

## **complaint**

Mr O complains that Tesco Personal Finance PLC allowed him to use his credit card for gambling transactions even where the transactions took him over the cash advance limit on the card. He thinks Tesco should refund the transactions.

## **background**

Mr O opened a credit card account with Tesco in October 2006. The credit agreement provided that there was an “advance limit” of 30% of the credit limit. And the terms and conditions of the account provided that “cash advances” included cash machine (or ‘ATM’) withdrawals, buying foreign currency and gambling transactions.

From early days Mr O used the card frequently for gambling transactions. He complains that Tesco allowed the cash portion of his balance to exceed 30% of his credit limit by a long way numerous times. He thinks it should have refused to allow the transactions. If it had done so, he’d have avoided a lot of gambling losses. He’s asked for a refund of all the transactions that took him over the 30%.

Most of the transactions Mr O’s complaining about took place in the first few years the account was open. Tesco objected to us looking at the complaint as far as it related to transactions which took place more than six years before Mr O brought his complaint (“the older transactions”). Our adjudicator agreed that we didn’t have the power to consider that part of the complaint.

But Mr O used the card for a few gambling transactions in 2011. And Tesco allowed the transactions even though cash advances accounted for more than 30% of his credit limit.

Our adjudicator didn’t recommend that the part of the complaint concerning the 2011 transactions should be upheld. He concluded, in summary, that the 30% limit only applied to withdrawals from cash machines. So it didn’t include gambling transactions.

Mr O accepts that his credit agreement referred to the 30% cash limit. But he says it was clear that this could change. And since Tesco allowed his cash balance to be a high proportion of his credit limit almost from the start, it wasn’t apparent to him that there was, in fact, any limit. So he thinks we ought to consider his complaint about the older transactions. And he disagrees with the adjudicator’s view that gambling transactions weren’t included in the 30% limit.

## *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr O and to Tesco on 15 September 2015. I summarise my findings:

- We aren’t able to consider every complaint that is referred to us. We’re required by law to follow our rules. And the time limits for bringing claims to this service are set by the Financial Conduct Authority’s dispute resolution rules (DISP).
- We can’t consider a claim which is referred to us more than six years after the event complained of or, if later, more than three years after the complainant ought reasonably to have been aware that he or she had cause for complaint.

- I understood Mr O's point that the fact that Tesco allowed transactions which took the cash balance over the 30% limit led him to believe that no limit actually applied. But his complaint was that there was a 30% limit and it should have been enforced.
- The 30% limit was set out reasonably clearly in the credit agreement which Mr O received in 2006. So I found that he ought reasonably to have known he had cause for complaint in late 2006. This was when Tesco started to allow gambling transactions that took the cash balance over that limit. It followed that I found that I didn't have the power to consider Mr O's complaint so far as it relates to the older transactions.
- I was satisfied that gambling transactions counted as cash advances for the purpose of the 30% limit. But I didn't consider that it would be fair or reasonable to require Tesco to refund the 2011 transactions to Mr O. He hadn't suggested that he was struggling financially when he made the gambling transactions. And he generally kept his account in order. So I didn't think that there was anything that should have prompted Tesco to refuse the transactions on the basis that they might amount to irresponsible lending.
- It's not unusual for gambling companies to allow transactions without authorising them with the customer's bank first. So by the time the transaction is presented to the bank for payment, the customer has already received the service. In those circumstances, it's too late for the bank to decline the transaction, whether or not there's a limit on cash advances.
- Mr O had authorised the transactions, so I thought it was reasonable of Tesco to assume that he wanted them to go ahead. Even if Tesco had declined them, I wasn't convinced, on balance, that he wouldn't have found another means of payment. So I thought it reasonably likely he'd still have made the losses.
- I didn't find that I could fairly require Tesco to refund the transactions or to compensate him.

#### *further submissions*

Tesco says it has nothing to add. But Mr O is dissatisfied with my provisional decision. He says, in summary:

- His complaint is that the transactions should not have been processed, as they took him over the cash limit. It shouldn't be categorised as a complaint about gambling losses.
- He reiterates that Tesco's actions in allowing the transactions led him to believe reasonably that there was no limit on cash transactions. So he thinks the question of whether he should have read the original agreement is irrelevant. He only became aware that a 30% limit should have applied last year. So he thinks we should consider his complaint about the older transactions.
- Other card issuers have prevented him from using his cards for gambling transactions once their limit has been reached. He thinks it unacceptable that Tesco doesn't provide any such protection, which he considers important if lending is to be responsible.

- He doesn't consider his financial struggles to be relevant to the decision.
- He doesn't think it reasonable that I concluded that I thought it likely he'd have found another means of payment without asking him what finance he had available at the time. And he doesn't think it's relevant in any event, as the transactions shouldn't have been authorised.

### **my findings**

I've considered all the available evidence and arguments, including the further points that Mr O has made to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I can see no reason to depart from my provisional decision.

I understand Mr O's point that the fact that the 30% limit wasn't enforced led him to believe that there was, in fact, no limit. But his complaint is that there was meant to be a limit, and it should have been enforced. The limit was set out in the credit agreement Tesco issued to him in 2006. If he had any concerns about Tesco's failure to enforce a cash advance limit, he could have raised them at the time. So I still consider that he ought reasonably to have known he had cause for complaint about the older transactions when he made them. It follows that I remain of the view that we can't consider the part of Mr O's complaint that relates to the older transactions.

I accept that Mr O's complaint is that the transactions shouldn't have been processed. But as I said in my provisional decision, Mr O had authorised the transactions, so I thought it was reasonable of Tesco to assume that he wanted them to go ahead.

I mentioned the fact that Mr O hadn't suggested he was struggling financially when he made the transactions in the context of explaining that I didn't consider that Tesco had lent irresponsibly by allowing them to go ahead. If I'd concluded that Tesco should have known Mr O was experiencing financial problems at the time, I'd have taken that into account in reaching my decision as to whether the lending was responsible. As it was, Mr O hadn't suggested he was experiencing financial problems when he made the transactions. And I didn't consider that Tesco had lent irresponsibly by allowing them. That remains my view.

I accept that other card issuers may have declined transactions once their cash limit was reached. But I've reached my view on the actions of Tesco in this case.

Finally, even if Mr O would have had no other means of making the transactions if Tesco had enforced the cash limit, I've not found that it was at fault in allowing the transactions. So I don't need to consider the point further.

My view remains that I can't fairly require Tesco to refund the transactions or compensate Mr O.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 2 December 2015.

Juliet Collins  
**ombudsman**