

The complaint

Mr H is unhappy that Tesco Personal Finance PLC, trading as Tesco Bank, suspended his account.

What happened

Mr H holds a credit account with Tesco. In September 2023, Mr H spoke with Tesco and said he was in financial difficulty and was struggling to meet the contractual payment obligations on his account. Tesco arranged a six-month payment arrangement and told Mr H that he would retain the use of his account once the payment arrangement came to an end.

However, in December 2023, while the agreed six-month plan was still ongoing, Mr H received a letter from Tesco which explained that his account was now suspended. The reason Tesco had suspended Mr H's account was because the account was in a state of 'persistent debt' – which is generally defined as being when a customer's payments clear more in account interest and charges accrued each month than they clear of the actual capital balance outstanding on the account.

Mr H wasn't happy that Tesco had suspended his account on the basis of it being in persistent debt, especially as he hadn't been sent any recent correspondence from Tesco that mentioned that his account was in persistent debt or was in danger of being suspended. So, he raised a complaint.

Tesco responded to Mr H and acknowledged that they hadn't sent him several recent persistent debt letters, including one that was a regulatory requirement. Tesco apologised to Mr H for this and made a payment of £100 to him as compensation for any trouble or upset their oversight may have caused. However, Tesco didn't feel they'd acted unfairly by suspending Mr H's account because it had been in persistent debt long enough for that suspension to be reasonable. Mr H wasn't satisfied with Tesco's response, so he referred his complaint to this service.

One of our investigators looked at this complaint. They accepted that Mr H hadn't been sent the persistent debt letters from Tesco he should have been sent, which would have told him what payment he needed to make so that his account was no longer considered as being in persistent debt and so that the suspension of the account could be avoided.

But our investigator felt that the financial difficulty that Mr H had explained to Tesco in September 2023 meant it was unlikely that he'd have been able to make the necessary payment to avoid his account being suspended a few months later, even if he'd been made aware of what that required payment amount was. As such, our investigator felt that Mr H's account would most likely have been suspended even if Mr H had received the persistent debt letters from Tesco that he should have received, and so didn't uphold the complaint.

Mr H didn't accept the view of this complaint put forward by our investigator and felt that he'd been able to demonstrate that his financial position had improved in the few months that had passed since he'd arranged the six-month payment plan with Tesco such that he would have been able to make the payment needed to take his account out of persistent debt. So, Mr H's

complaint was escalated to an ombudsman for a final 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 issued a provisional decision on this complaint on 22 July 2024 as follows:

I note that in his correspondence with this service that Mr H has made several references to Tesco not meeting their regulatory requirements. However, this service isn't a regulatory body or a Court of Law and doesn't operate as such. Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the factors and circumstances of a complaint into consideration.

I also note that Mr H has provided several detailed submissions to this service regarding his complaint. I'd like to thank Mr H for these submissions, and I hope he doesn't consider it a discourtesy that I won't be responding in similar detail here. Instead, I've focussed on what I consider to be the key aspects of this complaint, in line with this service's role as an informal dispute resolution service.

This means that if Mr H notes that I haven't addressed a specific point he's raised, it shouldn't be taken from this that I haven't considered that point – I can confirm that I've read and considered all the submissions provided by both Mr H and Tesco. Rather, it should be taken that I have considered that point but that I don't feel it necessary to address it directly in this letter to arrive at what I consider to be a fair resolution to this complaint.

The Financial Conduct Authority ("FCA") considers that a credit account is considered as being in persistent debt if the level of interest which accrues on that account is such that the monthly payments made towards that account by the customer result in the customer paying, over a sustained period, more in interest and charges than they do towards paying off the capital balance on the account.

This can often be the cases where a customer is paying close to the minimum payment required on the account, which can result in the customer repaying the interest that has accrued on the account that month but making little progress towards reducing the capital balance - meaning that the monthly interest payments just keep becoming due. Because of concerns about the long-term viability of such situations for credit account

holders, the FCA issued new rules surrounding how a credit provider must manage accounts that are considered as being in persistent debt. These rules came into force in March 2018 and include that a credit provider must send letters to persistent debt customers advising that they're in persistent debt and explaining the level of additional monthly payment that the customer needs to make so that their account is no longer considered as being in a state of persistent debt.

These letters should also advise customers of the potential consequences of the account remaining in a state of persistent debt, which can include the suspension of the account and the initiation of a payment plan designed to clear the full outstanding of the balance over a period of no more than four years.

Importantly, in this instance, Tesco didn't send Mr H several letters that they would usually send to customers whose account is in persistent debt. This included one regulatory

required letter – the 36-month persistent debt letter (“PD36”), which meant that Mr H wasn’t advised that his account was in danger of being suspended or told what payment or payments he would need to make to avoid that happening.

Additionally, in February 2020 the FCA updated its position on persistent debt and made specific reference to how a business should treat PD36 customers - such as Mr H was in this instance - and provided clarification on when a credit provider such as Tesco should suspend a customer account, and when not.

