

The complaint

Mr H complains that Tesco Personal Finance PLC trading as Tesco Bank ("Tesco") allowed him to gamble extensively and excessively to a gambling merchant on his credit card.

What happened

Mr H held a credit card with Tesco. In December 2017, he reduced the credit limit on this from £3,400 to £2,000. Mr H's account statements show that he started to gamble heavily from December 2017 until November 2018, with multiple transactions sent to a particular gambling merchant.

Mr H says he contacted Tesco throughout this time asking for help because of his gambling, but they refused to do anything. He says he asked Tesco to block payments to the gambling merchant or to block payments from his card entirely but was told this wasn't possible. Mr H reduced the credit limit to £1,500 in January 2018 and to £250 in July 2018 and says he did so when Tesco offered him no help or support.

Mr H complained to Tesco, but they didn't uphold this. They said, in summary, that gambling was permitted on credit cards prior to April 2020 and that Mr H had maintained his account well until it was closed in June 2019. Tesco also said they had correctly applied interest and fees to the account and wouldn't refund these.

Our investigator recommended that Mr H's complaint should be upheld. She said Tesco had discussed his gambling with him in December 2017 and had sufficient information about this to have offered him more support. She also said it was likely Mr H had mentioned to Tesco that he wanted to reduce his credit limit because of his gambling, and that they missed opportunities to discuss the spending on his account with him. Our investigator also felt it wasn't likely Mr H had told Tesco not to block his card or close his account, as Tesco had claimed.

Overall, she felt Tesco hadn't treated Mr H fairly and recommended they refund all interest and charges applied to the account from December 2017 until it was closed, and to pay him £250 for their poor service.

Tesco didn't agree and so this complaint was passed to me for a decision.

I issued my provisional decision on 13 November 2023, in which I said the following and which forms part of my final decision:

"Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I appreciate that this has been a very difficult situation for Mr H and I want to thank him for being so honest in his submissions. However, and I understand that this will be very disappointing for Mr H, I don't currently think that Tesco acted unreasonably or unfairly.

I've looked at whether Tesco should have identified whether Mr H needed support based on the activity on his account, and whether Tesco failed to act appropriately upon contact with him. I think these are the two key elements to this complaint.

I note Mr H says that Tesco should have seen he was using the account very differently from before. I've looked at the account statements from February 2016 to when the account was closed in 2019 and agree that the activity on the account had changed. Certainly, Mr H didn't use the card with such regularity or frequency throughout the couple of years prior to when the gambling spend started to happen in December 2017.

However, I've also seen, at least if you look strictly at the statements, that Mr H was able to make frequent, high-value payments to reduce the account balance each month and to keep this within the credit limits. There weren't obvious signs that Mr H wasn't able to maintain this either.

I've looked at Tesco's account history notes to see what notes they made about Mr H's account and the contact that was made with him during the time he was using his card to gamble. I can see that Tesco flagged the spend on Mr H's account as 'high risk' in December 2017. The notes also record on 14 December 2017 that Tesco had spoken with Mr H recently and that he had enquired about the charges they had levied for his gambling transactions. There were no notes that Mr H had asked Tesco for help and support with this.

Tesco's notes also show that they flagged Mr H's spend as 'high risk' again in May 2018 and spoke with him shortly after. The notes record there was some discussion around Mr H wanting to make a payment before a particular transaction had cleared. I've also seen that Tesco spoke to Mr H in September 2018 where an overlimit fee was discussed. There were no notes around Mr H's gambling on either occasion and no notes on this either when Mr H called in December 2018 to close his account.

It's quite possible that Tesco's notes don't tell the actual story of what happened. And, as Tesco no longer have call recordings for the period in question, I'm unable to hear what was discussed on each occasion. However, I think it unlikely that Tesco wouldn't have added something to the notes at some point if Mr H had, as he says, asked them for help or had asked for them to either block payments to the merchant or to block his card from being used at all.

Tesco recorded these flags on Mr H's account from a fraud perspective, in that they felt there was some risk of fraud on his account. So, the flags weren't added because of concerns about what Mr H was spending his money on. In other words, Tesco would have only been considering whether Mr H was authorising these payments rather than there being any concern about Mr H being potentially vulnerable and at risk. It could be argued that Tesco should have thought more about the spend rather than just whether Mr H authorised this.

However, as I've mentioned, Mr H seems not to have mentioned anything about his gambling when Tesco did speak with him. I can't be sure therefore that Mr H would have been prevented from gambling had Tesco asked him questions around his gambling spend.

I note that Mr H reduced his credit limit throughout the time he was gambling. I've not seen anything in Tesco's notes that they refused to suggest this or failed to act on a request from him to do this on his behalf. It's possible Mr H decided that reducing his credit limits was the best way for him to help manage his situation and his card spend. I don't think Tesco should have noticed he was experiencing financial difficulty from this as reducing a card limit is often a way consumers can decide to manage and balance their spending.

I appreciate the impact Mr H's gambling had on him and I hope he has been able to get the support he needs. However, for the reasons given above, I don't currently intend to uphold this complaint.

I asked Mr H and Tesco to send any further evidence or comments for me to consider.

Tesco said they had nothing further to add.

Mr H didn't agree with my provisional decision and said Tesco had deleted notes where he had told them he was borrowing heavily to keep gambling and when he asked them to block payments to the merchant. And he said we were siding with Tesco noting that our investigator had said they should have contacted him whereas my decision disagreed with that. Mr H also said that his spending far exceeded his income, and the gambling merchant closed his account down because they were worried about his spend. And he said that Tesco only let him reduce his credit limit to a certain amount each time so he could still use the card for gambling. Mr H also said the account history showed he was barely using it and then heavily spent each month.

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 know Mr H feels very strongly about my provisional decision and how it differs from the view of our investigator. However, I'm not obliged to agree with our investigator, and I reviewed the case afresh as I am required to do.

I've considered everything Mr H has said in response to my provisional decision. I've though not seen enough persuasive evidence that Tesco has deleted notes or withheld evidence about the contact Mr H had with them about his spend on the account or requests to reduce his credit limit.

I mentioned in my provisional decision that it was possible that Tesco's notes didn't tell the actual story of what happened. On balance though I think it unlikely that Tesco would have no record of any discussion about Mr H's concerns with his spending and gambling if, as Mr H says, he spoke to them on several occasions about this. I know Mr H will strongly disagree with me and I understand why. But this is still what I think and I'm afraid I just don't have compelling evidence that Mr H did speak with Tesco about the extent of his gambling when their notes show that he didn't mention this when he spoke with them.

I realise that Mr H's gambling was excessive and note that the gambling merchant blocked his account because of concerns about this. However, that doesn't mean Tesco was under an obligation to restrict the account because of the spend. Tesco did mark the account as 'high risk' but again I can't be sure that the gambling spend would have been prevented when, from the evidence I've seen, Mr H doesn't appear to have mentioned this spend when he spoke with Tesco.

While I know this will be extremely disappointing for Mr H, I won't be upholding his complaint for the reasons set out above including those in my provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 2 February 2024.

Daniel Picken
Ombudsman