

Complaint

Mrs P has complained that Tesco Personal Finance PLC registered two CIFAS markers against her name and refuses to remove them.

Background

Mrs P was a Tesco Bank customer. In August 2017, she applied for a new saver account. As part of its checks, Tesco discovered that her contact details appeared in applications for a current account and a loan, which were made in a third party's name in 2015.

The loan was paid into the third party's account and later transferred to an account in Mrs P's name. The repayments were made from a joint account. Mrs P's was one of the accountholders.

Tesco called the third party on 6 September 2017. She said she didn't want to deal with Tesco and confirmed that she hadn't applied for any accounts with Tesco or taken out any loans. It later spoke to Mrs P who said the third party was her aunt.

Tesco subsequently registered two CIFAS markers against Mrs P's name for identity fraud.

On 22 September 2017, the aunt called Tesco and confirmed that she'd allowed her niece, Mrs P, to open the account and to apply for the loan. She said her niece was having financial problems and she wanted to help her out. She followed up the call with a letter confirming she accepted liability for the outstanding balance on the loan account. She also changed the contact details on the account.

However, Tesco decided to close the current account in the aunt's name. It left the loan account open because there was still an outstanding balance and the aunt had accepted liability for it. The monthly repayments continued to be made but from a different account.

Mrs P asked Tesco to remove the two CIFAS markers but it refused because:

- the aunt originally denied any knowledge of the account and loan when Tesco first called her.
- The aunt said she thought the call was a hoax yet she didn't hang up. She continued with the call, which lasted approximately 20 minutes and answered questions. This suggested that she was concerned about what happened.
- Mrs P and the aunt gave conflicting versions of events. In particular, the aunt said her niece completed the applications and signed for her. Mrs P said she had never made an application for anyone else.
- The aunt was talking to, and possibly taking instructions, from someone else in one of the calls.

Mrs P wasn't happy with this outcome so she brought her complaint to this service.

An investigator looked into the complaint and decided to uphold it. He said that, whilst the arrangement between Mrs P and her niece might be unorthodox, he didn't think that Tesco had satisfied the test for registering a CIFAS marker. He recommended that Tesco remove the two markers.

CIFAS disagreed with the investigator's view. It repeated its concerns with the way Mrs P and the aunt responded to its investigations. Also, it said it relied on guidance from CIFAS on what to load in such a circumstance and this demonstrates that it acted fairly.

This case has now come to me for an ombudsman's final decision.

My findings

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out the facts and the relevant industry guidance on CIFAS. As he explained, the bar for recording a CIFAS marker is a high one. The bank must have a good reason to believe it could have suffered a loss and/or it reasonably believes it has grounds to press criminal charges as a result of the activity on the account. This should be more than just a suspicion or concern.

If Tesco received guidance or advice from CIFAS then it's fair and reasonable that I should consider it. I've read the correspondence between Tesco and CIFAS. The subject of their exchange is about what type of marker to load. In its email, CIFAS admitted it was an unusual case, there was no specific loading to cover the events but decided to use the identity fraud marker adding there wasn't a victim. It said Tesco would need to give details of its loss. CIFAS didn't advise specifically on whether Tesco had satisfied the test for recording the markers.

Tesco may say that it's implicit from the guidance that the test was met. However, on balance, considering all the evidence I'm not persuaded it was and I think Tesco should remove the markers. I've reached this conclusion because:

- by the end of its investigation, and in spite of the evidence given by both women, the aunt accepted liability for the loan.
- The aunt hasn't complained about identity fraud.
- Tesco didn't feel the need to take any further action with regard to the loan. Indeed, it conceded that the aunt had accepted liability and this was a reason for doing nothing more.
- Tesco hasn't suffered a loss. The repayments had been met and continued to be made after the investigation closed.
- Even when the details became known in 2017, Tesco hadn't suffered a loss. It was still receiving the repayments
- According to the guidance from CIFAS, Tesco needed to record its loss but it hasn't shown an actual loss.
- Mrs P was an existing customer with no record of complaints against her.

Therefore, I don't consider that it had reasonable grounds to believe it could have suffered a loss or that it had grounds to press criminal charges. For these reasons, I don't think the test was met. Clearly, Mrs P and her aunt differed in their explanations. And I can see why Tesco had concerns but the CIFAS test requires more than just a suspicion or concern. There is now only a year left to run, and so I think it's also fair and reasonable to remove the markers.

My final decision

My final decision is that I'm upholding this complaint.

I'm asking Tesco Personal Finance PLC to:

- remove the two CIFAS markers against Mrs P's name
- remove any adverse credit markers recorded on Mrs P's file as a result of the CIFAS markers
- pay Mrs P £100 for the distress and inconvenience caused by the markers and having to bring this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 10 August 2020.

Razia Karim
ombudsman