accept that Tesco probably sent a text message to Mr C when the purchases he tried to make via the second online retailer were declined. I haven't seen the exact wording of the message, but Tesco suggests it merely asked Mr C to confirm if it was he who was making the payment. Mr C says he didn't see the text and I'm willing to accept that because, if he had, I see no reason why he wouldn't have replied because this would have enabled him to complete the online purchase, rather than having to visit the supermarket. In any event, given what Tesco say this text said, I don't think it would have alerted Mr C to the possibility he was being scammed.

I've seen nothing to suggest Mr C was, or ought to have been, familiar with this type of scam. So, while I accept that the requests were somewhat unusual I don't think Mr C acted negligently by failing to recognise that he was falling victim to a scam.

Overall, I don't think Tesco acted fairly by refusing to refund the two disputed transactions and it should settle the complaint in the way I've outlined below.

My final decision

My final decision is that I uphold this complaint and instruct Tesco Personal Finance PLC (trading as Tesco Credit Card) to:

- Refund £2,000 to Mr C's account.

- Rework the account as if the two disputed transactions had never taken place.
- If the above results in a credit balance, pay 8% simple interest per year on that credit balance from the date it would have been created had the refunded transactions not taken place, to the date of settlement.

If Tesco Personal Finance PLC (trading as Tesco Credit Card) considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 December 2022.

Ruth Hersey
Ombudsman