

The complaint

Mr A says Tesco Personal Finance PLC, trading as Tesco Credit Cards, closed his card despite agreeing this would not happen if he made payment on or by 4 January 2022.

What happened

On 7 December 2021 Tesco issued a default notice to Mr A. He had not made any payments since May 2021. This explained that if he did not make a payment of £514.95 before 3 January 2022 his account would be closed, and a default registered with the credit reference agencies. On 15 December 2021 Mr A called Tesco as he wanted to resolve this. Tesco says it told Mr A as 3 January 2022 was a bank holiday he had up to 4 January 2022 to make his payment.

Mr A made the payment on 4 January 2022, but after 6pm and so it did not reach his credit card account until the following day. This meant his card was closed. Mr A says this is contrary to the advice he was given on the phone. His card was subsequently declined when he went to use it, this caused him embarrassment and left him unable to support himself financially.

Our investigator upheld Mr A's complaint in part. She found Tesco had fairly terminated Mr A's account, in line with its terms and conditions, as payment had not reached it until 5 January 2022. The IVR message he would have heard on 4 January 2022, when he made the payment after 6pm, would have said two working days should be allowed for payments made after 6pm. And the information on the back of each statement explains this too.

She did however think Tesco ought to have started the default process sooner given Mr A had made no payment since May 2021 and failed to meet previous payment plans. She said it should backdate the default to July 2021. And she felt as Mr A had understood he could make the payment anytime on 4 January 2022, and says he wasn't told otherwise, Tesco has caused some avoidable distress and inconvenience for Mr A. To recognise this she said it must pay him £50 compensation.

After this assessment, Tesco said it was confused why we had concluded that it had been supportive - yet also unreasonable by not defaulting the account sooner.

Mr A asked for an ombudsman's review. He said, in summary, he has always tried to sort out his finances with Tesco, but it has been hard. He suffers from anxiety and depression. But he made this required payment on the right date. He accepts it was after 6pm but says the adviser he spoke to promised if he made the payment by that date he would be able to keep using his card – no specific time was agreed. He feels he kept his side of the agreement and Tesco hasn't. He says we must listen to the multiple calls he had with the bank as he wasn't told once he had to pay before 6pm.

He wants his account to be re-opened; to be allowed to make the minimum payment to clear the balance; the default to be removed; and compensation to be paid for the distress he has suffered. He says backdating the default is not right at all as it's not valid and Tesco hadn't deemed a default should be applied, just our investigator.

I made different findings in places to our investigator, so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties for any comments by 24 November 2022.

Extract from my provisional decision

I am planning to uphold Mr A's complaint in part. I'll explain why.

Tesco says that when it spoke to Mr A on 15 December 2021 it said he needed to make payment by 4 January 2022, as the previous day was a bank holiday, and if he did so he would be able to continue to use his card. Mr A has said there were multiple calls on which he was promised if he paid on or by that date his card would remain active. We asked him for the specific dates of these calls, but he wasn't able to provide them. We have gone back to Tesco to ask it to search for all and any calls between the parties around this time but it hasn't been able to locate any calls, other than the start of calls on 15 December 2021 when Mr A was then transferred to different departments, and a follow up call on 10 January 2022.

However, I don't doubt that Mr A's testimony is his honest recollection that he wasn't told there was a cut-off time. It seems from what both parties have said the cut-off time on 4 January 2022 was not discussed when Mr A called. On balance, I think it's reasonable to conclude this was not mentioned, rather than any incorrect information being provided. But this is its standard payment processing requirement. And as other communication channels (the statements and IVR message) made clear there was a cut-off time for payments to reach an account I cannot fairly hold Tesco liable for Mr A's payment reaching his account after the 4 January 2022. Given the terms and conditions of the account and the default notice that was sent on 7 December 2021 I find it was reasonable for Tesco to terminate Mr A's account. The fact Mr A hadn't made a payment since May 2021, so for eight months, is very relevant and important context to this finding.

