

complaint

Miss D complains Tesco Personal Finance PLC "Tesco" is holding her liable for transactions she says she didn't carry out or authorise.

background

Miss D had been in contact with a person through a dating site. This person talked to her about getting a credit card. She then received a card and shared some the cards detail with this third party. She then became aware the card had been used and this led to her coming to the conclusion that she'd been the victim of a scam.

Tesco investigated and said Miss D had given the third party important details about the card. It accepts some details on this account do not align completely with Miss D's circumstances. Tesco said that Miss D was nevertheless liable for these transactions because she'd been negligent with her security details. Miss D complained to us.

One of our investigators looked into this complaint and said he thought it was fair for Tesco to bear the cost of the transactions. This is due to section 83 and 84 of the Consumer Credit Act. Tesco didn't agree so the complaint came to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Tesco said to Miss D that she's liable for these transactions because she was negligent with her card details. I don't necessarily agree with this – it looks like Miss D was the victim of a clever scam. More importantly, however, Tesco cannot hold Miss D liable for transactions on her credit card unless she authorised them or someone else acting on her behalf did so. This is as a result of section 83 of the Consumer Credit Act. Negligence isn't enough.

The evidence I've seen – including evidence from Tesco – doesn't suggest it's more likely than not that Miss D authorised the transactions or someone else acting on her behalf did so. Miss D makes very clear that she didn't authorise these transactions or authorise this third party to do so. I've considered her evidence closely and I am persuaded by it. So I agree with our investigator that Tesco shouldn't have held Miss D liable.

I note that when faced with the view of the investigator Tesco didn't deal with the legislation in its response. It just said she'd been negligent. I'd expect Tesco to know that it couldn't hold Miss D liable for transactions on her credit card unless she'd authorised them or someone else acting on her behalf had done so. So I would have expected Tesco to have realised that it shouldn't have held Miss D liable once it had completed its investigation. I accept that Tesco did nothing wrong when it initially allowed the transactions to go through. However I am very disappointed that Tesco has chosen to behave in this manner. This service and indeed I have written decisions based on this legislation to Tesco. Our position is clear as is the legislation.

I understand Tesco has not been able to recoup any of the transactions in question. Tesco must write off the entire debt caused by this unauthorised transactions on this credit card save for the first £50. It should also remove any charges or interest charged as a result of this transaction. It should return any payments Miss D has made towards this debt and apply

8% interest to it as is standard in our approach to redress. Tesco must ensure that there is no adverse information logged on Miss D's credit file with regard to these events on this credit card. Lastly it must write to Miss D once all this is done confirming it has done everything I have directed it to do.

my final decision

My final decision is that I uphold this complaint and require Tesco Personal Finance PLC to complete the directions I have described earlier in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 29 January 2018.

Rod Glyn-Thomas
ombudsman