

## **The complaint**

Mr B complains Tesco Personal Finance PLC trading as Tesco Bank discriminated against him because it wouldn't even allow him to apply for a loan because he'd be 75 before his loan ended.

## **What happened**

Mr B wanted to take out a loan. He tried applying online to Tesco Bank but says he wasn't even allowed to put in an application as he'd be 75 before his loan ended – he tried to apply for the loan a month before he turned 75. He says he was more than able to make the monthly repayments and had assets which he could have used to secure the loan if needs be. He wanted a loan so he could help members of his family who, like many people, were going through an awful time.

Having failed to get a loan from Tesco Bank, Mr B says he was able to get a loan from another lender without any issues at all. But he wasn't happy with all the hassle and worry Tesco Bank caused him. He felt Tesco Bank's policy amounted to age discrimination. So, he complained to Tesco Bank as he felt that this was wrong, strongly so.

Tesco Bank investigated Mr B's complaint and said that it was unable to locate an application in his name and that in its FAQs it confirmed "to apply for a Tesco Bank loan, you need to meet the following criteria – aged between 18 and 74. You must be aged under 75 at the end of your loan term". Tesco Bank didn't, therefore, think it had done anything wrong by not proceeding with a loan. Mr B was still unhappy, so he complained to us.

One of our investigators looked into Mr B's complaint and asked Tesco Bank to provide evidence in confidence that it had carried out a risk assessment that would justify discriminating on the grounds of age in Mr B's case. Tesco Bank told our investigator that it had taken the commercial decision not to lend to consumers who are over 74 – due to what it says is the considerably higher risk involved in lending – and that it was unwilling to share details about any risk assessment on the grounds that it's not required to justify its lending criteria. Tesco Bank also told our investigator that if we wouldn't expect it to share that assessment with Mr B then there was nothing it could do to stop Mr B complaining. So, it would be unfair to uphold the complaint as Tesco Bank couldn't have done anything to prevent it. Having taken everything into account, our investigator upheld Mr B's complaint and awarded him £150 in compensation. Tesco Bank didn't agree with our investigator's recommendations and asked for a decision from an ombudsman. Tesco Bank said that it thought our investigator's view was unfair as its explanation for the limits on its lending was a reasonable and valid one. Tesco Bank also said that we have no jurisdiction over its lending criteria, and that we can only look at individual complaints on their own merits. As Tesco Bank wanted a decision from an ombudsman, I've looked into Mr B's complaint.

I issued a Provisional Decision upholding Mr B's complaint for reasons similar to those given by our investigator. I issued a Provisional Decision as I thought it was fair to give both parties and, in particular, Tesco Bank a chance to comment further. Tesco Bank said it had nothing new to offer in response to my Provisional Decision and would "do as instructed". Mr B said that he hoped Tesco Bank would be more open to lending to people based on their

circumstances and not their age in the future in response to my Provisional Decision and was otherwise happy to accept £150 in compensation.

### **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.

As I explained in my Provisional Decision, this complaint isn't about whether or not Tesco Bank should have ultimately lent to Mr B. Banks can and do decide whether or not they want to lend to people who apply for borrowing, and they do so based on criteria that, amongst other things, look at whether or not the lending would be affordable and responsible. The complaint, as far as I see it, is that Tesco Bank didn't even get to that stage with Mr B – it didn't consider his individual circumstances at all. That's because it wouldn't even consider an application from him as he was going to be 75 before his loan ended – he tried to apply a month before turning 75. I agree with Mr B that this appears to be a blanket policy and one on the face of it that "discriminates" against him because of his age.

As I also explained in my Provisional Decision, Mr B accepts that sometimes people are "discriminated" against because of their age – for example, no-one under the age of 18 can apply for credit. And Mr B accepts that there's nothing "wrong" with refusing someone who is under the age of 18 credit. That's probably because the law says that it's illegal to lend to someone who is under the age of 18. So, most people would probably agree that this isn't unfair.

In this case, again as I mentioned in my Provisional Decision, one thing I have to take into account when deciding what is fair and reasonable is relevant law. And in this case that means taking into account, amongst other things, the Equality Act 2010.

