

The complaint

Mr T is complaining about Tesco Personal Finance PLC because he says it lent irresponsibly by giving him a credit card he couldn't afford. In making his complaint, he referred to the various other debts he had at the time and also mentioned a gambling problem.

What happened

In March 2022, Mr T opened a credit card account with Tesco with an initial credit limit of £250. This was increased to £600 in June 2022.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be partly upheld. My reasons were as follows:

Before lending to Mr T, Tesco 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 in respect of each lending decision are:

- *Did Tesco complete reasonable and proportionate checks to establish Mr T 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 to carry out a proportionate and borrower-focused assessment of whether Mr T could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant Tesco 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 him making payments, it had to consider the impact of the repayments on Mr T.

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.

I've considered Tesco's decisions to approve the initial application and then increase the credit limit separately.

Application in March 2022

Tesco has described the information it gathered to assess whether the initial credit limit was affordable for Mr T before it was approved. This included:

- information contained in his application, including his income;*
- information obtained from a credit reference agency (CRA), giving details of his 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 key expenses, along with actual data from the CRA about the cost of his existing credit arrangements.*

In making his application, Mr T declared his monthly income was £1,950. In respect of his existing commitments, Tesco's credit check showed he had existing debt of around £3,600 and no recent history or payment arrears or defaults. After considering this information carefully, I don't think there was any indication Mr T was struggling financially at this point. He wasn't heavily indebted compared to his declared income and seemed to be managing his existing commitments well.

Tesco says it also considered Mr T's key expenditure based on a combination of his existing credit commitments as recorded by the CRA and modelled statistical data to estimate other living expenses. In this way, it determined he had sufficient disposable income to afford repayments on the credit being offered.

The use of modelled statistical data to estimate expenditure is an approach that's recognised by the regulator for assessing credit applications. It was clearly less thorough than an assessment of Mr T's actual expenses by reference to his bank statements for example. But in view of the amount of credit being offered and the information Tesco already had about his income and existing commitments, I think it was a proportionate approach in this case.

I've also considered Tesco's lending decision based on the information obtained from what I believe to have been a proportionate affordability assessment. In my view, it was entitled to believe the new credit repayments would be affordable for Mr T and that the decision to lend was a reasonable one.

Credit limit increase in June 2022

After carefully reviewing the information Tesco took into account before approving the limit increase, I think there were factors that should have prompted it to carry out further checks and I don't agree the affordability assessment based mainly on modelled statistical data, rather than Mr T's actual circumstances, was reasonable and proportionate on this occasion. In addition to the fact that a higher amount of credit was now being considered, I'm also conscious the credit check completed showed Mr T's debt had increased from £3,600 when the card was approved to over £11,600. I think this was a significant increase over a period of only three months and that further checks were required to complete a proportionate affordability assessment.

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

A review of the statements shows Mr T had an agreed overdraft limit of £1,900 and was living in that overdraft with the account overdrawn more often than not, often by an amount approaching the limit.

But of greater concern, the statements also show evidence of extensive gambling. In the statement dated 11 March 2022, I counted 108 payments to online gambling sites with a total value of over £9,900. And in the statement dated 13 May 2022, I counted 43 gambling transactions with a total value of over £900. The statements show that much of this gambling was funded by personal loans, including loans of £3,000 from Fairscore and £5,000 from Madison CF in March 2022. This appears to be how Mr T was funding his gambling.

If Tesco had seen this information, it's my view that it should have concluded it wasn't responsible to offer further credit to Mr T and decided not to increase the credit limit.

In summary

I'm satisfied Tesco carried out an appropriate affordability assessment when considering Mr T's original application and made a reasonable decision to lend based on the information it obtained. But I think it should have carried out further checks before increasing the limit and decided against offering further credit at that time.

It's for these reasons that I'm currently proposing to partly uphold Mr T's complaint.

Mr T accepted my provisional decision without further comment. Tesco didn't accept it and made the following key points:

- The additional amount lent when the credit limit was increased was low. As there were no concerns following its own affordability assessment, there was no requirement to carry out further checks.
- The increase in Mr T's debt was because he'd taken a fixed-term loan that could easily have been a car loan or something legitimate. Taking one loan doesn't mean Mr T couldn't afford a small amount of revolving credit.

Mr T only used the additional credit for five months and it cost him less than £50 in interest, meaning it had almost zero impact on his overall financial situation.

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, my findings haven't changed from those I set out previously. I haven't necessarily commented on every single point raised. I've concentrated instead on the issues I believe are central to the outcome of the complaint. This is consistent with our established role as an informal alternative to the courts. 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.

In answer to the points made by Tesco in response to my provisional decision:

- The amount of additional credit was low but Tesco was still required to carry out a reasonable and proportionate affordability assessment before offering it. For the reasons I set out in my provisional decision, I don't think it met that requirement in this case.
- The loan may have been for something 'legitimate' but it wasn't for Tesco to assume

that was the case. My point was that Mr T's debt had increased significantly over a short period and Tesco should have carried out further checks to establish whether he could afford further credit. I think those further checks would likely have revealed this wasn't the case and moreover that Mr T's recent gambling history meant it was irresponsible to lend further.

My decision about whether it was reasonable for Tesco to lend further must be based on information it knew at the time. It couldn't have known how Mr T would use the additional credit or for how long and I don't believe that's a factor in the outcome of this case.

Putting things right

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

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

To put things right, Tesco 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 the limit increase in June 2022 on balances over £250.
- If the reworking results in a credit balance, this should be paid to Mr T 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 to deduct tax from any interest. It must provide Mr T with a certificate showing how much tax has been deducted if he asks for one. If Tesco 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 in excess of £250, Tesco should arrange an affordable payment plan with Mr T for the shortfall.
- Remove any adverse information recorded on Mr T's credit file after June 2022 relating to this credit, once any outstanding balance over £250 has been repaid.

If Tesco no longer owns the debt, it should liaise with whoever does to ensure any payments Mr T has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr T 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.

My final decision

My final decision is that I partially uphold this complaint. Subject to Mr T's acceptance, Tesco

Personal Finance PLC should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 10 October 2024.

James Biles
Ombudsman