

## The complaint

Mr M complains about Tesco Personal Finance Plc trading as Tesco Bank's decision to lend to him.

## What happened

I set out the background to Mr M's complaint in the provisional decision which I issued earlier this year. But, for ease of reading, I will set out what happened in this complaint again here.

In February 2016 Mr M entered into an unsecured personal loan with Tesco Bank. Under this agreement Mr M borrowed the sum of £2,500 to be paid back over a period of 30 months. The monthly repayments were £102.88.

Mr M also complained to Tesco Bank about a credit card it sold him, but that credit card complaint does not form part of this complaint.

Mr M has said this about his complaint *"between February 2016 to February 2017 I was in the grip of a crippling gambling addiction. I was able to borrow within that period over £50,000 [from various lenders]. I believe I should never have been able to borrow the money I did, and it was irresponsible lending on behalf of those companies. One of which was Tesco [it] must have been able to do appropriate checks and see what was happening."*

Mr M has brought separate complaints about the other, third party companies who he says collectively with Tesco Bank lent him £50,000. However, I am not looking at those other separate individual complaints in this decision.

Further, as a consequence of what Mr M's sees as the irresponsible actions of Tesco Bank in lending to him, Mr M says he experienced a number of adverse events. In particular, he tells us he was already having money trouble before February 2016 but after this, due in part to this new lending he experienced financial difficulties, which then led to him entering into an Individual Voluntary Arrangement ("IVA") with some of his creditors. The finance agreement with Tesco Bank was covered by the IVA.

Moreover, Mr M tells about almost losing his home and the ending of his marriage which he also attributes, in part, to the money he borrowed between February 2016 to February 2017 (including from Tesco Bank) and then gambled away.

Mr M seeks compensation for what he views as the impact of the borrowing on his life which he describes as being *"catastrophic"*. Mr M complained to Tesco Bank about all of this.

In response Tesco Bank said Mr M submitted some inaccurate information when he applied for the loan. But, as part of its initial checks, it picked up on this by comparing what he said in his application, to the information on his credit file. It then reprocessed Mr M's application with the new information, and he was accepted for a loan. Tesco Bank indicated that at no point during the application process did Mr M tell it he was engaging in problem gambling, neither did the searches it did show this was happening. It is satisfied that it did all the checks and assessments that it ought to have done before lending to Mr M.

As a result of all of the above, Tesco Bank does not agree that its decision to lend to Mr M was inappropriate, but it did express sympathy for Mr M's predicament.

Dissatisfied, Mr M came to our service.

I took a look at Mr M's complaint and I issued a provisional decision. I said the following in that provisional decision.

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

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Why I don't agree that Tesco Bank's checks went far enough*

*When Tesco Bank lent to Mr M it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to him. Under the relevant regulations at that time Tesco Bank was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate in the circumstances, which might include considerations about the amount borrowed and Mr M's borrowing history.*

*That said, exactly what a lender should consider was for each lender to decide, however, the rules listed a number of factors which a lender such as Tesco Bank might have wished to take into account.*

*Further, Tesco Bank had to be able to demonstrate that it did enough to ensure that Mr M could repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. This assessment needed to be borrower focused. Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:*

- Did Tesco Bank complete reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?*
- If not, would those checks have shown that Mr M would've been able to repay the loan in a sustainable way?*
- Did Tesco Bank act unfairly or unreasonably in some other way?*

*If I come to the conclusion that Tesco Bank didn't act fairly and reasonably in its dealings with Mr M and that he has lost out as a result, I'll go on to consider what is a fair way to put things right.*

*As set out above, at the relevant time, the regulatory framework required Tesco Bank to have carried out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the loan with it in a sustainable manner. This affordability assessment had to be borrower focused in the sense that rather than focusing on the credit risk for Tesco Bank the assessment needed to have sufficient checks to satisfy it that Mr M would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Mr M's financial situation.*

*We asked Tesco Bank what checks it carried out before it lent to Mr M. As I have already mentioned, Tesco Bank indicated that it had requested and reviewed information about Mr M from both Mr M and the credit references agencies, it looked at how his pre-existing debt had been managed by him and also it took into account debt to income ratios based on the data it gathered. In particular, it told us it substituted inaccurate information provided by Mr M with accurate data it obtained from his credit file.*

