

The complaint

Miss M complains that Tesco Personal Finance Plc won't refund what she says are unauthorised payments made on her credit card.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

On 19 September 2023 Miss M contacted Tesco and reported that she didn't recognise a large number of transactions that had taken place on her card that month. These transactions totalled just over £4,100. Tesco's notes record that Miss M said that she was experiencing a mental health crisis around this time and had spent all day in hospital on 10 September, and then spent the next few days at home recovering before being admitted to a recovery centre on 16 September 2023. It's also noted that Miss M said she maintained possession of her card throughout this period and that she'd never given it to anyone else nor had she shared her PIN.

Tesco investigated and found that all the payments in dispute had been authenticated via either chip and PIN or that they were 'contactless'. Miss M believes her card must have been 'cloned'. Ultimately Tesco said that there was insufficient evidence to support that any of the transactions were carried out by an unauthorised third party. But in recognition of Miss M's difficult circumstances, they agreed to refund the payments made on certain days as a gesture of goodwill. This amounted to £1,472.

This still left Miss M at a loss and she referred the matter to our service. One of our Investigators didn't recommend that Tesco needed to do more. She thought they had acted fairly in the circumstances. Miss M still disagreed, she is adamant she had no involvement in any of these transactions and she asked for an Ombudsman to make 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.

Having done so, I've reached the same overall outcome as our Investigator and for largely the same reasons. I know this will be disappointing for Miss M, so I'll explain why.

I'd like to start by acknowledging the difficult time Miss M has experienced in recent times. But despite my natural sympathy for her situation, my role requires that I remain impartial – although I have taken account of Miss M's personal circumstances when making my decision.

Generally, Tesco should only hold Miss M liable for payments that she's authorised. And this means that she's consented to the payments taking place, either herself or by permitting someone else to make them on her behalf.

There is some discrepancy as to exactly which payments are in dispute. For example, on the call to Tesco at the time, Miss M says that her last genuine use of her card was to pay for a car park on 7 September 2023 (this transaction took place at 7.00pm that day). But later during the same call, Miss M confirms further payments that took place around an hour and twenty minutes later as genuine. But those same two payments are also potentially highlighted as 'unauthorised' on the statements Miss M provided to our service (this was because there seems to be some overlap between those highlighted as 'mine' and 'not mine'). As there is uncertainty, I think it's appropriate that I make a finding on those payments. And based on Miss M telling Tesco at the time (when events would have been fresher in her memory) that she did make those payments, I think that more than likely is the case. And that those payments (which were to a food and wine shop) therefore were authorised.

Moving on to the remaining payments, Tesco have evidenced that the vast majority were authenticated through either chip and PIN or the use of the contactless facility associated with the card. I accept Tesco's evidence on this point, and I think it's most likely that the physical card was present and (where applicable) that the associated PIN was used for the payments in dispute. Miss M says that she had possession of her card throughout this time period (and hadn't temporarily lost it). She also says she hadn't shared her PIN with anyone else.

There is other evidence which includes that Tesco have said (and Miss M accepts) that she logged into her online account on 10 and 11 September 2023. At this point it's likely at least some of the disputed transactions would have been visible, but Miss M didn't raise this at the time. She states she didn't notice the transactions when she logged in.

Tesco have also evidenced that spending alerts were sent to Miss M for many of the disputed payments at the times they took place. Miss M says that due to her personal situation, she'd turned her phone off and didn't receive these messages.

Miss M's testimony is that her last genuine use of her card was on 7 September 2023. And beyond that date she hadn't made any of the payments, she believes someone may have cloned her card. If this is even possible, many of the payments also required the use of her PIN. And there isn't any obvious and plausible point of compromise that would allow another person to have ascertained this.

The pattern of spending also doesn't match what is typically seen in unauthorised card use. Usually if someone has dishonestly obtained access to a card, it is used quickly in high value transactions to maximise the gain. Here, the payments were spread across a number of days (with no payments at all on 8 or 9 September), not in particularly quick succession and look to mostly be for cash withdrawals and day-to-day spending, including with some merchants that Miss M had used previously for non-disputed payments.

Whilst each of the above factors individually might not be conclusive as to what has happened here, I have to make my decision on the balance of probabilities. And really I have to decide whether Tesco holding Miss M responsible for the payments she disputes is fair and reasonable.

Taking everything together, I don't think the most likely explanation is that a third party cloned or otherwise accessed Miss M's card (when she believed she still had it), somehow obtained the PIN and made the payments without Miss M's knowledge or involvement. I

think it's most likely Miss M would have seen some of the payments she now disputes when she logged in on 10 and 11 September and that she would have received at least some of the notifications of the spending as it occurred. And whilst I acknowledge Miss M was experiencing an acutely difficult period at the time, I think it's possible she's forgotten making (or giving another permission to make) the payments she disputes. It follows that I don't think Tesco holding her liable for the disputed payments is unfair or unreasonable. The fact that Tesco provided a refund of nearly £1,500 as a gesture of goodwill is something they are entitled to do. This doesn't obligate them to provide a full refund and was clearly to Miss M's benefit. As such, there isn't a reasonable basis upon which I can require Tesco to do more to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 August 2024.

Richard Annandale
Ombudsman