

complaint

Mr W complains Tesco Personal Finance PLC is unfairly holding him liable for a loan which he didn't apply for.

background

In June 2016, Tesco approved a loan for £20,000 in the name of Mr W. The money was paid into a joint account – held at the time by Mr W and his wife. Days later, the full amount was transferred into an account in his wife's name. Until May 2018, repayments for this loan were paid by direct debit from the joint account - £311.50 per month.

But Mr W says he didn't apply for this loan. His ex-wife told him she had applied for one in her name alone to invest in her business. He worked away from home regularly and was off shore. He says he rarely checked his statements because he was away a lot of the time and because he never felt he had to be careful with his spending.

When Mr W complained to Tesco about this in 2018, it rejected his complaint. In its final response to him in March 2019, it relied on the following:

- the details on the loan application were Mr W's correct details – including questions about his credit file;
- the loan was sent to a joint account;
- Mr W had not contacted Tesco to say it was taken out without his knowledge;
- in March 2018 Mr W had contacted Tesco for a settlement figure and still hadn't raised the issue of the fraudulent application.

But Mr W was not happy with this response and brought the complaint to this service.

Our investigator thought Tesco should do more for Mr W. He thought it should refund any payments made after January 2019 (the date it received Mr W's complaint), write off the remainder of the loan, remove any negative markers from Mr W's credit file and pay him £100 for the poor service.

Neither Mr W nor Tesco agreed. Mr W thought the full repayments should be refunded and he should no longer be liable for the loan. Tesco thought it had acted fairly in holding him liable for it and did not want to make any refunds.

The matter was then passed to me for a 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 and having done so, I have arrived at a different outcome than the investigator. I've explained to Tesco and Mr W that I intend to uphold the complaint in full and have allowed the opportunity for further submissions. Tesco has done so but that does not change my decision.

I don't think Tesco can fairly hold Mr W liable for this loan because I think it is entirely plausible that his wife made the application in his absence, transferred the funds into her account and allowed the repayments to come out of the joint account on the pretence that the loan was in her name alone.

Tesco submits this loan is a “marital debt” and by this, it means that it is a debt accumulated whilst Mr W was married and one which both partners take responsibility for. I disagree. Debts in one spouse’s name do not automatically become the liability of the other.

I think Mr W gives a credible and consistent account of how he worked off shore and would not regularly check his finances – instead leaving this to his ex-wife. He thinks his ex-wife intercepted any post Tesco would have sent in relation to the loan.

And I have listened to the call which Mr W made to Tesco in March 2018. At this time he clearly has knowledge of the loan and is requesting a settlement figure. Mr W says he thought about trying to pay the loan off as he didn’t want to get his wife into trouble. They have children together.

During that call Mr W has no details of the loan to give to the customer service representative and he is vague about the amount of the direct debit which leaves his account.

So I am afraid that I do not agree with Tesco’s submissions that this was a debt for which Mr W is jointly liable and neither do I agree with its submissions that Mr W ever accepted liability for it.

Finally, if Tesco propose to chase Mr W’s ex-wife for the remainder of the debt, that is a matter for Tesco. It is not relevant to the outcome of this complaint. Mr W has asked for an ombudsman’s decision because he was not happy with the response received from Tesco or from our investigator.

He now has that.

my final decision

My final decision is that I uphold this complaint.

Tesco Personal Finance PLC must:

- refund any payments made towards this loan held in Mr W’s name
- remove any trace of the debt and/or negative markers from Mr W’s credit file
- cease to hold Mr W liable for this debt
- pay Mr W £100 in compensation for the poor service

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 11 July 2020.

Shazia Ahmed
ombudsman