

The complaint

Mrs C complains that Tesco Personal Finance PLC trading as Tesco Bank (Tesco) lent to her irresponsibly and didn't help her when she was in financial difficulty.

What happened

Mrs C applied online for a credit card in July 2016 – she asked for a balance transfer of £800. Tesco agreed the card and gave her a limit of £8,600. In April 2017, Tesco increased the limit to £9,600. In March 2017, Tesco gave Mrs C a loan of £10,000 payable over 62 months for debt consolidation.

Mrs C complained. She said that Tesco didn't complete sufficient checks when giving her the card and when increasing the limit. She went over both limits and this should have been a warning to Tesco that she couldn't afford the borrowing. She said she had a significant gambling habit and therefore Tesco should've stopped her borrowing on the card. She wasn't aware that gambling transactions were treated as cash and therefore attracted a fee. Over time, this was very expensive. She said Tesco should refund all interest and charges, plus gambling transaction charges.

Tesco said that Mrs C passed their credit checks when she applied for the card, and when the increase in limit was offered. If Mrs C didn't want the increased limit, she could've opted out but she didn't. Tesco provided monthly statements so Mrs C could see her limit and balance. On the matter of overlimit positions, Tesco said they didn't always have the option to decline transactions given that some merchants didn't have to refer certain payments to Tesco for authorisation. On Mrs C's gambling, Tesco said gambling transactions were allowed on the card. Her last gambling payment on the card was in October 2019. And then, from 2020, gambling transactions weren't allowed on credit cards – following new guidance from the Financial Conduct Authority (FCA).

Mrs C brought her complaint to us. Our investigator said Tesco hadn't acted fairly. She felt that the initial issue of the card in July 2016 was acceptable, given what she saw in Tesco records. Up until February 2017, Mrs C maintained her balance within the limit. But at the time when Tesco offered to increase the limit to £9,600 in April 2017, they should've carried out more checks. By then, Mrs C was over her limit and had been using the account for a lot of gambling payments. She saw that Mrs C called Tesco in October 2017 to say she was in difficulty – and Tesco should've then have helped Mrs C by looking at her income and expenditure and supported her. Later, she could see that Tesco supported Mrs C by freezing interest for six months in December 2018 – so that was helpful. On the matter of fees on gambling payments – she thought these were fair, as most credit card providers charged them and they were shown on Mrs C's statements. But she said they should be refunded after October 2017 – when Mrs C had said to Tesco that she needed help. Our investigator said that Tesco should refund all interest on the increased borrowing with effect from April 2017; remove any adverse information reported to credit reference agencies from that time; refund fees on gambling transactions from October 2017; and pay compensation of £300.

Tesco didn't agree and asked that an ombudsman look at Mrs C's complaint. Tesco said the increase of £1,000 in April 2017 was modest and there wasn't any evidence to say that Mrs C's financial circumstances had changed since the card was issued. She had exceeded her limit before the increase but was making the minimum monthly payments. On gambling, she was entitled to use the card in that way. And when she called Tesco in October 2017, she didn't mention anything about gambling – so it wasn't realistic for them to have done anything about it then. Tesco said that the payment of compensation of £3 fair – as the problems were caused by Mrs C's gambling, not the actions of Tesco.

I reached a provisional decision where I said:

There are two pieces of guidance from the FCA which are relevant to Mrs C's complaint. Firstly, all lenders have an obligation to lend money responsibly. We must check whether Tesco acted in line within the Financial Conduct's (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision made bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
 - the lower a customer's income, and the higher amount to be repaid.
 - the greater the number of loans and frequency of loans.
 - the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

In the context of Mrs C's complaint, I think it's fair to say that her limits were quite high, and therefore the obligations on Tesco were more than for a lower limit.

Secondly, Mrs C was in financial difficulty and businesses have an obligation to treat such customers sympathetically. The Financial Conduct Authority (FCA) says that businesses like Tesco should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments, or defer them, and allow customers more time to repay their debt.

When Mrs C applied for the card in July 2016 – she was given a limit of £8,600. That seems high to me – for a new customer. But I can see that she declared an annual income of £25,000. She had other unsecured debt of £13,000 (and nine other lenders) and a mortgage of £44,000. Tesco worked out that Mrs C had monthly disposable income of £210 after making her repayments and paying living expenses. So that looked reasonable. And so, I can see why Tesco gave her the card and limit.

From then on, Mrs C maintained her account within the limit and paid the monthly instalments. But then – in March 2017, Mrs C went over her limit of £8,600 – the balance was £10,015. In April 2017, the balance was £9,488. It was at that point that Tesco offered to increase the limit to £9,600. Tesco argue that Mrs C passed their checks at that time –

and there wasn't any need to get any more information from Mrs C as it was less than a year since she provided that with the original application for the card.

But I take a different view – Mrs C was a new customer to Tesco only nine months before and had gone over her limit – and by a significant amount. And if Tesco had looked at how she used her account - it was almost entirely used for gambling payments. Our service makes no judgement on the rights and wrongs of gambling – we say that it's up to customers how they spend their money. But – as the payments were treated as cash withdrawals – this should've been a warning sign. I say that as traditionally, cash withdrawals are a warning sign of difficulty (as opposed to normal 'retail' or shop purchases). So – that should've caused Tesco to ask more questions.