I can see, however, on the call on 10 January 2022 he was given incorrect information about the status of his account (he was told it was active after the payment had been received). For the confusion and subsequent inconvenience this caused Mr A should be compensated. Our investigator had previously recommended he be paid £50 for the service Tesco provided and I agree this amount of compensation should be paid to him, specifically because I have heard that inaccurate information was given on the call on 10 January 2022. And this led to Mr A trying to use his card and being declined, causing him embarrassment.

Mr A say his previous failure to meet payment plans is not relevant here, and that Tesco was not going to default his account, until our investigator decided a default should be applied. But I disagree. We would expect Tesco to consider Mr A's payment history in the round when deciding how to manage his account after he failed to make any payments from May 2021 onwards. Looking back at his statements I can see Mr A's account had been in arrears since February 2020, during 2020 he made no payment on seven occasions and in other months paid less than the arrangement he had in place. It was for this reason our investigator felt that whilst Tesco acted sympathetically and positively towards Mr A during this time, it would have been fairer to default his account sooner in 2021 once he had missed three consecutive payments.

Tesco questioned the consistency of this opinion, but I agree that there has been an unfair and detrimental impact on Mr A as a result of not defaulting his sooner. Tesco says it could not know that Mr A would not make the payments requested in the default notice on time, but I think there were enough indicators earlier in his payment history to conclude he was going to have problems repaying his debt. So I think it would have been fairer to start the default process sooner, rather than to wait over seven months. Once Mr A had missed three

consecutive payments, and given his payment history, I think it was clear he would most likely be unable to make his repayments. So I find Tesco should have issued the default notice then. This is in line with the guidance of at least three and no later than six months, as set out by the Information Commissioner's Office (ICO). It follows I agree the default should be backdated, but to August 2021 as a notice would need to have been served in July 2021.

Mr A said that the default was only added as our investigator requested it to happen, but I don't find that to be accurate. A default notice was issued on 7 December 2021, so Tesco had clearly started the process before this service became involved. And the instruction to Tesco to now backdate this is to Mr A's advantage as it means it will remain on his credit file for a shorter period of time. I understand that Mr A was struggling at the time and I'm sorry he had to go through this and that his health conditions exacerbate the impact, but in the circumstances I find it was reasonable for Tesco to terminate and default his account.

I then set out what Tesco would need to do to put things right.

Tesco responded saying, in summary, the default being delayed was in the best interests of Mr A and shows it was acting sympathetically to his needs and circumstances. The ICO's guidance is just that, not an obligatory timeline. It is unfair we are now saying the default should have been applied sooner, now that we can see it was subsequently applied. It accepted Mr A was indeed given incorrect information on the call on 10 January 2022.

Mr A did not respond.

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.

Neither party provided any new evidence that I need to consider here. With regards Tesco's comments about the timing of the default, I maintain that it did not act in the best interests of Mr A. I don't doubt that was its intent, but I think it made the wrong decision given Mr A's circumstances and the ICO guidance. This was not the first time Mr A had missed payments - during 2020 he made no payment on seven occasions and in other months paid less than the arrangement-to-pay. So I think, given this context, once Mr A had then missed three consecutive payments in 2021 it was clear that he was most likely not going to be able to meet his contractual commitment. So I have not made my finding about the timing of the default based on hindsight as Tesco suggests, but rather based on Mr A's payment history and what Tesco knew in July 2021.

It follows, for the reasons set out above, I am upholding Mr A's complaint in part. In the circumstances I find it was reasonable for Tesco to terminate and default his account, but it provided incorrect information after he made the January 2022 payment and ought to have defaulted his account sooner.

Putting things right

Tesco must pay Mr A directly £50 compensation for the distress it caused by giving him inaccurate information on 10 January 2022, and backdate the default date to August 2021.

My final decision

I am upholding Mr A's complaint in part. Tesco Personal Finance PLC, trading as Tesco Credit Cards, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 23 December 2022.

Rebecca Connelley
Ombudsman