

## **The complaint**

Mr D complains that Barclays Bank UK plc trading as Tesco Bank ('Tesco') made changes to his account when they'd agreed not to.

To put things right Mr D wants Tesco to reissue his credit card or write off his credit card balance.

## **What happened**

Mr D's friend was authorised to engage with Tesco about his account on his behalf. For ease I'll refer to things done by Mr D's friend as things done by Mr D.

Mr D contacted Tesco on 11 January 2024 and 7 February 2024 and agreed to pay set instalments for six months. His understanding was that his card would be frozen during the payment plan but available for him to use after this period, as long as he made the payments.

Mr D made the required payments and was expecting to be able to use his card again. But Mr D's card had expired, and Tesco declined to issue a new one.

When Mr D complained Tesco replied that they'd undertaken a routine review of Mr D's account and decided not to reissue his card when it expired, which they were entitled to do under the terms and conditions of the account.

Mr D referred his complaint to the Financial Ombudsman Service. Before our investigator looked into the matter Tesco offered Mr D compensation of £50, as they'd discovered they hadn't notified Mr D about not reissuing his card. Mr D didn't accept this offer.

Our investigator then gave their view that Tesco had acted in line with their written terms and conditions and that Tesco's offer of £50 was fair for not notifying Mr D of the changes to his account.

Mr D maintained that a verbal contract had been reached between the parties and he'd been misled by Tesco into making the payments in the belief he'd be able to use his card once his arrangement ended.

The matter was passed to me to consider. I asked for further information from Tesco, to include the call recordings between Tesco and Mr D.

## **My provisional decision**

I recently issued a provisional decision, as follows:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account any relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.*

*Having done so I have come to the same conclusion as our investigator, although for slightly different reasons. I intend to say that Tesco's recent offer to pay £50 is a fair and reasonable outcome to this complaint, and I think this should be paid to Mr D. I'll explain why.*

*The crux of Mr D's complaint is that Tesco made a legally binding agreement with him regarding the future use of his credit card if he kept to a short-term payment arrangement. He says all the components of a verbal contract were in place.*

*I think I need to consider what was expected from each of the parties in order to decide whether Mr D's been treated fairly here. However I think it's important to say it's not my role to determine whether Tesco varied or added to their contractual terms, or make legal findings, as that's a job for the courts.*

*I'd expect the parties to adhere to the account's written terms and conditions. I note the following:*

- Section 9 allows Tesco to suspend the use of Mr D's account in a wide range of circumstances.*
- Section 12 sets out Tesco can end the agreement at any time, although they'd give notice of this.*
- Section 11 sets out any changes to the agreement will be confirmed in writing.*

*I've also seen some updated written terms and conditions from Tesco which I don't need to set out here.*

*Importantly, I've not seen written confirmation that additional terms were agreed with Mr D regarding his future use of his card. I'm minded to say that any material changes to the contract between the parties would have been confirmed in writing in line with Section 11.*

*I'd also expect Tesco to communicate with Mr D in a way which is "clear, fair and not misleading" in accordance with Principle 7 of the Financial Conduct Authority's Handbook of rules and guidance.*

*I've listened to several relevant calls between the parties between January 2024 and July 2024, regarding the arrangement and future use of Mr D's account.*

*When Mr D sought a payment plan Tesco said Mr D could have a long-term payment plan which meant defaulting and closing his account, but no fees and interest would be added. Or Mr D could agree a short-term plan which required higher payments, but he couldn't use his card during the arrangement.*

*Mr D agreed to a short-term plan because he didn't want his account to be closed. Mr D was told his short-term arrangement would temporarily block his card and there "shouldn't be an issue" using the card when the arrangement ended, "unless the agreement was terminated."*

*I'm not minded to agree Mr D was misled into making an arrangement here. I say this for a few reasons.*

*Firstly, because Tesco were clear there might be issues that prevented use of the card at some point in the future, such as a decision made by Tesco under the terms and conditions of the account.*

*Secondly, Tesco's information about future account use wasn't untrue at the time – because Tesco's decision not to reissue the card hadn't been made yet.*

*Thirdly, given the arrears on Mr D's account and his circumstances at the time, I'm inclined to say the likely alternative to a short-term arrangement would've been the defaulting of Mr D's account in the near future and the consequential loss of the line of credit, which he wanted to avoid if possible. I'm inclined to say he was motivated to enter the arrangement on this basis.*

*Tesco accepted they should have notified Mr D that his card wasn't being reissued, and they offered £50 to recognise this caused Mr D some distress and inconvenience. I've thought about whether this is fair.*

*I'm minded to say that Mr D would always have been upset to receive news that his card wasn't being reissued. However, I'm inclined to say that finding out the card wouldn't be reissued at the time he was expecting to be able to use it caused Mr D unnecessary upset. I'm minded to say a letter giving advance notice would've dampened his disappointment.*

*I've considered the guidelines the Financial Ombudsman Service follows for awards for distress and inconvenience. Having done so I'm minded to agree with our investigator that in these circumstances Tesco's offer of £50 is fair and in line with our approach. So, I intend to say Tesco should now pay £50 to Mr D.*

*I've considered Mr D's submission that to put things right Tesco should go further and reissue him a card or write off his balance. I'm not inclined to agree with Mr D here. I'm minded to say Tesco were at liberty to take the action they did under the terms and conditions of Mr D's account – I can't force them to bank with Mr D just as I can't dictate who Mr D banks with. And ultimately Mr D owes Tesco a debt. I'm not minded to say the arrangement and subsequent loss of the use of the account changes that."*

#### Responses to my provisional decision

Tesco didn't respond to my provisional findings.

Mr D said he'd like me to reconsider, saying that a verbal contract is as good as a written one. Mr D said Tesco made a verbal contract and broke it because he was told he could use his card if he made the agreed payments, but Tesco then didn't give him a card back.

#### **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've given further thought to the points raised by Mr D, but I haven't been persuaded to depart from my provisional decision.

I think it's important to reiterate that the Financial Ombudsman Service isn't a court that resolves contractual disputes. I am looking at whether Mr D has been treated fairly and reasonably by Tesco in the circumstances of his complaint.

In my provisional decision I referred to the written contract which sets out the parties' agreement that any variations to the contract had to be in writing.

This is the main reason why I think Mr D would likely struggle to establish that he made a verbal contract with Tesco.

I think a court determining this point would likely say a verbal variation was invalid if it wasn't set out in writing as required by the written contract, following the Supreme Court's decision

in Rock Advertising Limited v MWB Business Exchange Centres Limited [2018] UKSC 24 (<https://www.supremecourt.uk/cases/uksc-2016-0152>).

I recognise that Mr D believed he'd made a verbal contract with Tesco, and he acted on this. But I don't think this gives rise to unfairness here. I say this because I don't think Mr D lost out by arranging a short-term repayment plan with Tesco to avoid an imminent default. I'm also mindful that Mr D was always obliged to repay his debt to Tesco.

For the reasons set out here and in my provisional decision above, I think Tesco's offer of £50 is a fair and reasonable outcome to Mr D's complaint in these circumstances and should be paid to him.

### **Putting things right**

Barclays Bank UK plc trading as Tesco Bank should pay £50 to Mr D for his distress and inconvenience.

### **My final decision**

For the reasons I've outlined, I require Barclays Bank UK plc trading as Tesco Bank to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 June 2025.

Clare Burgess-Cade  
**Ombudsman**