

The complaint

Mr A complains that Tesco Personal Finance PLC trading as Tesco Bank (Tesco) irresponsibly lent him money that he couldn't afford to repay.

What happened

Tesco provided Mr A with a loan for £35,000 on 30 January 2016. The loan was repayable over 120 months at the monthly rate of £449. Part of the loan (around £16,400) was used to pay off a previous Tesco loan. The balance of the loan was said to be for home improvements. Mr A struggled to repay the loan and he missed several payments. In February 2019 Mr A was issued with default notice and In March 2019, having failed to pay the arrears, a default was placed on his credit file. He has since come to a payment arrangement with Tesco.

Mr A complained to Tesco that the loan was unaffordable to him. In particular he said it failed to take account of another loan that he was paying when assessing his application.

Tesco said it took into account the information Mr A provided together with that provided by credit reference agencies. It said Mr A easily passed its affordability assessment with a considerable disposable income remaining. There were no adverse indicators such as missed payments, arrangements or bankruptcy identified by the credit reference agencies. It's confident its assessment was thorough, so to evidence Mr A could sustainably repay the loan.

On referral to the Financial Ombudsman our investigator initially didn't uphold the complaint as based on the information obtained Mr A appeared to be able to afford the repayments. However our subsequent investigator requested copies of Mr A's current account statements. From the evidence seen in those it was established that Mr A was spending considerable sums each month on gambling at the time of the application. Our investigator said that given the amount of the loan and the period of repayment Tesco should have done further checks which would likely have revealed the gambling. So she said Tesco shouldn't have provided the loan.

Tesco reiterated that Mr A was assessed by the credit reference agencies to have a good credit risk and given Mr A's history with it, it didn't consider it necessary to obtain bank statements. As Mr A didn't tell it about his gambling it wouldn't have known about it at the time of providing the loan. It asked for an Ombudsman's decision.

The matter has been referred to me for further consideration.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Tesco complete reasonable and proportionate checks to satisfy itself that Mr A would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr A would have been able to do so?

The rules and regulations in place required Tesco to carry out a reasonable and proportionate assessment of Mr A's ability to make the repayments under the agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so Tesco had to think about whether repaying the loan would be sustainable. In practice this meant that Tesco had to ensure that making the repayments on the loan wouldn't cause Mr A undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Tesco to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr A. 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. I think that such a check ought generally to have been *more* thorough:

- The *lower* a consumer'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 *greater* the number and frequency of loans, and the longer the period 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).

I've noted that Tesco didn't ask Mr A for payslips nor did it verify his income. However as the income figure Mr A gave was accurate I don't think anything turns on this. But I do think that, given the amount of the loan, the period of repayment and the amount of each repayment Tesco should have carried out a thorough assessment of Mr A's finances.

On the face of it, Tesco's credit check showed Mr A to have only one loan i.e his existing Tesco loan, no other loans, and no revolving credit (credit or store cards). However Mr A has shown us details of a loan which was issued to him on 25 November 2015, for which he was paying £167 a month, which hasn't been recorded by Tesco on its affordability check. As Mr A has shown us details of a more recent report from the same credit reference agency, showing the loan, I could assume that it hadn't yet been reported to that agency when Tesco did its check. But the later report did show that the record was updated on 1 January 2016

and given the date of the loan it seems likely the credit check was done after that. However as I haven't seen the copy report Tesco obtained at the time, I can't verify this. The amount of that loan repayment added to the new Tesco repayment would have increased his credit to income ratio from about 24% to 33%.

Mr A was assessed as having a disposable income after taking account of the new loan repayment of £678, which would have been £511 taking account of the "missed" loan. And, whilst he didn't say he what he was doing with it, he did repay that loan from the funds provided by the Tesco loan.

But I don't think that, on its own that would have been a reason to decline the loan. The loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines sustainable as being without undue difficulties and in particular, the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

Mr A's loan history with Tesco, as advised to us by it, is that he borrowed £5,000 in 2013 for home improvements, and in March 2014 a further £5,000 for home improvements. In November 2014 he topped up his existing loan to £18,000, again for home improvements, and to pay off a credit card debt of £1,900. And, as I've said the present loan issued in January 2016 was partly to pay off the second loan, as topped up and a substantial sum for home improvements.

However whilst Tesco partly justifies providing the loan by pointing out that Mr A kept up with all the payments on those loans, it never queried why Mr A kept coming back for ever increasing sums for home improvements. Mr A has shown us his records, which show that none of those loans were used for home improvements. Rather they were used to pay off other loans. Whilst I would not expect Tesco to be interested in any paid off loans, the fact that Tesco loans, provided for something else, paid off those loans is I think significant in that it kept his credit score high. Those loans would have shown on his record as being paid off after receiving the Tesco loans.

As I've said, in light of his repeated borrowing, the amount being advanced (which I understand is the maximum Tesco will loan) and the term and repayment period, I don't think Tesco carried out proportionate checks. And in any event from the checks it did, I think it should have been alerted to the fact that Mr A kept asking to borrow monies for home improvements. So I think Tesco should have carried out further checks. The easiest way to carry out those checks would have been to ask for recent bank statements. However Tesco decided to do this such checks would most likely have revealed that Mr A was spending substantial sums on gambling, of several thousand pounds a month. And as Tesco has advised us, had it been aware of Mr A's gambling problem it *"most certainly wouldn't have lent to him."*

I think, in the particular circumstances of this case, that Tesco should refund the interest and any other charges on this loan, as set out below.

Putting things right

Mr A has had the capital payment in respect of the loan, so it's fair that he should repay this. So far as the loan is concerned, I think Tesco should refund all interest and charges as follows:

- Remove all interest, fees and charges applied to the loan.

- Treat any payments made by Mr A as payments towards the capital amount.
- If Mr A has paid more than the capital, refund any overpayments to him with 8% simple interest* from the date they were paid to the date of settlement.
- But if there's still an outstanding balance, Tesco should come to a reasonable repayment plan with Mr A
- Remove any adverse information about the loan from Mr A's credit file.

*HM Revenue & Customs requires Tesco to deduct tax from this interest. It should give Mr A a certificate showing how much tax it's deducted if he asks for one.

My final decision

I uphold the complaint and require Tesco Personal Finance PLC trading as Tesco Bank to provide the remedy set out under "Putting things right" above.

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

Ray Lawley
Ombudsman