

complaint

Mr B's complaint is that Tesco Personal Finance Plc (Tesco) unfairly closed his account and registered a fraud marker against his name on the national fraud database, CIFAS.

background

In October 2015, Mr B noticed his two Tesco accounts were blocked. They were then closed without notice, and a CIFAS fraud marker was added against his name.

He complained to Tesco that it had closed his accounts without notice, and that when he'd applied for a new account elsewhere he was declined due to the CIFAS marker. It replied, explaining that it was within its rights under the terms and conditions of Mr B's accounts to close them, and that it felt it had sufficient reasons – per the CIFAS guidance Principle 4 Lawfulness (Standard of Proof) (the four pillars)- for registering the fraud marker.

As Tesco refused to remove the CIFAS marker, Mr B brought his complaint to our service.

Our Investigator looked into matters, and concluded that on balance Tesco hadn't been able to show us that it had met the high bar required to justify the registration of a CIFAS marker against Mr B, and felt it should remove it.

Tesco didn't agree. It re-stated that it felt it had met the four-pillars required by CIFAS, and that while it no longer held the original detailed evidence it based the marker on, it explained that it had heard from other banks with information that justified the adding of the marker.

So Tesco asked for an ombudsman's review.

my findings

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

Having done so, I can see that this isn't a 'black and white' case. So it's not straightforward for me to be able to say if Tesco was right or wrong in 2015. It's not immediately obvious, and requires a balanced view of all the evidence.

Ultimately, though, I agree with our Investigator that while Tesco did have some evidence to justify adding the CIFAS at the time, it's not been able to show us specifically what this is – and crucially whether it was enough. And as the requirement is to keep the detailed records for six years, I'd expect it to be able to do so if it had them.

It's very clear how strongly Tesco feels about this case. It's articulated its position well, and done its best to explain why it feels it met the four pillars burden of proof CIFAS requires before a fraud marker can be added. But this evidence is largely anecdotal – i.e. saying that other banks had been in touch with concerns about Mr B receiving a fraudulent payment. While that may have been the case, we haven't seen any further detail of what these concerns were. And I'm afraid it's not enough simply to say that the information was sufficient and credible at the time – and that therefore the CIFAS loading was justified. I need to be able to see now why it was loaded, so that I can decide myself if it was then. And there isn't the evidence to allow me to do that.

Further, if Tesco was to argue that another bank had loaded a further CIFAS marker since 2015, it still wouldn't persuade me that it was right to do so when it did. I can only look at the circumstances at the time – not retrospectively. So while cumulatively matters now might not look good for Mr B, that doesn't make what Tesco did in 2015 okay. It still needed to meet the high bar in place at that time – regardless of what might go on to happen in the future.

On the matter of the account closures, I agree that Tesco was entitled to do what it did. But in respect of the CIFAS marker – whether justified at the time or not – what matters to me is whether it can be justified now with sufficient evidence, and I'm afraid Tesco's been unable to convince me of that.

My role is to assess all of the evidence, and reach an outcome that's fair to both parties. As I've said, this hasn't been an easy case to determine, and I was persuaded to some extent by the arguments put forward by Tesco. But, ultimately, I've not been convinced that there's evidence to support its position that the 2015 CIFAS loading was fair and justified at the time.

So I'm going to uphold the complaint and ask Tesco to remove the CIFAS marker. I'm not going to ask it to pay any compensation to Mr B, as I feel he's to some extent getting the benefit of the doubt here, and I think the lifting of the marker is sufficient redress.

my final decision

My final decision is that I'm upholding this complaint in part. To resolve matters, I'm asking Tesco Personal Finance Plc to remove the CIFAS marker it placed against Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 July 2020.

Ashley L B More
ombudsman