DRN-5637613

The complaint

Mr H complains about how Tesco Personal Finance Limited trading as Tesco Bank ('Tesco') has administered a credit card he has with it. He also thinks that the card was miss-sold to him.

Mr H's complaint has been brought by a representative and I've referred to Mr H and the representatives' comments as being from Mr H for ease of reading. Except where I've needed to differentiate between the two parties to consider how Tesco communicated with Mr H and his representative.

What happened

In January 2009, Mr H opened a credit card with Tesco. The account had a credit limit of £5,200. This was increased to £6,450 in December 2011 and then further increased to £8,450 in November 2013. Mr H started to have some financial difficulties in 2017, and he was unable to reliably repay the balance from 2018 onwards. The card was defaulted in 2018.

Mr H has corresponded with Tesco since 2018, via his representative. A payment plan was agreed where he would pay £1 per month, and there was a period after this where Mr H paid this amount to the card and there was no contact between him and Tesco.

Tesco was informed that Mr H wanted to use a representative in 2018. Tesco has said that Mr H's authority to represent wasn't permanent as it wasn't under a Power of Attorney and therefore needed to be renewed. As it wasn't renewed it expired in 2019 during the period Mr H and Tesco were not in regular contact. Is it in place now. This has led to Tesco corresponding with Mr H at times, rather than his representative.

In July 2023, Tesco assigned the account to a third party. In August 2023, a joint Notice of Assignment was issued by the third party which said that it now owned the outstanding balance of £9,049.19. The Notice of Assignment explained payments should now be made to the third party.

Mr H has complained to Tesco about the card. His complaint is wide ranging and concerns the initial setup of the card, the administration of it over time, including that Tesco has contacted Mr H directly rather than his representative. Mr H has complained about how it was passed to the third party.

Mr H has also raised a complaint about the actions of the third party that the card was transferred to. These complaints are being considered separately. I'm only considering part of the issues that have been raised here which directly concern Tesco, namely how the complaints about the initial set up of the card, certain aspects about how Tesco has administered it over time and the transfer of it to the third party debt collection agency.

Tesco has considered the complaints made in several final response letters. Some of the issues have not been brought in time to the Financial Ombudsman and I can't consider them. An Ombudsman has issued a decision that said Mr H didn't bring the issues he complained about in the 30 August 2023 final response letter to the Financial Ombudsman Service in time. This letter provided a response to Mr H's complaints about:

- Contact with the financial assist team was not adequate.
- Mr H was charged with late payment fees and overlimit fees.
- Tesco declined Mr H's offer of a settlement to the amount he owed.
- Tesco didn't acknowledge Mr H's representative had authority to discuss in respect of Mr H, and its offer of compensation due to this was inadequate.
- Tesco transferred Mr H's account to the third party without prior notice.

But we can consider the issues raised in the September 2023 and March 2024 complaint correspondence and some of the ongoing issues raised. These are:

- The card was not executed properly under the Consumer Credit Act and so it is not an enforceable contract.
- Communication has not been acknowledged within a timely manner and not within three days.
- Information about the setting up of the card, and the terms and conditions, were not provided in a timely manner.
- Information about how the card was managed, and the credit limit increases, was also not provided in a timely manner.
- Tesco's complaints procedure has not been followed correctly, and the procedure is flawed in some ways, and this has made it problematic for Mr H to bring his complaint to the Financial Ombudsman Service.
- The transaction report, and card, have different reference numbers to the one Tesco used when Mr H's business went into liquidation.
- Tesco gave information to the third party without Mr H's authority.

Our Investigator partially upheld Mr H's complaint. Overall, and over a number of correspondences, he thought that Tesco had acted reasonably, it had communicated with Mr H properly most of the time. He thought Mr H was given enough information when the card was started and he didn't think it was set up incorrectly. Tesco did have authority to communicate with Mr H at some times when the consent to deal with his representative had expired. And it acted reasonably when it transferred the account to the third party collection business.

Our Investigator thought that Tesco had made some customer service errors. He didn't think that Tesco provided clear communication around the fact that Mr H's representative authority had expired, and it didn't acknowledge some correspondence properly. Some complaint points were not addressed in the complaint response letter. Because of this, our Investigator thought that Mr H should receive £150 for the distress and inconvenience caused by this poor service.

Mr H didn't agree with the Investigator. He said that:

- He thought the agreement wasn't properly executed in accordance with the Consumer Credit Act 1974. And he made a claim of £37,491.26 for this.
- He disagreed with the amount of £150 that the poor administration had caused him.
- The documents signed didn't contain enough information for Mr H to have made an informed decision about the credit card.
- Tesco's complaint department did not have the correct power to investigate the complaint, and it did not do this properly.

Because Mr H didn't agree, this matter has been passed to me to make 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've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it to reach what I think is the right outcome.

Was the card set up correctly

I've seen the application information that was been provided from when the card was started. The application form also formed part of the agreement. I don't think this is unreasonable and isn't outside of the relevant rules and regulations applicable at the time. The information does say that it is an application form and an agreement. The document was signed at the time and appears to have been correctly executed.

