

## The complaint

Mr L says Tesco Personal Finance PLC, trading as Tesco Bank, irresponsibly lent to him.

## What happened

Mr L took out two loans from Tesco Bank. They were both for £12,000 over 60 months. The first was taken out on 26 November 2016 for a car. The monthly payment was £235.86 and the total repayable was £14,151.60. The second loan was used to refinance the first and was taken out on 28 May 2019. The monthly payment was £249.74 and the total repayable was £14,984.40. There remains an outstanding balance.

Mr L says Tesco Bank did not carry out proper checks, he was already struggling financially and had a gambling addiction. He had to take out a debt management plan in May 2020 and this has all impacted his mental health.

Our adjudicator did not uphold Mr L's complaint. She said it would not have been proportionate for Tesco Bank to have asked for the amount of information needed to show the lending was unsustainable. She felt its checks were reasonable and did not show anything that ought to have concerned the lender.

Mr L disagreed with this assessment and asked for an ombudsman's review. He said better checks would have showed the lending was unaffordable. He set out in detail his financial circumstances at the time of each loan and sent in supporting evidence.

I reached a different conclusion to the adjudicator so I issued a provisional decision. An extract follows and forms part of this final decision.

### *Extract from my provisional decision*

*Tesco Bank asked for some information from Mr L when he applied for both loans. This included his net monthly income, any rent or mortgage costs and any existing credit commitments. It made an assumption about his living costs using national statistics. It then completed a credit check. In both 2016 and 2019 it decided he would be able to afford the loans based on the results of these checks.*

*I think the checks proportionate for loan one and I don't think there were any indications in the results that there was a risk Mr L would struggle to make his repayments sustainably. The credit check showed Mr L had £4,964 of debt and was up-to-date with all his payments. He declared his monthly income was £1,750, that he had no housing costs and a loan repayment of £299. So I think Tesco Bank's lending decision was fair. Mr L has challenged some of this data but it was what he declared at the time and given it was his first loan and his credit history was good I don't think Tesco Bank ought to have done further checks. For this same reason, whilst Mr L has raised that he was £4,000 overdrawn and had a credit card these debts did not show on the bank's credit checks (this can happen due to timing differences, or as not all lenders report to all the agencies) but we can only fairly expect Tesco Bank to use the results their check returned.*

*It follows I don't think Tesco Bank was wrong to give loan one to Mr L*

*However, when he applied for loan two I don't think the same level of checks were proportionate. Mr L was borrowing to refinance his first loan and the credit check showed his indebtedness had increased significantly, particularly on credit cards. Taking on this loan would mean Mr L needed to spend a relatively high proportion of his income on his credit commitments so Tesco Bank ought to have done better checks to get the assurances it needed that this would be sustainable – in other words, that he would not need to borrow to repay or suffer some other financial harm.*

*I have reviewed Mr L's bank statements from the months prior to his application. I am not saying Tesco Bank had to do this but it is one way I can recreate what better checks would most likely have shown Tesco Bank. And I think there were signs that there was a high risk Mr L wouldn't be able to repay this loan sustainably. He was persistently reliant on his overdraft and gambling frequently. So his finances were not stable and I cannot see how he could repay this loan without adverse financial consequences. And I do not find it reasonable, or responsible, that Tesco Bank seems to be saying it ought to be taken into account that Mr L also received significant credits from his gambling. But I apologise if I have misunderstood this point in its submission. It adds that it doesn't believe Mr L would have accepted he had a gambling issue if it had asked about this at the time – but had it done proportionate checks I think it would have been in the position to realise the lending would most likely be financially harmful, and so as a responsible lender it would have declined his application, irrespective of what Mr L may have said.*

*It follows I think Tesco Bank was wrong to give loan two to Mr L.*

I then set out what Tesco Bank would need to do to put things right. I asked both parties to respond with any comments by 22 December 2022. They both replied ahead of this deadline.

Mr L said he accepted the provisional decision. Tesco Bank did not. In summary, it does not agree that the checks for loan 2 were not proportionate. Its calculations showed Mr L would have had £828 net disposable income each month for loan 1, and £1241 at the time of loan 2. Given this healthy disposable income and the fact it found no adverse data on the credit check it does not agree further checks were needed.

### **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 and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considering Mr L's complaint.

Tesco Bank argues based on the results of its initial checks for loan 2 no further information was needed. I have considered its full response to my provisional decision carefully, but I still think its checks were not proportionate. It argues, given all the information it gathered, the increase in revolving credit was not reason enough to do more, but I disagree and I don't think the debt increase was the only thing it needed to think about.

This was Mr L's second high-value loan being taken out over a long term – and he had not yet repaid the first. Tesco Bank argues that Mr L's income had increased since loan 1, but I think this was further reason to carry out better checks given his credit card debt had increased from £5 to £8,027, possibly somewhat counter-intuitively in the circumstances.

And I would remind Tesco Bank that CONC 5.2A.16 part 3) sets out that it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence. So I remain of the view Tesco Bank needed to do more before deciding to lend.

I set out in my provisional decision what I thought it was most likely better checks would have shown. Tesco Bank asked for copies of Mr L's bank statements but I don't think that is necessary in the circumstances. Where customers provide personal information such as bank statements in the course of making a complaint, we don't typically share the information in full. This is in line the provision set out in DISP 3.5.9 which states that the Ombudsman may "accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate".

I am of course happy to provide some more detail in summary form about what the statements show to further support the finding I made in the provisional decision. Mr L sent in statements for the period January to April 2019. At that time he was spending on average 26% of his salary on gambling transactions. And he was only in credit over that period for five days (31 December 2018 to 3 January 2019 and 28 February 2019). In addition, Tesco Bank would have seen that Mr L was now paying rent (£510 pcm) and his income was lower than he had declared. So had it completed proportionate checks I am sure, as a responsible lender, Tesco Bank would not have continued to think Mr L had the level of disposable income it had initially calculated, rather that there was a high risk Mr L would be unable to repay this loan sustainably. I note he went on to have repayment problems as soon as July 2019.

It follows I am upholding Mr L's complaint about loan 2.

### **Putting things right**

For loan two:

I think it's fair and reasonable for Mr L to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him. Tesco Bank must put this right.

It should:

- Remove all interest and charges from loan two.
- If reworking Mr L's loan account results in him having effectively made payments above the original capital borrowed, then Tesco Bank should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement\*.
- If reworking Mr L's loan account leaves a capital balance outstanding Tesco Bank should try to agree an affordable repayment plan with Mr L.
- Remove any adverse information recorded on Mr L's credit file in relation to loan two.

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

### **My final decision**

I am upholding Mr L's complaint in part. Tesco Personal Finance PLC, trading as Tesco Bank, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 12 January 2023.

Rebecca Connelley  
**Ombudsman**