

## **The complaint**

Mr L complains that Tesco Personal Finance PLC caused him severe financial hardship - and that they didn't treat him fairly and sympathetically when he got into financial difficulties. He also complains about the way they communicated with him and that they wouldn't correspond with him by email.

## **What happened**

Mr L had a Tesco loan and a credit card. In February 2016 he was signed off work due to illness. A year later, as he still hadn't been able to return to work, he applied for a top-up to his Tesco loan.

Unfortunately, Mr L's situation didn't improve as quickly as he'd hoped, and by August 2017 he was unable to meet his monthly repayments. In September 2017 he phoned Tesco to let them know he was out of work - he followed this up with a letter offering to pay £1 per month until he was able to pay more. In this letter Mr L told Tesco he was homeless, so they'd need to contact him either by email or by writing to him at a relative's address.

Mr L says Tesco didn't respond to his letter, so he called them in December 2017. He says he set up direct debit arrangements over the phone to pay £1 per month to each account and that Tesco promised to contact him if there were any problems. They told him that they were unable to communicate with him by email.

Mr L says he re-contacted his creditors in March or April 2018 with the intention of increasing his monthly payments, but when he called Tesco they told him they hadn't received the agreed £1 payments on his credit card account. He says he offered to pay these missed payments and to increase his payments going forward, but Tesco refused his offers of monthly amounts he felt he could afford.

Mr L was unhappy that Tesco issued default notices demanding repayment of the total amounts he owed and later sold these debts to another company. He complained that they hadn't done enough to help him deal with his financial difficulties, and that the defaults on his credit file were preventing him getting accommodation. Tesco said they'd done nothing wrong.

Our investigator didn't think Tesco acted irresponsibly by giving Mr L the top-up loan. And he thought they'd offered suitable support before issuing default notices when he failed to keep up with repayments. He didn't look into whether Tesco did anything wrong by refusing the payments Mr L offered them, because that forms part of a separate complaint. Mr L asked for the case to be reviewed by an ombudsman.

## **What I've decided – and why**

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

Having reviewed the file in detail, I can see that this has been an incredibly difficult time for Mr L. I've carefully considered whether Tesco acted irresponsibly by lending him more money in February 2017 and whether they acted fairly when he got in to financial difficulties. I've also looked at whether their communication with Mr L was appropriate and adequate. I'm not going to consider whether Tesco acted unfairly by refusing the payments Mr L offered, because he made a separate complaint about that.

#### Did Tesco act irresponsibly by allowing Mr L to increase his loan?

The Financial Conduct Authority (FCA) sets out rules and guidance for lenders to follow – these can be found in their Consumer Credit Sourcebook (CONC). Before lending Mr L more money in February 2017, Tesco were required to carry out a creditworthiness assessment. This meant making reasonable and proportionate checks to satisfy themselves that he'd be able to make repayments in a sustainable way. These checks weren't just about how likely it was that they'd get their money back – they had to focus on whether the repayments would adversely affect Mr L's financial situation.

There was no set list of checks that Tesco had to complete, but they had to be proportionate to the circumstances. There were a number of factors that might affect how extensive these checks needed to be, such as the type and amount of credit, the customer's financial position, credit history and other financial commitments.

Tesco have provided evidence of the checks they carried out. They've told us Mr L declared that he was in full time employment with a net monthly income of £2,068, with declared monthly payments of £1,135 for rent and other credit – and that this was consistent with information they'd obtained from a credit reference agency. I've seen copies of Mr L's statements showing that, although he'd incurred some late payment fees on his Tesco credit card account, he hadn't missed any payments. And all monthly repayments on his previous Tesco loan had been paid on time. I note that a lower rate of interest applied to the new loan and his monthly repayment amounts were slightly lower.

In these circumstances I'm satisfied that the creditworthiness checks Tesco carried out were reasonable and proportionate. I've seen nothing in the information those checks revealed that should've given Tesco cause for concern about Mr L's ability to sustain repayments on the new loan. He hadn't made them aware of any change in his circumstances, so I find it reasonable for them to rely on the income information stated in the application. So, I don't consider Tesco to have acted irresponsibly or unfairly here.

#### Did Tesco treat Mr L fairly when he got into financial difficulty?

CONC also sets out rules and guidance as to how lenders should treat customers in arrears or default. Although there are no rules preventing lenders from taking action to recover money owed to them, they're expected to act with 'forbearance and due consideration'. What this means in practice will vary according to the circumstances. This could include suspending further interest or charges on an account, or accepting token payments for a reasonable period of time to give the customer an opportunity to recover from an unexpected change to their income. Lenders should allow customers who are in arrears a reasonable time and opportunity to repay the debt. I've carefully considered Mr L's complaint with this in mind.

