

The complaint

Miss L is complaining about Tesco Personal Finance PLC trading as Tesco Bank because she says it lent to her irresponsibly and she's unhappy about the charges and interest she's incurred.

What happened

Miss L took a credit card with Tesco Bank in August 2022. The limit was initially set at £3,500 and hasn't been increased since.

Our investigator concluded the complaint should be upheld. He felt Tesco Bank should have carried out more detailed affordability checks and then declined Miss L's application.

Miss L accepted the investigator's assessment. Tesco Bank didn't. It maintains further checks weren't required as Miss L's debt was low compared to her income and she had an excellent credit file. It also pointed out that Miss L used the interest-free balance transfer facility to pay off other debts, meaning the card actually reduced her monthly outgoings.

The complaint has now been referred to me for review.

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 done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss L, Tesco Bank was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did Tesco Bank complete reasonable and proportionate checks to establish that Miss L would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required Tesco Bank to carry out a proportionate and borrower-focused assessment of whether Miss L could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Tesco Bank

had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss L.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Tesco Bank has described the information it gathered to assess whether Miss L's credit was affordable before it was approved. This included:

- information contained in her application, including her income;
- information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and
- an expenditure assessment using a combination of modelled data for housing and other key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.

Tesco Bank maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable.

After carefully reviewing the information Tesco Bank obtained, I think there were factors that should have prompted it to carry out further checks before approving Miss L's credit and I don't agree the affordability assessment based mainly on modelled statistical data, rather than her actual circumstances, was reasonable and proportionate in this case.

In particular, I'm mindful Miss L's declared income was relatively modest and the credit limit offered was comparatively high. I'm conscious the card gave her the facility to transfer some of her existing debt to an interest-free facility, but I understand this was only a temporary arrangement. Also, there was no requirement for Miss L to close any existing accounts so the overall debt available to her was still increased by £3,500.

In my view, further checks were required to complete a proportionate affordability assessment in this case.

I can't know exactly what further checks Tesco Bank might have carried out at the time, but I think a consideration of Miss L's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Miss L's income may not have been as high as Tesco Bank believed and also that it included child benefit. But more importantly, they also show she was essentially living in her overdraft with a negative balance for most of the month and only returning to a positive balance for a few days after she was paid. This pattern repeated itself throughout this period.

If Tesco Bank had seen this information, it's my view that it shouldn't have lent to Miss L. She appeared to be living beyond her means and I don't think it was responsible to offer her another credit facility, particularly one with a limit as high as £3,500 in those circumstances.

In summary, if Tesco Bank had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Miss L. It's for this reason that that I'm upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Miss L to the position she'd now be in but for the errors or inappropriate actions of Tesco Bank. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Tesco Bank should have lent to Miss L, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Tesco Bank now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.
- If the reworking results in a credit balance, this should be paid to Miss L with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Tesco Bank to deduct tax from any interest. It must provide Miss L with a certificate showing how much tax has been deducted if she asks for one. If Tesco Bank intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Tesco Bank should arrange an affordable payment plan with Miss L for the shortfall.
- Remove any adverse information recorded on Miss L's credit file relating to this credit, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Miss L's complaint. Subject to her acceptance, Tesco Personal Finance PLC trading as Tesco Bank should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 9 May 2024.

James Biles
Ombudsman