

## **The complaint and what happened**

Mr H complains that Tesco Personal Finance PLC, trading as Tesco Bank, lent to him irresponsibly and without carrying out proper affordability checks. He would like all the fees and charges associated with the loan refunded, along with some of the principal amount he borrowed. He also believes that Tesco's decision to lend to him led him to have to enter an IVA, which has caused him significant distress and ill health. So he would like to be compensated for that.

I've included relevant sections of my provisional decision from June 2022, which form part of this final decision. In my provisional decision I set out the reasons why I wasn't planning to uphold this complaint. In brief that was because, although I wasn't satisfied that Tesco Bank's decision to lend to Mr H was fair or reasonable, he had in fact already received a bigger refund, via the write off of the debt, than I would be directing Tesco Bank to refund. I also didn't think it would be fair to attribute his undoubted distress to Tesco Bank's action in lending to him.

I asked both Mr H and Tesco Bank to let me have any more information they wanted me to consider. Tesco Bank explained why it continues to believe its assessment before agreeing to lend was correct, and to let me know that I had misunderstood the evidence. Mr H hasn't responded.

## **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 done so, I'm not upholding it, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

### **“What happened**

In April 2015 Tesco Bank approved a loan of £12,000 for Mr H, which was scheduled to be repaid at approximately £268 per month over a term of 60 months. The loan was seemingly intended to consolidate debt. When assessing the application, Tesco Bank asked Mr H about his financial circumstances and carried out credit checks before approving the lending.

Within a year of the loan starting, Mr H ran into significant financial difficulties and entered an IVA. He had serious health problems and suffered a lot of distress due to his financial situation. It would seem that a problem with gambling also played a substantial role in this. This loan was ultimately written off via the IVA. Mr H's IVA practitioner has confirmed that he has no interest in any redress which may be due in this case.

The investigator looked at the evidence and thought that Tesco Bank shouldn't have granted the loan, so upheld the complaint. Due to the very difficult circumstances which subsequently arose for Mr H, which the investigator thought was in part due to this loan, he also awarded £500 distress and inconvenience.

### **What I've provisionally 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 done so, I'm currently **not** planning to direct Tesco Bank to pay anything to Mr H, and I'll explain why.

I agree with the investigator that Tesco Bank should not have granted this loan. But I don't think there is any redress for Tesco Bank to pay – which ultimately means that I'm not able to uphold the complaint.

I'll explain first why I don't believe this loan was affordable and sustainable for Mr H.

Tesco Bank is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Mr H would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,

*"...without...incurring financial difficulties or experiencing significant adverse consequences"*

Essentially, Mr H needed to be able to meet his financial commitments and not have to borrow elsewhere to repay Tesco Bank for the loan to be considered affordable and sustainable.

*Did Tesco Bank's checks go far enough?*

The evidence that is still available provides a summary of the information that Tesco Bank gathered in 2015. It seems to have asked Mr H about his income and expenditure and carried out credit checks. But there is no record of any conversations with Mr H, or whether he was simply asked to provide some information via an online application. But the summary information now available does not provide a coherent basis for the lending decision Tesco Bank reached. Whether there previously existed more evidence to alter that, I have no way of knowing.

In short, there are several important unanswered questions, which, in fact, don't appear to have been even posed by Tesco Bank in 2015:

- The purpose of the £12,000 loan was noted on Tesco Bank's system as debt consolidation. But checks showed that Mr H had less than £6,000 outstanding debt. So what was the purpose of more than 50% of the loan?
- I have surmised that Mr H wasn't required to provide any details about his outgoings, as Tesco Bank says he chose not to. So, it relied on statistics such as average spending as outlined by the Office for National Statistics (ONS). However, the income and expenditure (I&E) assessment Tesco Bank completed makes no sense. It shows a monthly net income of £1,700; a sum total of only £320 in monthly living expenses; £1,000 per month to repay existing credit (which was less than £6,000); and concluded that Mr H would have £99 disposable income after taking this loan. This cannot be described as an evenly vaguely plausible or sensible understanding of Mr H's financial situation.
- The credit checks revealed five searches on Mr H in the previous six months. The result of those searches isn't clear, but either Mr H had been entering into a lot of debt in a short time or was looking for credit and possibly being turned down.

Overall, I can't see how Tesco Bank reached the lending decision of *"unconditional accept"* on the basis of the evidence I've seen. There are too many queries and potential flags for that.

