

## **Complaint**

Ms B has complained that Tesco Personal Finance PLC (trading as “Tesco Bank”) provided her with an unaffordable loan.

She says that she was already £30,000.00 in debt at the time of the application and proportionate checks would have shown this as well as the fact that she shouldn't have been lent to.

## **Background**

Tesco Bank provided Ms B with a loan for £9,445.43 in February 2017. The loan had an APR of 10.5% and a 48-month term. This meant that the total amount to repay of £11,504.16, which included interest of £2,058.73 was due to be repaid in 48 monthly instalments of just under £240.

This was in fact Ms B's second loan with Tesco Bank and some of the proceeds were used to settle the first loan. Ms B has confirmed that she's only complaining about the second loan Tesco Bank provided so we've limited our consideration to this loan. And all references made to loan from this point onwards are made towards loan 2 taken in February 2017.

One of our investigators looked at this complaint and thought that Tesco Bank shouldn't have provided this loan as it ought to have realised it was unaffordable.

Tesco Bank disagreed and asked for an ombudsman to review the complaint.

## **My findings**

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Ms B's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Ms B's complaint. These two questions are:

1. Did Tesco Bank complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay her loan without experiencing difficulty or suffering significant adverse consequences?
  - o If so, did it make a fair lending decision?
  - o If not, would those checks have shown that Ms B would've been able to do so?
2. Did Tesco Bank act unfairly or unreasonably in some other way?

Did Tesco Bank complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay her loan without experiencing difficulty or suffering significant adverse consequences?

Tesco Bank provided this loan while it was authorised and regulated by the Financial Conduct Authority (“FCA”). The rules and regulations in place required Tesco Bank to carry out a reasonable and proportionate assessment of Ms B’s ability to make the repayments under these agreements. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so Tesco Bank had to think about whether repaying the loan would cause significant adverse consequences *for Ms B*. In practice this meant that Tesco Bank had to ensure that making the payments to the loans wouldn’t cause Ms B undue difficulty or adverse consequences.

In other words, it wasn’t enough for Tesco Bank to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Ms B. Checks also had to be “proportionate” to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer’s income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I’ve carefully thought about all of the relevant factors in this case.

*Were Tesco Bank’s checks reasonable and proportionate?*

Tesco Bank says that it carried out an income and expenditure assessment with Ms B prior to providing her with this loan. This information was validated against a credit check and bank statements which Ms B provided.

So bearing in mind Tesco Bank says and has evidenced that it obtained a significant amount of information on Ms B's circumstances, I'm prepared to accept that it did carry out proportionate checks – at least in terms of the information requested – before providing this loan to Ms B.

*Did Tesco Bank make a fair lending decision?*

It isn't enough for a lender to simply request information from a consumer before deciding to lend to them. So even if a lender may have requested a proportionate amount of information, it may still be the case that it will not have acted fairly and reasonably towards that consumer if it didn't carry out a fair and reasonable evaluation of the information it obtained.

I say this because a lender is required to carry out an assessment of the borrower's ability to repay any credit advanced. And any assessment requires an evaluation, judgement, appraisal and scrutiny of any information obtained. Tesco Bank says its assessment of the information obtained led it to conclude that Ms B's loan was affordable for him as he'd be able to sustainably make his repayments.

Tesco Bank was required to establish whether Ms B could make her loan repayments without borrowing further or experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided in light of this. Having done so, it's worth noting even on Tesco Bank's own assessment the internal score Ms B achieved indicated that she was high risk. Tesco Bank checks also indicate that Ms B's debts had increased by £10,000.00 in the few months between loan 1 being taken and this application and she was now almost at the limit of her credit limits on her revolving credit facilities

So while there might not have been missed payments on Ms B's credit file, I think it would be a bit of a stretch to say that her debts were well managed. Indeed, I'd in fact argue that Tesco Bank's checks showed that Ms B's financial position was deteriorating.

Furthermore, the bank statements Tesco Bank asked Ms B to provide showed that she was earning less significantly less than what Ms B declared as her income. It also shows that the amount going into her account was less than what was going out and that Ms B was significantly overdrawn.

I've seen what Tesco Bank has said about Ms B saying that her income was seasonal and that she was being asked for statements for a period where her earnings were lower than usual. But I don't see how this means that it was reasonable for Tesco Bank to include the ad-hoc contributions Ms B's statements showed she received from her son, in that period, as income when there was no suggestion from Ms B that she expected to receive this for the duration of the loan. Given the significant mismatch between what was declared and what Ms B was able to evidence, I don't think it was fair and reasonable to make assumptions about what Ms B's son would be contributing going forwards either.

So while I appreciate what Tesco Bank said in response to our investigator's assessment, I'm satisfied that Tesco Bank ought to have been on notice that Ms B's income was much lower than the figure it used in its income and expenditure assessment. And when Ms B's substantially lower income is coupled with her already being heavily overdrawn, I'm satisfied

that it was unlikely Ms B had sufficient funds to repay what she was being asked to commit to without borrowing further or experiencing difficulty.

Therefore, in my view, while Tesco Bank may have believed that the monthly payments were pounds and pence affordable for Ms B, even though I'm not persuaded of this, I, in any event, am satisfied the information gathered suggested Ms B was always unlikely to be able to make the payments she was being asked to commit to without borrowing further or suffering significant adverse consequences.

Bearing this in mind, and what exactly it was Tesco Bank was required to consider, I'm satisfied that Tesco Bank's decision to provide this loan to Ms B wasn't fair and reasonable in the circumstances.

*Did Tesco Bank act unfairly or unreasonably towards Ms B in some other way?*

I've carefully thought about everything provided. And having done so, I've not seen anything to suggest that Tesco Bank acted unfairly or unreasonably towards Ms B in some other way.

*Did Ms B lose out as a result of Tesco Bank unfairly providing him with his loan?*

As Ms B paid and she's still being expected to pay interest, fees and charges on a loan that she shouldn't have been provided with, I'm satisfied that she has lost out as a result of what Tesco Bank did wrong.

So I think that Tesco Bank needs to put things right.

### **Fair compensation – what Tesco Bank needs to do to put things right for Ms B**

Having thought about everything, Tesco Bank should put things right for Ms B by:

- Removing all interest, fees and charges applied to Ms B's loan from the outset. The payments Ms B made should be deducted from the new starting balance – the £9,445.43 originally lent. Tesco Bank should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments, if there are any, should be refunded to Ms B;
- Adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms B to the date of settlement†;
- If an outstanding balance remains on Ms B's loan once these adjustments have been made, Tesco Bank should contact Ms B to arrange a suitable repayment plan for this.
- If, after all adjustments have been made, no outstanding balance remains, Tesco Bank should remove any and all adverse information it may have recorded about this loan from Ms B's credit file.

† HM Revenue & Customs requires Tesco Bank to take off tax from this interest. Tesco Bank must give Ms B a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Ms B's complaint. Tesco Personal Finance PLC needs to put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or

reject my decision before 21 July 2022.

Jeshen Narayanan  
**Ombudsman**