*According to Tesco Bank, Mr M's accounts were in good order. It put late payments on Mr M's credit card account down to administrative issues on his part rather than money troubles. The debt income ratio was within its tolerances which it suggests are in line with best practice in the industry.*

*Mr M had borrowed a relatively small sum which was to be paid back over a 30 month period. Given the amount he was borrowing and the term together with the size of the monthly repayments and Mr M's income and outgoings, on the face of it, I don't think there was clearly potential for the repayments to have a substantial impact on Mr M's financial situation.*

*That said this was not the only information that Tesco Bank had. Mr M had £19,000 of unsecured debt, if I accept Tesco Bank's figures, which I do as it has provided information to support them. This total amount of unsecured debt was not excessive given the individual circumstances. This is the point Tesco Bank makes and I agree.*

*But added to all of this is the inaccurate information Mr M gave about his expenses which very much understated his outgoings. It could have been Mr M had made a simple mistake, but it also could have been he was deliberately minimising his outgoings to try and get the loan. It seems that Tesco noted this discrepancy but did not ask him about it. Neither did Tesco Bank asks questions to establish the reasons for the late payments on Mr M's credit card.*

*This is not an exact science, and the issue here is very finely balanced but in all the circumstances I would have reasonably expected Tesco Bank to have looked more closely at Mr M's overall financial situation at the time. In particular, I would have expected any reasonable lender to check his actual income and expenditure.*

*Why I can't say that the lending was unaffordable*

*That said, it is not enough for me to say that I do not think Tesco Bank carried out proportionate checks before it lent in order to tell Tesco Bank that it has to do something to put things right. I also have to be satisfied that if it had carried out proportionate checks it would have found that Mr M could not afford to borrow from it, or it would have found that it was inappropriate to lend to Mr M for some other reason.*

*I'll mention here that Mr M has been very clear with us, he sees this complaint as being about irresponsible lending to him due to his problem gambling. Rather than being mainly*

*about unaffordable lending. But he has said enough to us about unaffordable lending that I need to look into this aspect of his complaint too.*

*As far as I am aware, Mr M had two current accounts, a sole current account and a joint current account, no savings accounts, and a joint mortgage account. I only have information about Mr M's sole current account. The difficulty for Mr M here is that in order to make a finding about his financial situation at the relevant time and whether the finance was affordable, I would need information about his joint account[s] too. I don't have that information. Moreover, I don't have any information about Mr M's repayment history. Normally, if lending is unaffordable I'd expect to see that the consumer missed his initial payments. I have seen nothing to suggest this is the case here. It follows I can make no finding therefore that the lending was unaffordable.*

*Why I have not found that the lending was irresponsible*

*However, as I have already mentioned Mr M suggests that his complaint is primarily about irresponsible lending due to his problem gambling, rather than about affordability. Even a cursory examination of the information I have about Mr M's sole current account shows that he was gambling. Moreover, I think given the degree of the gambling that gambling fits the broad definition of problem gambling i.e. gambling that was disruptive or damaging to Mr M.*

*However, the vast majority of this information is from the time after Mr M took out the loan. That is not surprising as Mr M tells us his problem gambling started in the same month he took out the loan with Tesco Bank. In the circumstances I am not persuaded that Tesco Bank would have found out Mr M had a gambling problem if it had carried out appropriate checks.*

*For all of these reasons, I have no proper basis for saying that Tesco Bank ought reasonably to have been aware in February 2016 that Mr M was engaging in problem gambling, and therefore, as a result it ought not to have lent to him.*

*Both Mr M and Tesco Bank now have till the due date set out above to send in any further information, should they wish to do so. All I would add is that any final submissions should be materially new. Neither party needs to repeat what it said to us before because I have already looked at that information and thought about it."*

*In conclusion my provisional decision was that I did not intend to uphold Mr M's complaint.*

*As far as I am aware this service has received no response from Tesco Bank in relation to my provisional decision. However, Mr M did send in a response. In summary, Mr M thanked us for my provisional decision. Mr M explained how emotionally difficult it has been and still is, to deal with his complaint and why that was. Mr M added:*