As I explained in my Provisional Decision, Section 29 of the Equality Act 2010 says a service provider must not discriminate against someone based on a protected characteristic – age is one of nine protected characteristics given – such discrimination is unlawful. There are, however, exceptions applicable to this particular case, and they are contained in schedule 3 – part 5 – paragraph 20A. This is what paragraph 20A says:

- (1) A person (A) does not contravene section 29, so far as relating to age discrimination, by doing anything in connection with the provision of a financial service.
- (2) Where A conducts an assessment of risk for the purposes of providing the financial service to another person (B), A may rely on sub-paragraph (1) only if the assessment of risk, so far as it involves a consideration of B's age, is carried out by reference to information which is relevant to the assessment of risk and from a source on which it is reasonable to rely.
- (3) In this paragraph, "financial service" includes a service of a banking, credit, insurance, personal pension, investment or payment nature.

No-one is disputing that Tesco Bank has a policy that it won't lend to customers who are 75 or over when they apply for a loan or before the loan ends. So, as I mentioned in my Provisional Decision, I agree with our investigator that in order to decide whether or not it was fair and reasonable of Tesco Bank to not even consider Mr B's application that it's important to know whether or not this policy is based on the type of risk assessment mentioned in (2) above. Tesco Bank has said it won't share that assessment with us despite us agreeing that this would be in confidence and despite the fact that we can require either party to a complaint to provide us with relevant information.

Instead of sharing its risk assessment, Tesco Bank has given us a high level explanation of why it has this policy saying that “the older people get, the less likely they will repay the balance in full” and that “due to considerably higher risk in lending to consumers of 74 and above, the decision is down to Tesco Bank whether to accept this risk or not”.

As I said in my Provisional Decision, I agree with our investigator in this case that without more Tesco Bank appears to be making assumptions about someone’s ability to repay and the risk of lending simply based on that person’s age. More importantly, Tesco Bank is doing so without showing that it had done a risk assessment based on information from a source on which it is reasonable to rely.

Our role – as I explained in my Provisional Decision – is to investigate complaints, and not take one party’s word for it. I agree with Tesco Bank that we have no jurisdiction over its lending criteria, but we do have jurisdiction to look at individual complaints. And in this particular complaint, given what the Equality Act 2010 says and given that it’s clearly relevant law here, that means we can and should investigate whether or not Tesco Bank has based its approach on the type of risk assessment set out in paragraph 20A.

In my Provisional Decision, I said I agreed with our investigator, based on everything we’ve seen, that Tesco Bank didn’t act fairly or reasonably when it refused to even consider Mr B’s application because he was about to turn 75. I also said that we can’t make a finding that Tesco Bank has breached the Equality Act 2010 – that’s the role of the Courts. And that it doesn’t follow that Tesco Bank has discriminated on the grounds of age just because the exception might not apply. Indeed, as I mentioned in my Provisional Decision, Tesco Bank might have a legitimate aim here, but it hasn’t provided us with information to support its argument that its blanket approach of not allowing potential customers to apply for a loan because they’re 75 or over when they apply for a loan or before the loan ends is a proportionate means of achieving that aim. I remain of that view.

### **Putting things right**

As I said in my Provisional Decision, Mr B has told us that he was able to get a loan from another lender without any issues at all. That makes sense if, as he says, he was more than able to make the monthly repayments and had assets which he could have used to secure the loan if needs be. But Tesco Bank caused him unnecessary hassle and worry, as well as doing something he feels strongly was wrong. More importantly, I can see that Mr B was trying to help his wider family – which was why he wanted to take out this loan – at what was a difficult time for them. So, as I said in my Provisional Decision, I’m satisfied that this would have been very upsetting and hurtful for Mr B. He was, however, happy with the compensation our investigator recommended - £150. So, even though I might have awarded more, in this case I think that’s a fair and reasonable outcome. He also said he hoped Tesco Bank would, in the future, be more open to lending to people based on their circumstances and not their age.

### **My final decision**

My final decision is that Tesco Personal Finance PLC acted unfairly and unreasonably when it wouldn’t even let Mr B apply for a loan simply because he was going to be 75 before the loan would end – he applied a month before turning 75. I require Tesco Personal Finance PLC to pay Mr B £150 in compensation for the distress and inconvenience he’s been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 July 2022.

Nicolas Atkinson  
**Ombudsman**