

The complaint

Mr M has complained that Tesco Personal Finance PLC trading as Tesco Bank ("Tesco") gave him a loan he couldn't afford to repay.

What happened

Tesco gave Mr M a 60-month loan of £15,000 on 12 November 2021. The monthly repayments were £327.68 and the total repayable was £19,660.80. Mr M had had some difficulties repaying the loan and Tesco says it has passed it to a third-party collection agency to collect on its behalf.

Following Mr M's complaint Tesco wrote to him and explained it wasn't going to be upholding it. Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

In the investigator's latest assessment, she upheld Mr M's complaint about the loan because she said Tesco hadn't conducted proportionate checks taking into account the amount advanced, the term of the loan and that Tesco didn't know what Mr M's living costs were – instead, it relied on data from the Office of National Statistics (ONS).

Had further checks been conducted by Tesco it would've likely discovered Mr M was spending significant amounts each month on gambling and these transactions were more than Mr M's total income.

Tesco didn't agree, saying in summary that had it asked for bank statements from Mr M before the loan was approved, he would've supplied the ones sent to the Financial Ombudsman – meaning Tesco wouldn't have discovered the gambling.

The investigator thought about these comments, but they didn't change her mind and she explained that the statement which showed Mr M's gambling were provided to us from the outset. As no agreement could be reached the complaint was passed to me to decide.

I issued a provisional decision explaining the reasons why I was intending to uphold Mr M's complain and I gave both parties an opportunity to provide any further comments. Tesco confirmed it had nothing further to add and we didn't hear from Mr M.

A copy of the provisional findings follows this and forms part of this final decision.

What I said in my provisional decision:

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/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr M's complaint. Having carefully considered everything I've decided to uphold Mr M's complaint. I'll explain why in a little more detail. Tesco needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr M could

afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr M's complaint. Having looked at everything I have decided to uphold Mr M's complaint and I've explained why below.

Mr M, as part of the online application declared he worked full time and earned £2,400 per month. Tesco relied on the information Mr M had declared – and didn't undertake any further checks into his income.

It doesn't appear that Tesco asked Mr M for any details of his day to day living costs, but it has explained that taking account of the credit commitments it saw in the credit check (which I come on to below), as well as his declared mortgage payment, and using ONS averages it calculated his monthly outgoings were £1,714. Tesco therefore concluded the loan was affordable.

Tesco, as part of its affordability assessment carried out a credit search and it has provided a summary of the results it received from the credit reference agency. I want to add that although Tesco carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. This can and does mean information which is given to a lender may be different to what a consumer can see by reviewing their own report. But what Tesco needed to do was consider the results it received.

Tesco says the credit check results showed that Mr M had 6 active credit accounts owing a total of £1,508 to creditors – excluding the mortgage. Tesco went on to explain that there were no adverse payment markers recorded against the active accounts. It therefore believed, that given what was left over from Mr M's income the prospective loan payments were affordable and further checks weren't needed.

However, like the investigator I do think further checks ought to have been carried out when thinking about the sum that was being lent, the term it was lent over and the fact that while in some situations it may be appropriate to use averages, in this case I don't think it was proportionate to do so for the reasons given above – as such Tesco's checks needed to go further. I've therefore considered what further checks are likely to have shown.

Mr M provided as part of his initial complaint submission copy bank statements from around the time this loan was advanced and so I have evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr M has provided, it doesn't mean it would've shown up in any checks Tesco might've carried out.

But in the absence of anything else from Tesco showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what this information says as an indication of what Mr M's financial circumstances were more likely than not to have been at the time.

I also think it's important for me to set out that Tesco was required to establish whether Mr M could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. I think further checks

would've shown that Mr M was spending more than his income each month on gambling transactions and as such was unlikely to be able to afford the loan.

As this is the case, I think that proportionate checks are likely to have shown Tesco that Mr M was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. So, I'm satisfied that reasonable and proportionate checks would more like than not have shown Tesco that it shouldn't have advanced this loan for Mr M.

It therefore follows that Mr M is currently expected to pay interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr M has lost out and Tesco should put things right for him as set out below.

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.

As neither party provided any new submissions, I see no reason to depart from the findings I reached in the provisional decision. I still don't think, Tesco would've advanced the loan had it conducted what I consider to be proportionate check.

I am therefore upholding Mr M's complaint and I've set out below what Tesco needs to do in order to put things right for Mr M.

Putting things right

The main difference between the outcome I've reached and the one reached by the investigator is round what should happen to Mr M's credit file. The investigator said all adverse should be removed, once the complaint is settled.

It may help if I explain that our role is try and put the consumer, in this case Mr M back into the position he would've been in had the error not been made – in this case – being advanced a loan which wasn't affordable. But it's not possible, to just unwind the lending, this is because Mr M has had the funds and has used them.

Having thought about our approach to irresponsible lending if after carrying out the below redress, Mr M has repaid the capital lent then it would be fair and reasonable for any adverse information to be removed.

However, as what is likely the case here, after Tesco carries out the below Mr M will still owe a significant balance to it and in those circumstances, I don't think it would be appropriate for Tesco to remove the adverse credit file data.

I say this because there will still be a balance for Mr M to pay – a balance that we'd expect to be repaid. And so, it's fair for Tesco to reflect on Mr M's credit file so that any potential future lenders can take this into account.

I also have to consider, that if the adverse was to be removed, and Mr M couldn't for whatever reason keep up with his repayments on say a repayment plan then it could lead to a new default being applied, which means in total, Mr M could have a default on his credit file about this loan for longer than the permitted six years.

If Tesco has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Tesco can't buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- Tesco should remove all interest, fees and charges from the balance on the loan and treat any repayments made by Mr M as though they had been repayments of the principal. If this results in Mr M having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- If this results in Mr M still owing Tesco money it should try and come to a mutually agreeable repayment plan but I would remind Tesco of its obligation to treat Mr M fairly and with forbearance.
- If no outstanding balance remains after all adjustments have been made, all adverse information Tesco has recorded about this loan should be removed from Mr M's credit file.

*HM Revenue & Customs requires Tesco to deduct tax from this interest. Tesco should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint.

Tesco Personal Finance PLC trading as Tesco Bank should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2024.

Robert Walker
Ombudsman