The credit limit was not set out in the starting documentation. But the application form does say that '*1(A) Credit Limit We will give you notice of your credit limit and advance limit and we may change them at any time…' and the document says 'you will be advised of your credit limit when you receive your card.'* I agree that this is reasonable under the rules of the time and Mr H was informed of his credit limit in due course. There is no evidence that he disagreed with this at the time.

The application information included details of how to pay the card which Mr H has done. I don't think it needed to contain Tesco's bank details as such.

And I agree the documents from the time of sale were signed and indicate that Mr H understood the credit card and agreed with it. I think he had enough information to have been able to make an informed decision about the card. The documents included information about the card, the interest rate and the charges. And these would have also been provided in the monthly statements.

I appreciate some time has passed since the card was started and some of the information that Mr H may have seen at the time may not now be available. But this was an agreement for a well-known type of credit that Mr H clearly wanted and used for a significant period without any problems. He clearly did, and always intended to, borrow money in this way.

So, I think and most importantly, it isn't reasonable to conclude that, even if there were identified problems from the time of sale (and to be clear I'm not saying that there were), that Mr H should receive any compensation. This is because he clearly understood and wanted the credit and received the use of the credit over time.

I don't think there is a basis to say that Mr H wasn't fully aware of the agreement he was entering into and what this meant for him. So, I don't think there is also any basis to say the card was mis-sold in respect of the issues that have been raised as part of this complaint.

Did Tesco have the right to transfer the card to a third party

I won't reproduce all the terms and conditions of the card but Section 9 Transferring debts says:

> *'We may allow another person to take over any of our rights or duties under this agreement and you authorise us to give that person any financial or other information about you'*

So, I'm satisfied that Tesco had the right to communicate with and transfer the account to a third party as Mr H had agreed to this when he started the card. I don't think Tesco was acting incorrectly when it gave out information to third party and then when it transferred the card to this business.

The Complaints made about how Tesco corresponded with Mr H as part of the complaint

There has been a significant amount of correspondence in this complaint over a long period of time and Mr H has raised customer service issues about a large part of this. I'm not going to comment on, and outline, all this here as all parties to the complaint are aware of it. And I don't need to do this in order to reach a fair decision.

Mr H has complained that correspondence was not acknowledged within three days as the regulator specifies. As our Investigator explained there isn't a rule or guidance in the regulatory complaint handling procedures that says a complaint should be acknowledged within three days. The complaint made on 16 August 2023 was acknowledged on 22 August 2023 which is a reasonable time to reply. And I think that Tesco has largely responded to Mr H in a timely manner and provided the information that has been requested.

But there are times when this didn't happen, as our Investigator outlined. And some communications did not contain information Mr H had requested. This included the information Mr H asked for, such as the date of initial issue of the credit card, how the limits were determined and when they were increased and all the monthly statements. Tesco should have provided the information that Mr H had requested at this time. This information was provided to Mr H later within his Data Subject Access Request.

Some of the letters in 2023 were addressed solely to Mr H. There were times when Mr H's representative authority to act had lapsed, and Tesco should have been clearer about this and what the consumers could do to put this right.

So, I agree that Tesco could have done better at times here, and it hasn't always provided information when asked. I think the £150 compensation is reasonable for this. As Tesco has usually acted correctly over this long running complaint I don't think further compensation is reasonable. I don't think further information is needed from Mr H or his representative such as a victim impact statement to determine this.

When considering this I've born in mind that the complaints about this issue have been made when the representative has managed the complaint, rather than Mr H. I'm sure this customer service will have had an impact on Mr H, but he wasn't always the one corresponding with Tesco and so, much of this will have been mitigated. And I don't think it's right to provide compensation for any inconvenience his representative may have suffered.

Complaints about how the complaint has been handled

Mr H has said that Tesco hasn't handed the complaint properly and that various departments have different objectives. He says this made it problematic to bring the complaint to the Financial Ombudsman Service.

It's not within my remit to say how a business structures its internal complaint handling process, and I don't have a jurisdiction to consider a complaint handling itself. And Mr H has been able to have his complaint considered by Tesco and the Financial Ombudsman Service. So even if Mr H didn't agree with how the complaint was handled, I don't believe I can say that Tesco has acted incorrectly and I'm not upholding this aspect of his complaint.

Complaint about the transaction statements

Mr H has complained the transaction statements are incorrect as they contain a different reference number to the ones used at other times, such as when Mr H was going through a bankruptcy process. Tesco has explained that there is a card numbers and Mr H has an internal reference number. And, as far as I can see, Mr H has had one account number, and two different card numbers.

But I haven't seen that any of this is incorrect. And in event I don't think this has caused Mr H any detriment or financial loss. I'm not upholding this part of Mr H's complaint.

Putting things right

Tesco should pay Mr H £150.

My final decision

For the reasons I've explained, I partly uphold Mr H's complaint.

Tesco Personal Finance Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 September 2025.

Andy Burlinson
Ombudsman