

The complaint

Mr D has complained Tesco Personal Finance PLC, trading as Tesco Bank, has lodged a fraud-related marker on the industry fraud database, CIFAS, which has inconvenienced him.

What happened

In 2019 Mr D amended his direct debit with Tesco Bank so that the full amount would be paid when payment was due in mid-July.

Unfortunately Mr D's direct debit bounced as there were insufficient funds in his current account. In the interim Mr D had made a number of gambling transactions which led him to use funds that were not available to him. Tesco Bank added a fraud-related marker, stating that Mr D had committed uncleared effects fraud and misused his credit facility, to the industry fraud database, CIFAS in August 2019.

Mr D was trying to get his finances back into a proper state in 2022 and became aware of the CIFAS marker. He asked Tesco Bank to remove the record from CIFAS.

Tesco Bank felt they had sufficient evidence to lodge the record with CIFAS and refused to do what Mr D asked them to do. Mr D brought his complaint to the ombudsman service.

Our investigator reviewed the evidence and believed this showed that whilst Mr D was having financial difficulties, there was nothing to indicate he'd tried to commit fraud. She asked Tesco Bank to remove the marker.

Tesco Bank felt they did have sufficient evidence to show Mr D had acted with premeditation to spend money that he didn't have.

In the absence of any agreement being reached, Mr D's complaint has been referred to an ombudsman.

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've reached the same outcome as our investigator. I'll explain why.

It is clear what the requirements are prior to lodging a marker. Specifically:

"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted.

The evidence must be clear, relevant and rigorous."

So Tesco Bank must be able to provide clear evidence that an identified fraud was being committed and Mr D was involved. I'm not convinced they've done this here.

Tesco Bank has said that it was unusual for Mr D to amend his direct debit payment and would have known that he had insufficient funds to clear his credit card debt.

But, in fact, Mr D used his debit card to pay off his credit card debt in full (roughly the same amount as in July 2019) two to three months before this so I think historically Mr D did have access to sufficient funds so I wouldn't be at all surprised to find he believed he'd have access to funds this time around as well.

I don't dispute that Mr D used funds that he subsequently didn't have. But this is partly due to the way the direct debiting scheme operates. Tesco Bank credits their credit card accounts the day they receive the direct debit payment. This would show as a credit on Mr D's account. Tesco Bank would only get notification the following day that this direct debit was unfunded. I think as Mr D could have seen his credit card get credited, he may reasonably have believed funds were credited.

I can see Tesco believe that Mr D would have known that his direct debit payment would never have been successful. But I don't believe this takes into account Mr D's state of mind at the time. I've seen nothing to indicate Tesco Bank reached out to Mr D to discuss what was going on with him but his transaction history, which was gambling heavy, could have indicated that he was having financial difficulties. He was having difficulty not just managing this account but other accounts that he held.

The adding of a CIFAS marker seems to penalise Mr D for falling into financial difficulties and I don't believe that Tesco Bank has met the requirements for lodging a CIFAS marker.

Putting things right

On this basis I believe it's fair and reasonable to ask Tesco Bank to remove the fraud marker from Mr D's CIFAS record.

Mr D believed that he should be due additional compensation for Tesco Bank's actions, but I've seen nothing to indicate that would be appropriate in the circumstances of his complaint.

My final decision

For the reasons given, my final decision is to instruct Tesco Personal Finance PLC, trading as Tesco Bank, to remove the marker from Mr D's CIFAS record.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 November 2023.

Sandra Quinn
Ombudsman