

## **The complaint**

Mr J 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 J a 60-month loan of £15,000 on 11 November 2023. Mr J’s monthly repayments are £396.71. The loan had an APR of 18.3%. Tesco has confirmed up to July 2024 that all payments had been made as expected and the account wasn’t in arrears.

Following Mr J’s complaint Tesco wrote to him and explained it wasn’t going to be upholding the complaint about the loan because the checks it conducted showed Mr J could afford the loan repayments.

Tesco’s response also dealt with a credit card. Mr J’s complaint about the credit card is being dealt with under a different reference number and no finding in this decision will be made on it.

Unhappy with this response, Mr J referred the complaint to the Financial Ombudsman.

In the investigator’s assessment she upheld Mr J’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. In particular Tesco didn’t seek to check if the income Mr J declared was right. She thought this was important because he had told Tesco he was self-employed and so there was a risk that his income would fluctuate.

She said that had further checks been conducted Tesco it would’ve likely discovered Mr J was spending significant amounts each month on gambling and these transactions were more than Mr J’s total income.

Tesco didn’t agree saying, in summary,

- Tesco verified Mr J’s income through a credit reference agency and so there was no need to ask for bank statements.
- Tesco’s checks indicated Mr J had around £1,000 per month in free income so to check bank statements would’ve been disproportionate.
- There were no signs from Mr J’s current account that he wasn’t managing his funds despite the gambling transactions – for example there were no missed payments.
- Prior to the loan being granted the check checks showed that Mr J had managed his other commitments well.

As no agreement could be reached the complaint has been passed to me 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.

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 J's complaint. Having carefully considered everything I've decided to uphold Mr J'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 J could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's (or operator of electronic system in relation to lending such as here) 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 J's complaint. Having looked at everything I have decided to uphold Mr J's complaint and I've explained why below.

Mr J, as part of the online application, declared he was self-employed and received an income of £4,000 per month. The investigator said, further checks were needed at this point because Mr J's income may have fluctuated due to his self-employment. This isn't an unreasonable starting point.

Whereas Tesco in response to the investigator's assessment said that it did use a credit reference agency to check Mr J's income and it "... *passed an automated bureau check...*". However, Tesco's final response to the complaint and its initial submissions to the Financial Ombudsman made no reference to the income being checked or verified. It isn't clear why this information wasn't set out earlier.

However, thinking about the income as a whole, and the other checks that Tesco carried out for the reasons I've set out below, I still think Tesco needed to do carry out further checks before lending to Mr J.

It doesn't appear that Tesco asked Mr J 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 mortgage payment, and a figure it has used which assumed Mr J's living costs, an additional buffer that Tesco applied as well as the loan payment to Tesco. Overall, it calculated these costs were likely to be around £3,149 per month. 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.

Tesco says the credit check results showed that Mr J had nine active credit accounts which was costing him £608 per month to repay. Tesco was also aware that Mr J had one defaulted account but that had occurred 54 months before the loan application and so I think it was fair for Tesco to not have been overly concerned by the default.

Tesco went onto explain that there were no adverse payment markers recorded against the active accounts that it saw in the credit check. It therefore believed, given what was left over from Mr J'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 assumed monthly living costs, in this case I don't think it was proportionate to do so. I've therefore considered what further checks are likely to have shown.

Mr J provided copy bank statements from around the time this loan was advanced and so I have evidence of his financial circumstances when 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 J 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 J's financial circumstances were at the time.

I also think it's important for me to set out that Tesco was required to establish whether Mr J 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 J was spending more than his income each month on gambling transactions and as such was unlikely to be able to afford the loan.

I appreciate this is only one of the accounts that Mr J had, and of course, from the cover sheet of the bank statement there was also a joint account. It's also worth saying that even if Tesco had viewed the bank statement that contained Mr J's mortgage payments and other living costs there are transfers in and out of that account to other accounts in Mr J's name.

So, I do think, given the value of these transfers that Tesco would've likely been prompted to make further enquiries into his other accounts at which point it would've known about Mr J's gambling.

And while Tesco has said that Mr J has sought help for his gambling and may not impact him as much moving forward. I have to consider the checks that were conducted at the point the loan was granted. And for the reasons I've outlined above, had better checks been made then I don't think Tesco would've approved this loan.

As this is the case, I think that proportionate checks are likely to have shown Tesco that Mr J was unlikely to be able sustainably afford the payments to this loan. 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 J.

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

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr J in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

## **Putting things right**

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

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

## **My final decision**

For the reasons given above, I uphold Mr J's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 October 2024.

Robert Walker  
**Ombudsman**