

The complaint

Mr P complains that Tesco Personal Finance PLC trading as Tesco Bank lent to him irresponsibly.

What happened

In July 2017, Mr P applied for and received a loan of £17,500 from Tesco. The loan was to be repaid in 84 monthly repayments of £262.71. Mr P says that at the time he had a gambling problem and, had Tesco undertaken proper checks on his circumstances, it would have identified that and refused to lend to him.

Tesco initially said Mr P had complained too late for his complaint to be investigated. After our involvement it was found this service has the power to consider it. Tesco told us it believed it carried out reasonable and proportionate checks on Mr P's application and found nothing of concern. It was satisfied it had lent to Mr P responsibly.

Mr P referred his complaint to us and one of our investigators looked into it. He said that Mr P had a high amount of debt compared to his income – including a loan for £22,000 taken just two months before this application - which ought to have led Tesco to carry out further checks to understand his financial circumstances. If it had carried out further checks, our investigator felt Tesco ought to have refused to lend to Mr P.

Mr P accepted what our investigator said, but Tesco didn't. As there was no agreement, the complaint has been passed to me for a decision.

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 approach to complaints about irresponsible lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Tesco needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Mr P irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Tesco carry out reasonable and proportionate checks to satisfy itself that Mr P was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time, and did it make a fair lending decision?
- Did Tesco act unfairly or unreasonably towards Mr P in some other way?

It's not about Tesco assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr P. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan,

the amount of the monthly repayments and the overall circumstances of the borrower.

Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer has a low income (because it may make it more difficult to make loan payments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income);
- the longer the term of the loan (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer period); and
- the greater the number and frequency of loans and the longer the period of time during which a customer has been given loans (because of the risk of repeated refinancing may signal that the borrowing has become or was becoming unsustainable).

Did Tesco carry out reasonable and proportionate checks?

Mr P declared a monthly income of £3,200, lived with a partner in a jointly mortgaged home and a single dependant. His credit report showed monthly commitments (including his mortgage, existing loan repayments and credit cards) as £1,931. His loan balances equated to £30,060 and he had £1,953 on revolving credit. His accounts were all up to date and he had no defaulted accounts or CCJs.

Mr P had applied for a loan of £17,500 over seven years to refinance other debt, but there's no information about what debt the loan was to be used for. From the information above however, It's clear it wasn't to repay all of Mr P's debts.

So we can see that Mr P was not on a low income, but he was requesting a large loan over a significant period of time. He'd also taken out another, larger loan just a short time prior to this application. In light of this, I'd expect Tesco to have wanted to understand more about his financial circumstances to ensure he would be able to repay the loan sustainably over such a long period of time. I've seen nothing to suggest Tesco carried out any further checks, so I don't think it has done reasonable and proportionate checks in this instance.

What would reasonable and proportionate checks have shown at the time, and did Tesco make a fair lending decision?

There are no set rules about checks businesses should do, but a good starting point is often regarded as looking at bank statements for a few months prior to an application. This enables the lender to see for itself the applicant's actual income and expenditure. Mr P has provided copies of his statements from 21 March 2017, to after this loan was drawn.

It is clear from the statements that Mr P was gambling extensively at the time. Indeed around half of the loan he took in May 2017 was used for gambling within a fortnight of it being drawn. His statements show that he was using money raised from credit to fund his gambling habit.

If Tesco had carried out further checks – perhaps by looking at his bank statements – it would have seen the activity. I think it ought to have realised the loan would be unlikely to be repaid on a sustainable basis and refused to lend. It follows that I don't think it made a fair decision to lend to Mr P.

Did Tesco act unfairly or unreasonably towards Mr P in some other way?

I've carefully read and thought about all the information provided by each party to this complaint. I don't think Tesco acted unfairly towards Mr P in some other way.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Mr P in the position he would be in now if he hadn't been given the loan. But Mr M was given the loan, used the money and in this case, I think it's right that he should repay what he borrowed and had use of, but I don't think Tesco should benefit from its decision to lend to him through interest and charges.

So, I think Tesco should:

- add up the total amount of money Mr P received as a result of having been given this loan and deduct repayments he's made.
 - If this results in Mr P having paid more than he received, any overpayments should be refunded to him along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*
 - If any capital balance remains outstanding, then Tesco should contact Mr P to arrange an affordable payment plan with him. I'd remind Tesco of its obligation to treat customers in financial difficulty fairly.
- remove any negative information recorded on Mr P's credit file relating to this loan.

*If Tesco considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint. Tesco Personal Finance PLC trading as Tesco Bank should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 May 2024.

Richard Hale
Ombudsman