*"I don't accept that the business was unaware of my gambling because I had most likely used the credit card it provided me with to fund my gambling habit in addition to using the loan itself. So, Tesco knew or ought to have known what I was up to. I therefore don't agree with your comments that Tesco ought not to have been aware of my gambling habit when it would have been showing on my credit card statements.*

*I am pleased to see that you don't believe Tesco made sufficient checks before it lent to me. Had it done so, it would have been aware that I had already had 4 other loans within 14 months of applying for this one. These would have been evidenced on my credit file had it obtained a copy. At no point did Tesco ask me why I was applying for what was then a 5<sup>th</sup> loan within 14 months of the first one I took out. Perhaps if it did it may have decided against lending to me.*

*You commented on the fact that I paid off my Tesco credit card within 6 months of opening it. This was only possible because I used the fund given to me by Tesco via the loan it*

*approved. Furthermore, if you look at my attached credit file on page 7 of 13, you will see that I missed 6 payments and thereafter made minimal monthly payments. This is hardly a picture of someone on top of their finances. They even recorded the account as in default!*

*You have also commented that late payments were put down to administrative issues on my part. However, this is not true. Late payments were due to the fact that I was struggling to make payments because of my crippling addiction debt, and I took the loan out to pay off this credit card. I used the rest of the money to fund my addiction. I therefore cannot agree that the loan did not impact on me substantially as you have suggested in your PD."*

Mr M also explained that with regret, he would not be able to provide information about his joint accounts due to the circumstances in which he divorced his ex-wife.

Mr M told us he wanted his voice heard and his concerns understood.

### **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.

I thank Mr M for his very candid response to my provisional decision. And I don't underestimate how upsetting he has found it to go over a period of his personal history that he finds painful. We would not have asked about any of this if had not been strictly necessary to investigate his complaint. I also understand why he wants his voice heard and his concerns understood, he is entitled to expect that from this service. I wish to reassure him I have heard his voice and thought about his concerns, just as I have done for Zopa.

I've reviewed the complete file again thought about what Mr M has said in response to my provisional decision and revisited my provisional decision. I have concluded that I have no proper basis on which I can uphold Mr M's complaint. I explain my reasoning below.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

### ***Why I still can't say that the lending was unaffordable***

I found in my provisional decision that prior to lending to Mr M, Tesco Bank did not carry out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the loan with it in a sustainable manner. Tesco Bank has not responded providing new information to say it does not agree with this finding. So, since I have been provided with no new information that finding still stands.

That said, as I already explained in my provisional decision, this is not enough by itself, for me to say the lending was unaffordable. This is because I also have to be satisfied that if Tesco Bank had done a proportionate assessment it would have found that the lending was unaffordable. And to make a finding about that I need to know what Mr M's financial situation was at the time. Further, to do that I have to see the evidence from all of his accounts and Mr M has not provided us with all of this information. In particular, he has not provided us with information about his joint accounts because he says he cannot.

I recognise that Mr M might not be able to obtain information about his joint accounts without his ex-wife's consent. But without it I don't have the full picture.

It may be that Mr M did struggle with his repayments to his Tesco Bank credit card account, although I don't have his statements to back this up. Although there is the credit file information. However, even if I accepted this was the case, that in all the circumstances, would not demonstrate that the lending was unaffordable.

I note what Mr M has said about his other pre-existing debt. He made similar points prior to my provisional decision. I already dealt with the issue of Mr M's borrowing history and why this did not satisfy me that the lending was unaffordable in my provisional decision.

For all of these reasons together with the reasons I went through in my provisional decision, I have no proper basis for finding that the lending made by Tesco Bank was unaffordable for Mr M.

*Why I have not found that the lending was irresponsible*

Mr M has been very specific he tells us his gambling started in February 2016. He now says he "*most likely*" used the credit card account he had with Tesco Bank to pay for his problem gambling, which I can't check because I don't have his credit card statements. But I do have his sole account statements. These show the vast majority of his spending on gambling came after this loan was taken out. On balance the credit cards statements would show a similar pattern. That being so, in the circumstances I can fairly and reasonably find that Tesco Bank ought to have been aware that Mr M was engaging in problem gambling.

For these reasons, together with the reasons I set out in my provisional decision, I am not persuaded that Tesco Bank acted irresponsibly in lending to Mr M.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it

**My final decision**

My final decision is that I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 April 2022.

Joyce Gordon  
**Ombudsman**