

The complaint

Miss R complains that Tesco Personal Finance PLC trading as Tesco Bank was irresponsible when it offered her credit.

What happened

Tesco opened a credit card account for Miss R in January 2019 in with a credit limit of £5,800. This type of credit was an open-ended or running account facility. On opening the account, Miss R transferred an existing credit card balance of £2,000 to the card and made a £700 money transfer. She also either transferred existing store card purchases totalling £3,000 or made a new purchase of this amount. Her minimum payments in 2019 were around £110.

Miss R complained to Tesco that it had been irresponsible to open the account for her due to her level of existing debt and how she'd managed this. She said this would have been visible on her credit file along with a recent default.

Tesco said it relied on the information Miss R provided in her application and information from the credit reference agencies. It said the account had been well maintained and all fees and charges had been applied in line with the terms and conditions of the agreement. It didn't agree it had been irresponsible to open the account for Miss R and didn't uphold her complaint.

Miss R brought her complaint to us. Our investigator assessed the complaint and didn't recommend that it be upheld. They found that Tesco carried out proportionate checks before opening the account for Miss R and that there wasn't anything in its checks which suggested that the credit would be unaffordable for her.

Miss R disagreed with our investigator's recommendation and asked for her complaint to come to an ombudsman to review and resolve and it came to me. I issued a provisional decision on 2 October 2023 explaining why I thought Miss R's complaint should be upheld and setting out my proposals to put things right for her. I allowed some time for either party to comment on what I'd said or provide any new information they wished me to consider.

Miss R had some comments in response my decision and I've had no response from Tesco.

Miss R said that Tesco had recently let her know it had defaulted her account and she asked that the default be removed. In my provisional proposals for putting things right for Miss R I said that Tesco should remove any adverse information from her credit file once any adjusted balance had been cleared. This would include any defaults.

Miss R also said that Tesco hadn't treated her fairly regarding putting in place a payment plan for her account because what it proposed wasn't affordable for her. Miss R said that Tesco hadn't respected her preferred communication methods. We've let Miss R know that these were points she hadn't previously raised with Tesco and so she would need to approach it in the first instance. If she wasn't happy with the response she received she could refer a complaint to us. I have not addressed these points in this final decision.

This is my final decision on the complaint and will be legally binding on both parties should Miss R chose to accept it.

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 reconsidered everything, I remain of the view that Miss R's complaint should be upheld. I'll set out my reasons and conclusions again in this final decision.

As I'd said before, I've 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 Miss R 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 Miss R's particular circumstances. The overarching requirement was that Tesco needed to pay due regard to Miss R's interests and treat her fairly. CONC 2.2.2G(1) 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 the account for Miss R 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 a fair lending decision?

Tesco said it relied on information provided by Miss R and information from credit reference agencies to make its lending decision. It recorded that Miss R had a net monthly income of £3,000 and calculated her outgoings as £2,693, including estimated repayments for this account plus a buffer amount. Tesco said that there was no adverse information recorded on Miss R's credit file and noted that she had existing loans amounting to around £14,000 with monthly repayments of £229 and revolving credit balances of about £6,000. Tesco concluded that Miss R had a level of disposable income which meant the credit card repayments would be affordable and sustainable for her.

Tesco said in its final response letter to Miss R that it didn't obtain any evidence of her stated income of £3,000 per month but that there was no obligation for it to do so - it was reasonable for it to work on the basis that the information she provided was true, based on the other checks it carried out. I'm afraid I disagree with Tesco on this point. The regulations at the time stated that a lender must take reasonable steps to determine or estimate a customer's current income and that it wasn't generally sufficient to rely solely on their statement of current income without independent evidence. In this instance, given Miss R's existing level of debt and that it was offering her an additional £5,800 credit, I think it would have been proportionate of Tesco to verify Miss R's income in order to ensure she'd be able to repay the credit within a reasonable period of time without experiencing financial difficulty.

Miss R provided us with copies of her bank statements and I've relied on these to

understand Miss R's means at the time. To be clear, I'm not suggesting this is the information Tesco should have considered but it is the information I have and I think it's reasonable to rely on it as a proxy for what a proportionate check would likely have shown.

The bank statements show that Miss R's income was made up of a weekly wage of £145, tax credits, child-related benefits and student loans to a monthly average of about £2,000 altogether. Further credit was clearly unaffordable for Miss R using Tesco's estimated expense figure. The identifiable spending I can see on Miss R's bank statements show monthly outgoings on rent, bills and existing debts of over £1,900, not including other usual expenses such as transport, food or clothing. Miss R was fully utilising her overdraft of £1,150 and was on occasion charged unarranged overdraft fees.

It seems to me that Miss R was having difficulty meeting her existing commitments out of her usual means and wasn't likely to be able to meet her repayments for this new amount of credit without difficulty. I think Tesco would have learnt this through a proportionate check and would have declined to lend to her. It follows that I think it was irresponsible to have entered into the agreement.

Putting things right

As I don't think Tesco ought to have opened the account, I don't think it's fair for it to be able to charge any interest or fees under the credit agreement. But I also think it's fair that Miss R pays back the money she borrowed.

Therefore, Tesco should:

- Rework the account removing all interest, fees and charges that have been applied;
- If the rework results in a credit balance, this should be refunded to Miss R 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 Miss R's credit file; or
- If, after the rework, there is still an outstanding balance, Tesco should arrange an affordable repayment plan with Miss R for the remaining amount. Once Miss R 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 Miss R a certificate showing how much tax has been taken off if she asks for one.

My final decision

For the reasons I've set out I'm upholding Miss R's complaint about Tesco Personal Finance PLC trading as Tesco Bank and it 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 Miss R to accept or reject my decision before 4 December 2023.

Michelle Boundy
Ombudsman