

## **The complaint**

Ms Y complains that Tesco Personal Finance PLC trading as Tesco Bank was irresponsible when it offered her two credit card accounts.

## **What happened**

Tesco opened a credit card account for Ms Y in August 2017 and another one a few months later in January 2018. The first had a limit of £3,200, the second a limit of £1,500 and neither limit was ever increased. I understand that both accounts are now closed.

Ms Y complained to Tesco in October 2022 that the credit was unaffordable and unsustainable for her. She said that each time she paid off her debts she had to borrow again and she made the minimum payments on each card. Ms Y said that she managed to repay the account balances by borrowing from elsewhere.

Tesco didn't uphold Ms Y's complaint. It said that it used a variety of information to check that the credit would be affordable for her including information she'd provided and information from the credit reference agencies. Tesco said it was happy to move forward with her application each time.

Tesco said that Ms Y's first account was well maintained and fully repaid by June 2019. The credit limit was reduced to £350 in March 2021 and Ms Y closed the account in May 2021. Tesco said that Ms Y's second account was in and out of arrears. It reviewed the account in March 2021 and reduced the limit to £450. The arrears on the account remained around £140 and it issued a default and terminated the account in October 2021. Ms Y is repaying the balance through a debt management plan with a national debt charity.

Ms Y referred her complaint to us. Our investigator assessed the complaint and recommended that it be upheld in part. They found that Tesco wasn't irresponsible to have opened the first account for Ms Y but it should have seen from the information it had that the second account wasn't likely to be affordable for her.

Tesco didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide.

## **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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as Tesco, need to abide by. Tesco will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement, Tesco needed to check that Ms Y could afford to repay the credit out of her usual means, within a reasonable period of time, without having to

borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Ms Y's particular circumstances. The overarching requirement was that Tesco needed to pay due regard to Ms Y's interests and treat her fairly. CONC gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my considerations are did Tesco complete reasonable and proportionate checks when it opened each account for Ms Y to satisfy itself that she would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown and, ultimately, did Tesco make fair lending decisions?

#### August 2017 agreement

When Ms Y applied for her first credit card, Tesco recorded her net monthly income as £1,600, her housing costs as £480 and estimated her living costs using data from the Office of National Statistics (ONS). I don't know if Tesco sense-checked Ms Y's income using information from the credit reference agencies, but it did check her credit file and noted that there was no adverse information showing, and that she had existing debts of £10,486.

Tesco had agreed a loan for Ms Y about a year before to refinance existing debt. It estimated that Ms Y's monthly repayments towards her debts amounted to £262 and estimated future payments towards her new credit card as £88. Tesco concluded that Ms Y's total monthly expenses came to £1,310, leaving her £290 spare.

I might consider Tesco's checks to have been reasonable and proportionate if Ms Y were applying for a lower amount of credit. Given her stated salary and what she already owed, I think it would have been a reasonable response for Tesco to have verified Ms Y's income, aside from any sense-checking, and considered whether the ONS data was actually representative of her circumstances before offering her another £3,200 credit.

Ms Y provided her bank statements and I've reviewed these. To be clear I'm not suggesting this is the information Tesco should have relied on but it is the information I have and I think it's reasonable for me to rely on it to consider what further checks might have revealed. These show that Ms Y's income was lower at £1,544 a month and that she was paying around £360 towards her existing debts which was more than Tesco estimated. However, I think it's likely Tesco would have continued with its offer even if it had carried out further checks, because it seems from the statements that Ms Y would be able to repay the credit out of her usual means without difficulty. It follows that I don't think Tesco was irresponsible to offer the credit to Ms Y.

Tesco has explained that Ms Y used the card to transfer an existing balance at a zero interest rate, and she wasn't charged any interest, late or overlimit fees on this account.

#### January 2018 agreement

When Ms Y applied for her second credit card, Tesco recorded her net monthly income as £1,600 and her monthly expenses as £1,489. Tesco estimated that Ms Y's monthly repayments towards her debts amounted to £529, including future payments towards her new credit card. It concluded that Ms Y would have an estimated £38 spare each month having met all her expenses.

Our investigator found that Tesco lent irresponsibly because its assessment didn't leave

Ms Y with a sufficient amount each month to meet any unexpected or unaccounted for expenses. Tesco said that this wasn't a reasonable way to determine the outcome of the complaint. It said that the ONS data it relied on accounted for day to day expenses and it would be unrealistic to consider hypothetical emergency spending.

I accept that Tesco wasn't required to consider a minimum surplus threshold in its affordability assessment however, it was required to consider the sustainability of the repayments for Ms Y's particular circumstances. When its affordability assessment found that Ms Y would have a relatively low amount left over each month and so a small variation in its estimates might have a bigger impact on its lending decision, I think it would have been a reasonable and proportionate response for Tesco to have looked into Ms Y's circumstances in greater depth before lending to her again.

In addition, Tesco knew that Ms Y owed almost £19,000, including a loan she'd taken out a few months prior to this application, and agreeing more credit for her potentially committed her to spending a third of her income repaying her debts. Tesco had previously agreed a loan for Ms Y in mid-2016 to consolidate her debts and she'd transferred an existing balance to her first credit card. I think Tesco should also have been concerned that Ms Y wasn't managing to make inroads into her debts and so offering more credit might not have been suitable for her at that time.

As before, I've reviewed Ms Y's bank statements to consider what further checks might have revealed about her finances. Had Tesco asked Ms Y for verification of her income, for example, it's likely to have learnt that her regular monthly income was less than the figure it relied on at £1,544 and her rent, which was her main expense, was £515, higher than the figure of £480 it relied on. This meant that additional credit was likely to have been unaffordable for her from the outset and Tesco should have recognised this risk before entering into the agreement. Given this and considering Ms Y's overall financial circumstances, I don't think Tesco treated her fairly when it offered her a second account.

Tesco said that Ms Y experienced financial issues in 2021 due to the pandemic, therefore her difficulties were caused by this and not its lending decision. I accept that the pandemic had an adverse impact on Ms Y's financial circumstances and let me say at this point that I am sorry to hear things have been so difficult for her. As I've explained above, I think the credit offered with this second account was unaffordable for Ms Y from the beginning. I understand that Ms Y took out a large loan from a high street bank around June 2019, and cleared the balances on her Tesco credit cards and loan at the same time. So, while Ms Y successfully repaid the credit, I can't say she did so out of her usual means.

In summary, I've concluded that Tesco was irresponsible to agree a second credit card for Ms Y.

### **Putting things right**

As per our usual approach I think it's fair that Ms Y repays the capital as she's had the use of this but she shouldn't pay any interest, fees or charges associated with her account opened in 2018. Therefore, Tesco should:

- Rework the account removing all interest, charges or insurance premiums that have been applied;
- If the rework results in a credit balance, this should be refunded to Ms Y along with 8% simple interest per year\* calculated from the date of each overpayment to the date of settlement. Tesco should also remove all adverse information regarding this account from Ms Y's credit file.

- Or, if after the rework, there is still an outstanding balance, Tesco should arrange an affordable repayment plan with Ms Y for the remaining amount or adjust an existing plan accordingly. Once Ms Y has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

\*HM Revenue & Customs requires Tesco to deduct tax from any award of interest. It must give Ms Y a certificate showing how much tax has been taken off if she asks for one.

### **My final decision**

For the reasons I've explained above I'm partly upholding Ms Y's complaint about Tesco Personal Finance PLC trading as Tesco Bank and it now needs to take the above steps to put things right for her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 6 January 2024.

Michelle Boundy  
**Ombudsman**