

The complaint

Mr W complains that Tesco Personal Finance PLC trading as Tesco Bank didn't block payments made with his credit card to a gambling site. He wants the payments refunded along with interest.

What happened

Mr W received a text message from a gambling website on 30 October 2023. He signed up to the website and made two deposits using his Tesco Bank credit card. He says that his credit card should block gambling transactions and so these transactions shouldn't have been allowed.

Mr W says that he used the gambling site for a while and won back his deposit and made a profit but when he tried to withdraw his money, he wasn't able to do so. He checked the gambling site's terms and it said he needed to email it his bank details for payment to be made but when he did this, he didn't get a response and his account was closed. Mr W says he now can't access his money. Mr W then found that the payments he made to the gambling site were made through a payment processor ('entity 2'). He tried to contact entity 2 but after an initial reply, it didn't respond to Mr W's emails. Mr W says this issue is causing him stress and he doesn't feel that Tesco Bank is doing enough to protect him. He doesn't know how he will afford to repay the payments he made.

Tesco Bank issued a final response to Mr W. It said that it considered whether it could raise a chargeback for the payments Mr W made but said that the rules stated that chargeback cannot be used for gambling, or transactions related to wins or losses. Therefore, it didn't pursue this and instead considered Mr W's claim under section 75 of the Consumer Credit Act 1974. However, it said that it hadn't been able to establish the required debtor-creditor-supplier relationship and so the dispute wasn't valid for a section 75 claim. It also said that as Mr W hadn't been able to provide an invoice, contract or additional evidence that confirmed he was unable to use the funds deposited for the agreed purpose or that he had a balance that wasn't paid out, it was unable to evidence a breach of contract. Therefore, the claim was rejected.

Tesco Bank agreed that gambling transactions shouldn't take place on credit cards but explained that merchants can use codes which imply the payments are for goods or services that aren't to do with gambling. In this case it said the payment was made to entity 2 and described as miscellaneous general merchandise. Given this Tesco Bank said there wasn't anything it could do to stop the payments.

Mr W referred his complaint to this service.

Our investigator explained that chargeback rules are set by the scheme operator. As the rules say that chargeback can't be used for gambling transactions, he didn't think that Tesco Bank had done anything wrong by not raising a chargeback as it didn't have a reasonable chance of success. Regarding section 75, our investigator noted the comment made by Tesco Bank about the debtor-creditor-supplier relationship but said that in this case the arrangement with entity 2 was such that he thought the debtor-creditor-supplier relationship

remained in place. He then considered whether there had been a breach of contract but said this couldn't be established without further evidence. Therefore, he thought Tesco Bank was correct to say that even if the debtor-creditor-supplier relationship was intact, there wasn't enough to prove a breach had occurred.

Our investigator noted Mr W's comment that the transaction shouldn't have been allowed. However, he said that Tesco Bank had provided evidence that showed the payments were to a merchant with a Merchant Category Code (MCC) coded as a purchase. Therefore, he accepted that this wouldn't be picked up by Tesco Bank as a gambling transaction. He also noted that the second payment was blocked by Tesco Bank for further security checks and Mr W confirmed this as genuine.

Based on the evidence provided, our investigator didn't find that Tesco Bank had done anything wrong and so he didn't uphold this complaint.

Mr W didn't agree with our investigator's view. He said that he had provided evidence of multiple attempts to contact both the gambling site and entity 2 about the withdrawal of funds and closure of his account and it was their lack of communication that meant he couldn't provide the evidence needed to support his claim. He accepted that he authorised the second payment but said that there was a flaw in Tesco Bank's systems as it wasn't blocking these gambling payments.

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 am sorry to hear of the experience Mr W has had and I can see that he has spent time trying to resolve the issues and gain evidence about his account. I can understand the lack of response from the gambling site and entity 2 is frustrating but as our investigator has explained, our role doesn't cover the activities of the gambling site or entity 2. This complaint has been brought against Tesco Bank and so I have considered the actions taken by Tesco Bank in its role as the credit card provider and also whether it took the actions we would expect in response to Mr W's request for a refund.

Mr W has explained that he made the payment to the gambling site (which went through entity 2) and that he used the funds to play games and won back his initial deposits and made a small profit. So, in this case Mr W authorised the payments and the funds did reach the intended account and Mr W was able to make use of this money.

Mr W has said that Tesco Bank should have stopped the payments as they were to a gambling site. I appreciate the point Mr W has raised and Tesco Bank acknowledged that gambling transactions should not take place on Mr W's credit card. The issue here is that the payment Mr W made went through entity 2 and the MCC recorded was 'Miscellaneous General Merchant'. The payments didn't attract a cash fee as would have happened for a gambling transaction further supporting that the payments were showing as purchases not gambling payments. While I understand the point Mr W has made about the need for Tesco Bank's system to identify these transactions, and I think it is reasonable feedback, in this case, as the payments Mr W was making appeared to be general purchases, I do not find that Tesco Bank should have been reasonably aware that the payments were for gambling and so I cannot say these should have been stopped.

I also note that while the first payment was processed without issue, Mr W's second payment triggered a security check, and a text was sent to Mr W to confirm the payment was genuine. Mr W responded to the text confirming the payment as genuine. So, in this case,

taking into account the information available to Tesco Bank about the payments and Mr W's confirmation, I do not find I can say that Tesco Bank was wrong to proceed with the payment instructions.

Mr W was able to use the funds he deposited but then encountered issues when he tried to withdraw these. He raised a dispute with Tesco Bank. As has been explained, when a dispute is raised there are two possible methods to try to obtain a refund. The first is through a chargeback and the second through section 75.

Chargeback is the process by which payment disputes are resolved between card issuers and merchants under the relevant card scheme. I would usually expect a card provider to attempt a chargeback provided there is a reasonable prospect of success. So, I've carefully considered if Tesco Bank treated Mr W fairly by declining to attempt a chargeback.

In this case, the dispute related to money that had been used for gambling and the chargeback rules are restricted in regard to these transactions. The rules state that a chargeback can't be used for any use of the gambling funds, withdrawal or any winnings or gains. Given the chargeback rules, I do not find that Tesco Bank acted unreasonably or treated Mr W unfairly by not raising a chargeback as it would be unlikely to succeed.

Because a decision not to make a chargeback was made, I find it reasonable that Tesco Bank then considered whether Mr W had a claim under section 75. There has been discussion regarding the debtor-creditor-supplier relationship, but even accepting that this was in place, I do not find I can say that Tesco Bank was wrong to decline Mr W's claim. I say this because Mr W made payments which were deposits with a gambling site. Based on his comments these payments were made and received by the gambling site and Mr W was able to play games with the money. So, I do not find I can say there was any misrepresentation or breach of contract at this stage.

Mr W's complaint was raised as he said he wasn't able to withdraw his money. I have looked at the gambling site's terms and these have certain conditions that need to be met for the return of funds. I understand Mr W's frustration at not getting responses to his emails from the gambling site and entity 2, and I have looked at the email exchanges, but given the evidence I have seen, I do not find that I have enough evidence to say that there has been a breach of contract.

In conclusion, based on the evidence available to Tesco Bank, I do not find that it did anything wrong by not pursuing a chargeback and declining Mr W's section 75 claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 November 2024.

Jane Archer
Ombudsman