For instance, regarding account suspensions, the FCA state:

“The PD rules only require the suspension of cancellation of cards where a customer:

- a) does not respond to the repayment options proposed within the time specified by the firm;*
- b) confirms that one or more of the proposed options are affordable but that they will not make the increased payments.*

We remind firms that ... when they choose to suspend or cancel a customer's access to credit they must serve customers with a notice giving reasons for this, and those reasons must be objectively justified.

There is no regulatory requirement (outside of those mentioned above) that a card must be suspended where a customer is in persistent debt, so an objective justification could not rely on such a requirement.”

In short, the above confirms that an account should only be suspended if a customer has received the required PD36 letter, which includes an explanation of what payment or payments are required from the customer to avoid the suspension of the account, and that customer either doesn’t respond to that letter or confirms that they can’t afford any of the payment options presented within it.

But in this instance, Tesco didn’t send the PD36 letter to Mr H. This means that it isn’t the case that Mr H didn’t respond to that letter, because he never received it. And it also isn’t the case that Mr H confirmed to Tesco that he couldn’t afford any of the payment options contained with the PD36 letter – again, because he never received it.

It therefore doesn’t feel fair to me that Tesco have suspended Mr H’s account on the basis of it being in persistent debt, because neither of the clauses quoted above that would justify the suspension of Mr H’s account apply in this instance. To reiterate, this is because Tesco didn’t send the requisite letter to enable those clauses to potentially come into effect.

Accordingly, I’ll be provisionally upholding this complaint in Mr H’s favour and instructing Tesco to restore Mr H’s account to the position it should be in, had it never been suspended. When unsuspending Mr H’s account, Tesco shouldn’t apply any accrual of interest or charges for the period that Mr H’s account has been suspended. Additionally, Tesco should assess whether Mr H’s account remains in a position of persistent debt at this time, and if so, issue an appropriate letter to Mr H which should include information about the options available to Mr H to take his account out of persistent debt. Tesco should also be mindful of the information from the FCA I’ve quoted previously in this letter.

However, I won’t be making any further provisional instructions to Tesco beyond the above, such as instructing any payment of compensation to Mr H. This is because I’m not convinced that Mr H would have been able to make the necessary payments to take his account out of

persistent debt if he had received the PD36 letter as he should have.

I'm aware that Mr H feels differently in this regard, and I acknowledge the account balance information that Mr H has provided in support of his position to this service. But I recently reached out to Mr H and explained that I didn't feel that the account balance information he'd provided was sufficient proof that he would most likely have been able to take his account out of persistent debt, and I asked him to provide more detailed information which would provide a wider understanding of his financial position. This would have allowed me to confirm that Mr H's financial position had improved he's claimed, and to understand how that sudden improvement occurred.

Mr H declined to provide the more detailed account information I required from him. It is, of course, Mr H's right to make this choice. But unless I'm satisfied that Mr H would most likely have been able to take his account out of persistent debt if he had received the PD36 letter, then I'm not convinced that any compensation – beyond the £100 that Tesco have already paid to Mr H – is fairly or reasonably merited here. And this is because, in this scenario, I feel that Tesco's actions may well have constituted a reasonable outcome, albeit one which they didn't arrive at via a fair process.

Mr H didn't respond to my provisional decision. Tesco did respond and explained that if they remove the suspension from Mr H's account, the account will still be in a position of persistent debt. And Tesco also explained that they feel that if they issue a 36 month letter to Mr H, that its most likely that Mr H won't be able to avail of any of the increased payment plans offered in that letter such that his account will most likely end up being suspended again.

But the fact remains that Tesco didn't send a 36-month letter to Mr H, meaning that he was never given the opportunity to avail of the increased payment plans which that letter would have informed him about. And Mr H has maintained that he can make a payment to take his account out of persistent debt status.

Ultimately, I feel that Mr H should be given the opportunity to make a payment or payments to his account so that his account is no longer considered to be in a state of persistent debt. And I remind Tesco that neither of the two clauses in the FCA information quoted in my provisional decision letter above, which would justify Tesco's suspension of Mr H's account, apply in this instance – because Tesco didn't send the 36 month letter to Mr H.

As such, I see no reason not to issue a final decision here whereby I uphold this complaint in Mr H's favour on the basis described in my provisional decision letter. And I therefore confirm that my final decision is that I do uphold this complaint on that basis accordingly.

Putting things right

Tesco must restore Mr H's account to the position it should be in, had it never been suspended.

When unsuspending Mr H's account, Tesco shouldn't apply any accrual of interest or charges for the period that Mr H's account has been suspended.

Additionally, Tesco should assess whether Mr H's account remains in a position of persistent debt at this time, and if so, issue an appropriate letter to Mr H which should include information about the options available to Mr H to take his account out of persistent debt.

Tesco should also be mindful of the information from the FCA I've quoted previously in this letter.

My final decision

My final decision is that I uphold this complaint against Tesco Personal Finance PLC, trading as Tesco Bank, on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 September 2024.

Paul Cooper
Ombudsman