I've reviewed Tesco's records of their communications with Mr L from September 2017, when he told them he was struggling to make payments because he was no longer working. At that time Mr L said he was working on a budget plan. I've seen that Tesco immediately put a hold on both accounts for 30 days, to allow him time to look into his options without further interest and charges building up.

It isn't disputed that, in December 2017, Tesco accepted Mr L's offer of £1 per month for each account, to be paid by direct debit. Accepting a token payment is considered a means of allowing a consumer 'breathing space' – it isn't the same as making an arrangement to repay outstanding debts. Tesco's records say Mr L had no income at that time - so this was set up as a temporary measure for two months to see if his financial situation would improve.

Tesco's records show that they reviewed Mr L's accounts at least once a month in the period between September 2017 and March 2018, to assess whether his financial situation had improved enough to enable him to put a suitable payment arrangement in place. At the beginning of March 2018, before issuing default notices, the evidence shows Tesco spoke to Mr L by phone to see whether he was able to agree a payment plan. Their file notes say he was still homeless but managing to hold down agency work - and that they explained that they'd be restarting the default and termination process due to the level of arrears. Tesco then issued a default notice on Mr L's credit card account, and they issued a default notice on his loan account the following day.

Mr L feels strongly that there was no need for Tesco to issue default notices – and that in time he'd have been able to get things back on track. I've seen some references to this effect in Tesco's file notes, and that he wanted to update the information he'd given them about his income and expenditure at the time the default was issued. But after giving this careful consideration, I can't say that Tesco acted unreasonably or unfairly by issuing the default notices. I'll explain why I say this.

A 'default' is when someone fails to meet their financial obligations under an agreement – generally when the arrears have built up to an unacceptable level. When a consumer is in default, the business has to issue a default notice before they can terminate the agreement.

CONC says 30 days is generally considered a reasonable period for a customer to develop a payment plan, although lenders may extend this for a further 30 days where there's evidence that the customer is making progress with this. By March 2018, it had been more than eight months since Mr L had made repayments in accordance with the terms and conditions of the accounts. He had total outstanding balances of £3,502.14 on the credit card and £14,891.90 on the loan. So, although I can understand Mr L's frustration that Tesco didn't wait for his revised income and expenditure form before issuing the default, I'm not persuaded that this would have made any difference to the outcome. The updated details Mr L sent in the following month showed that his employment was on a zero hours contract with an agency – so he still had no guaranteed income with which to make sustainable repayments to pay off these debts.

I can understand Mr L being upset about defaults being recorded on his credit file, and the effect of this on his ability to find accommodation. But the Information Commissioner's Office (ICO) generally expect a default to be recorded when an account is between three and six months in arrears. The ICO say this kind of information is intended to indicate at the earliest possible opportunity that a customer is showing signs of potential financial difficulty or inability to manage his or her finances. In this case Tesco recorded the defaults after a period of more than eight months in arrears. Tesco have an obligation to ensure information they report to credit reference agencies is accurate and up to date, so I can't say they treated Mr L unreasonably or unfairly.

As I don't consider it to have been unfair or unreasonable for Tesco to issue default notices, it follows that I don't consider them to have done anything wrong by terminating their agreements with Mr L and selling the debts to another business.

Tesco's communications with Mr L

I realise Mr L's situation made it very difficult for him to correspond by post, and that email would've made things easier for him. I've reviewed Tesco's records of their communications with Mr L in detail. These records indicate that they kept in contact with Mr L by phone or by writing to him at the address he'd given them in October 2017. Although I accept letters would've taken longer to reach him than emails, I'm satisfied that Mr L received them because I've seen evidence that he called Tesco on several occasions in response to their letters.

The evidence I've seen shows Tesco informed Mr L when they hadn't received the required payments – and the action they were proposing to take as a result. I'm satisfied that they sent him information about the default on these accounts, their intention to pass the debts to a collection agency, and a response to the points he raised in his complaint. So, although this information wasn't provided to him in his preferred format, I don't consider Tesco to have treated Mr L unfairly.

### **My final decision**

I understand Mr L will be disappointed with this decision, but for the reasons I've explained here, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 July 2021.

Corinne Brown  
**Ombudsman**