So, I agree that more in-depth checks would have been more proportionate to the situation. In saying that, I also bear in mind the amount of the borrowing and length of the loan term, along with a reasonable assumption that the loan represented a large proportion of Mr H's annual gross pay (based on his monthly net income). All of these issues ought to have led Tesco Bank to have concerns about sustainability over the term of the loan and to have considered this application in more depth.

But that doesn't mean I should automatically uphold the complaint. I need to go on to consider what any additional information would have shown.

*What would more in-depth checks have shown Tesco Bank?*

Tesco Bank was under no compulsion to request or consider specific items from Mr H: it could have gathered more information in a range of ways. But Mr H has been able to supply us with some pages from bank statements from the months preceding this application. In the absence of anything else, I've looked at those to see whether there is anything they reveal which should have suggested to Tesco Bank that this borrowing was not affordable and sustainable for Mr H.

The statements show substantial financial difficulties. I will summarise the key issues:

- Significant expenditure on gambling. Sometimes in excess of Mr H's monthly income.
- Repeated and substantial borrowing from friends and family members.
- A large overdraft, the agreed limit nearly doubling the month before this loan was granted by Tesco Bank.

In summary, it is abundantly clear that Mr H was borrowing simply to exist, and would have had to borrow to meet this repayment. As I've explained, needing to borrow to meet repayments means that the lending is not sustainable for the customer. So based on the evidence available, I cannot see how Tesco Bank could have concluded that this loan was affordable or sustainable for Mr H.

*Is there any money to be refunded to Mr H?*

Ordinarily, I would direct Tesco Bank to refund the interest and charges to Mr H, as the best way of putting him back in the position he would have been in. This is because Mr H has had and spent the £12,000 he borrowed, so the fairest approach in cases such as this is to ensure that the business who made a mistake doesn't profit from that. Where there is still a balance outstanding, typically any refund can be used to reduce the balance that the customer still owes the business.

But I have had it confirmed by Mr H's former IVA administrator that this loan was included in the IVA plan, and ultimately about £11,000 of this debt was written off – meaning that Mr H will not have to pay it back. So he's already "received" more than he would if I were to direct Tesco Bank to follow our standard approach to redress in this case. Which means there is nothing for Tesco Bank to pay in respect of the borrowing itself.

*Distress and Inconvenience*

The investigator thought Tesco Bank should pay Mr H £500 for the distress and inconvenience the granting of this loan caused him. However, I don't think there is enough evidence to hold Tesco Bank responsible for the undoubtedly very difficult time Mr H experienced.

I've seen nothing to make me think that he could have avoided the IVA if he hadn't had this loan. He was clearly borrowing from a lot of different lenders and it wouldn't be reasonable for me to conclude that, but for this loan from Tesco Bank, his financial situation would have been manageable. I don't think he would have kept up with all his other debts and stayed out of an IVA.

Mr H also says that Tesco Bank was the only lender he could get money from at that time, so that lending directly enabled his harmful gambling addiction. The evidence doesn't support that conclusion. I can see at least three other credit accounts that were opened around the same time, and Mr H's bank statements show repeated borrowing from family. So I think it is much more likely that he would have continued to find money to gamble, even if Tesco Bank had declined this application.

Whilst I appreciate that Mr H feels very strongly that his suffering should be acknowledged financially, and will be disappointed by my decision, I cannot fairly say that if Tesco Bank hadn't provided this loan the distress and upset experienced by Mr H wouldn't have happened.

It therefore follows that I don't plan to uphold this complaint."

Mr H hasn't made any further points for me to deal with or respond to. Tesco Bank says that, in allowing for Mr H to make £1,000 worth of debt repayments each month, it "*...overestimated his expenditure, therefore accounting for more debt than necessarily existed.*" I am grateful to Tesco Bank for offering this clarification, however, I would like to reassure it that I didn't misunderstand this element of its affordability assessment. I cited it as part of illustrating how apparently haphazard and divorced from reality that assessment was, in the round.

Having considered Tesco Bank's points, I still conclude that there were many unanswered questions, and it should have carried out further checks before approving this loan. I also find that further checks would have likely shown that Mr H was experiencing significant financial difficulties, and that this borrowing was therefore neither sustainable nor affordable for him.

However, in any event, as there is no redress due to Mr H, I ultimately do not uphold this complaint.

### **My final decision**

For the reasons explained above and in the provisional decision, I do not uphold this complaint and Tesco Bank doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 August 2022.

Siobhan McBride  
**Ombudsman**