We also noticed that Mrs C had a personal loan from Tesco. So, we asked them about that. They told us it was for £10,000 and was agreed and drawn on March 2017 – just before the limit increase on the card. And the purpose of the loan was for 'debt consolidation'. So, by the time of the limit increase in April 2017 – Mrs C was borrowing £19,600 from Tesco. That was high – given that Mrs C's gross annual salary was £25,000. And as the loan was for debt consolidation, it was clear to me that Tesco should then have asked more questions about Mrs C's overall position – for example, what her debts and repayments were, plus an income and expenditure analysis. And as the loan was for debt consolidation, a reasonable question would've been – which debts were to be repaid, including the Tesco credit card – but I can't see that happened. If the Tesco card was to be repaid or reduced – to stabilise Mrs C's finances, it would've been sensible for Tesco to follow that up and ensure it was done. I can see that Mrs C reduced the Tesco card debt later, in October 2017 – she told us that she did that by borrowing money from other lenders and her family. So – it appears that it wasn't repaid by using the Tesco loan. The Tesco card debt was then redrawn between January 2018 and June 2018 with balance transfers. And so – I think Tesco should've done more checks before increasing Mrs C's limit in April/ May 2017.

Mrs C called Tesco in October 2017 – and she said she was struggling and wanted interest stopped. Tesco told her to call a debt charity. By that time and given that Mrs C was borrowing £19,600 from Tesco – I think they should've been alerted to Mrs C's situation and looked at her overall circumstances. That would've been in line with the FCA's guidance. And if necessary, agreed some sort of forbearance or interest relief – depending on what they found out. But they didn't. And so – Mrs C was left to struggle with her debts. This must have caused her some considerable stress and anxiety.

Mrs C has said that she wasn't aware of the fees charged for gambling transactions, and they should be refunded. I wanted to be clear about what Mrs C paid for these and asked Tesco some more questions. And they explained that gambling transactions were allowed on the card and showed us the terms and conditions to confirm that. So – I'm not going to say that Tesco were wrong to charge the fees as they did, as they were covered by the terms and conditions. But – we take the view that where the transaction fees were charged after the time at which we believe Tesco shouldn't have increased the limit without asking more questions – April 2017 – then they should be refunded in the same way as other fees.

We asked Mrs C about her other debts. She told us that she borrowed money from payday lenders to keep afloat and to meet the Tesco payments. She showed us her credit file which showed she'd had loans from ten other lenders at the time – but she couldn't give the amounts. But I'm persuaded that she did have to take high interest credit from other sources in the way she says. I think it's a reasonable assumption to make that Tesco

could have seen there were other lenders involved with Mrs C when they increased the lending in April 2017.

In summary, Tesco should've made more inquiries before increasing Mrs C's limit to £9,600 in April 2017, particularly in the light of the debt consolidation loan of £10,000 given the month before. And when Mrs C contacted Tesco in October 2017, they should've dealt with her proactively and in line with their obligations to support customers in financial difficulty – but they didn't. As a result, Mrs C had to struggle with her debts over a long period of time, and without support. She says that caused her a huge impact on her life and she had to fight hard to get herself straight - which she says she is now doing. But for this I think it is reasonable that Tesco pays some compensation of £300 – which is in line with what our service would recommend for what happened here.

My view is that Tesco shouldn't have increased Mrs C's limit to £9,600 in April 2017 – and so the other remedies I propose date from then. Tesco should re-work Mrs C's account to remove interest and charges paid on Mrs C's borrowing over £8,600 from April 2017; and also refund the gambling transaction fees charged after the date of that limit increase. If the rework results in a credit balance, this should be refunded to Mrs C along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. If a credit balance results, Tesco should also remove all adverse information from C's credit file.

Or, if after the rework an outstanding balance still outstands, Tesco should arrange an affordable repayment plan with Mrs C for the remaining amount. Once Mrs C has cleared the outstanding balance, any adverse information should be removed from her credit file.

Responses to the provisional decision:

Mrs C accepted the findings, and Tesco had no further comments to make.

I now need to make a final decision.

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 Mrs C accepted the findings, and Tesco had no further comments, I won't be departing from the provisional decision. And so, my final decision is the same.

My final decision

I uphold this complaint. Personal Finance PLC trading as Tesco Bank must:

- Re-work Mrs C's account to remove interest, charges, and transaction fees (including those relating to gambling transactions) paid on Mrs C's borrowing over £8,600 from April 2017.

- If the rework results in a credit balance, this should be refunded to Mrs C along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. If a credit balance results, Tesco should also remove all adverse information from Mrs C's credit file.
- If after the rework an outstanding balance still outstands, Tesco should arrange an affordable repayment plan with Mrs C for the remaining amount. Once Mrs C has cleared the outstanding balance, any adverse information should be removed from her credit file.
- Pay compensation of £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 22 August 2022.

Martin Lord
Ombudsman