

The complaint

Mrs N complains that Tesco Personal Finance PLC trading as Tesco Bank (“Tesco”) failed to protect her as a vulnerable customer and failed to adequately protect her account, which resulted in her being able to spend significant amounts on gambling.

What happened

Mrs N contacted Tesco in October 2020 as her credit card had been compromised and had been used fraudulently. Mrs N mentioned to Tesco that she was concerned the fraud was linked to non-UK gambling merchants she had been using online.

Mrs N asked Tesco whether they could block all foreign transactions. They told her this wasn’t an option, but they could place a block on the gambling merchants she had already used. Mrs N didn’t think this would help as the merchants were using numerous trading names to collect deposits.

In 2021 and 2022, Mrs N asked Tesco to raise a series of chargebacks. She had seen reviews saying the gambling merchants she’d used were scamming people, weren’t paying winnings and didn’t hold a gambling licence of any description. Tesco didn’t raise any chargebacks. They said the merchants had provided Mrs N with a service.

Mrs N complained to Tesco saying they failed to protect her as a vulnerable customer and failed to adequately protect her account. She said she was able to continue to gamble to non-regulated casinos despite discussing her concerns about her gambling with Tesco in 2020. Mrs N also said Tesco should have blocked the transactions due to their regularity and repetitiveness. And they should have had concerns that the merchants weren’t using the correct code to identify the transactions as gambling.

Tesco didn’t uphold Mrs N’s complaint and she referred the matter to us. Our investigator didn’t recommend that the complaint should be upheld. She said the transactions in question weren’t identifiable as gambling and Mrs N hadn’t reported the transactions as being fraudulent. Our investigator said that Tesco contacted Mrs N on several occasions regarding the high spend on her account and she had confirmed the transactions were authorised by her. She also said that Tesco had asked if they could give Mrs N any additional support around her gambling, but Mrs N had declined this.

Mrs N didn’t agree. She said she’d told Tesco she was being scammed by illegal overseas casinos who weren’t providing the service they were advertising. So, Tesco should have considered raising chargebacks.

Mrs N also highlighted that she’d made 41 transactions to foreign merchants within three weeks during September and October 2021, with some going to the same merchant up to ten times a day, and these should have been flagged as suspicious. Mrs N also mentioned that Tesco’s offer of support in 2023 came too late and that Tesco had approved the use of gambling on her credit card despite this being banned in the UK in April 2020.

As the matter remains unresolved, Mrs N’s complaint has been passed to me for a decision.

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 appreciate that this is a very difficult situation for Mrs N, and I want to thank her for being so honest in her submissions. When a consumer discloses a vulnerability to a business, as Mrs N has done, we expect that business to treat them with dignity and compassion and provide them with tailored support.

Mrs N feels that Tesco should have done more to prevent significant amounts of gambling spend being made to overseas gambling merchants. Mrs N does accept though that Tesco offered to block payments to the merchants she'd used in 2020. So, Tesco did offer some level of support at that point. And it wasn't possible for Tesco to have identified these transactions as gambling when they were being made. Payments like these are identified by the merchant category code ("MCC") the merchant has applied to it. Different types of retailers have different codes, and there is a specific one that gambling websites are supposed to use. If a gambling merchant doesn't apply the correct code, the transactions can't be identifiable as gambling. This is what happened in Mrs N's case.

So, I can't safely say that it's Tesco's fault that Mrs N found a way to gamble through her account. This is because Mrs N has confirmed that she had used a gambling block with UK based gambling websites when she registered with GAMSTOP in 2018, and that this had worked. But by using websites based outside of the UK, Mrs N found a way to circumvent the block. I appreciate that Mrs N has described the impact this had on her, and I appreciate that vulnerabilities will drive people to behave in ways that are harmful. But I can't hold Tesco responsible for gambling merchants who have miscategorised their websites in a way that allows them to prey on vulnerable people such as Mrs N. Had the merchants used the codes they are supposed to use, the block would have worked.

Mrs N says the online casinos she was using were acting illegally within the UK. This is because they weren't licensed to operate within the UK. As such she has equated them to operating fraudulent or 'scam' websites. While I understand why Mrs N has reached this conclusion, it's important to clarify what banks consider 'fraud and scams' to be. Mrs N believes that the transactions were fraudulent because the casinos she was using didn't have a licence to operate in the UK and as such they were acting fraudulently. However, 'fraud' more often than not means situations where a third party has accessed a customer's account and is spending or transferring their money without their knowledge or consent. In Mrs N's case, because she was the one spending the money on the websites, Tesco said the transactions weren't fraudulent, because they weren't focusing on what the money was spent on, but rather, who spent it.

Here, Mrs N spent the money and had received the 'goods' (in this case the bets she placed) and so Tesco couldn't complete a chargeback on these transactions. This is because chargebacks are only available in situations where consumers didn't receive the goods they paid for, or there was something wrong with the goods, or they were charged the wrong amount, or someone else used their card without their knowledge or consent. None of these applied to Mrs N's complaint in my view, and so Tesco couldn't process a chargeback request for her.

In regard to whether or not the online casinos were operating legally, or illegally, within the UK, this isn't something Tesco was required to consider. Mrs N paid for goods and received them, and I've not seen sufficient information that there was never any prospect of gaining winnings from them as claimed by Mrs N.

I've also considered whether Tesco should have picked up on any unusual activity on

Mrs N's account and checked that she wasn't experiencing any problems with the volume of transactions she was completing. The Financial Conduct Authority has previously released guidance on how financial companies, such as banks, can support vulnerable consumers. And this includes monitoring accounts for unusual activity.

I've seen Tesco's case history notes for Mrs N's account and note that they flagged there was high risk spend on this in April 2022, May 2022, July 2022 and January 2023. Tesco's notes also indicate that they sent text messages to Mrs N on each occasion highlighting the spend. I don't know whether Mrs N replied to each message saying the transactions were made by her, as Tesco claims, and I note Mrs N doesn't recall whether this happened. I have though seen a note from April 2022 which suggests Mrs N said to Tesco that she liked to use these websites to play games. So, it does appear that Tesco did reach out to Mrs N but that she didn't seek any support. I can't therefore be reasonably certain that, had Tesco identified the volume of transactions in September and October 2021 as Mrs N has highlighted (or indeed at any other appropriate time), that any interaction would have prevented her from losing the money that she did.

Overall, and for the reasons I've set out above, I don't find that Tesco acted unfairly or unreasonably in respect of the events that prompted Mrs N to complain.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 1 March 2024.

Daniel Picken
Ombudsman