

The complaint

Mr J complains that Tesco Personal Finance Limited ('Tesco') irresponsibly agreed to lend to him by way of a personal loan he couldn't afford to repay.

What happened

In October 2017, Mr J took out a personal loan in the form of a fixed sum loan agreement with Tesco. The loan was for £12,000 and was payable over 60 months. Under the terms of the loan agreement, Mr J was required to pay monthly repayments of £237.11. The total repayable under the agreement was £14,088.

Mr J says Tesco didn't complete adequate affordability. He is also unhappy because he says he was on a low income with existing debts and so the loan worsened his financial position.

The loan has since been paid off in full.

Tesco said Mr J's loan application had comfortably passed all its checks. Tesco also said the complaint had been made too late under our time limit rules.

As he was unhappy with Tesco's response, Mr J brought his complaint to this service.

Our investigator didn't recommend the complaint be upheld. He thought Tesco hadn't acted unfairly or unreasonably by approving the loan. It had carried out reasonable and proportionate checks before agreeing to lend to Mr J and had gone on to make a fair lending decision.

As Mr J doesn't agree with our investigator's finding, his complaint has been passed to me for a final 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 explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr J's complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Tesco thinks this complaint was referred to us too late under our time limit rules. This is because the loan was agreed more than six years ago and Mr J was declined for a top-up loan in 2019, which is more than three years before he started his complaint.

Our investigator explained why he didn't think we could look at the complaint, given that the decision to lend happened more than six years before. He also said Mr J ought reasonably to have been aware that something might have gone wrong in relation to his loan when he was turned down by Tesco for the top-up loan. Our investigator went on to explain that he considered the complaint was about an unfair relationship as described in Section 140A of

the Consumer Credit Act 1974. That means that Mr J's complaint about having an allegedly unfair lending relationship with Tesco had been referred to us in time.

Seeing as I've decided not to uphold Mr J's complaint - and given the reasons for this, which I'll go on to explain - whether Mr J has referred his complaint to us about a lending decision that is too late under our time limit rules has no impact on that outcome. I agree that Mr J's complaint should be considered more broadly than just the lending decision, seeing as he complained not just about the decision to lend but also the impact this had on him over the course of his relationship with Tesco. Mr J's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Tesco.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr J's complaint can be reasonably interpreted as being about the fairness of his relationship with Tesco, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ('CCA').

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Tesco) and the debtor (Mr J), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Mr J has complained about, I therefore need to think about whether Tesco's decision to lend to Mr J or its later actions created unfairness in the relationship between him and Tesco, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr J's relationship with Tesco is therefore likely to be unfair if it didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.

The rules don't say exactly what a lender should look at before agreeing to lend, but reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look to be affordable. A proportionate check might also require the lender to find out the borrower's credit history and also take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if the loan would have been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should have

realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

When Mr J applied for his loan, Tesco asked him for information about his finances and carried out a credit check to find out more about any other credit he was using. It also carried out an affordability assessment.

In his application Mr J said he was working full time and was receiving a net monthly income of around £1,500. He was at the time living with his parents.

The credit check showed that he owed around £7,600 in existing unsecured debt and had a clear recent credit history with no adverse markings on his credit file such as missed payments, defaults or county court judgments.

The checks therefore appeared to be reasonable and proportionate, given the size and duration of the loan, to enable Tesco to establish whether, based on his financial circumstances, Mr J would likely be able to repay his new loan sustainably.

I next need to consider if Tesco made a fair decision based on what it had discovered from its checks.

As I've said, Mr J told Tesco he was receiving a net monthly income of around £1,500 and had existing credit commitments of around £7,600. But it needed to be assured that the loan would be affordable to Mr J based on his committed spending each month on things such as household costs, food and travel. Tesco calculated that, based on statistical data, Mr J needed around £335 per month for his cost-of-living spending, plus another £438 to cover paying off his existing debt. That would leave him with enough funds to meet the new loan repayment of £237 whilst still having around £490 left in disposable income.

Given that the affordability breakdown didn't suggest that Mr J would have any difficulty meeting the monthly repayments for the loan, I don't think it was unreasonable for Tesco to have agreed to lend to Mr J. There wasn't anything obvious in the information it had to suggest Mr J wouldn't be able to repay the loan in a sustainable way. And I think the repayment period was a fair reflection on Mr J's ability to repay over a reasonable timeframe. I therefore don't think proportionate checks would have required Tesco to probe any more deeply into Mr J's finances.

I've seen that Mr J says that the impact of having to repay the loan led him to apply for a further loan in 2019, which was turned down. But he didn't specifically request help or support from Tesco. I've also noted that he was given two payment holidays in 2020. This would have been during the pandemic with Tesco taking action to assist him during a time when he was likely to have been financially stretched.

Finally, I've seen that Mr J considers that had Tesco carried out a check by looking at his bank statements it would have seen the loan was unaffordable. Given what Mr J had put in his application about his financial circumstances alongside what the credit and affordability checks showed, I don't think there was enough to suggest that Tesco needed to make further enquiries. Mr J didn't volunteer information about gambling transactions, but realistically I wouldn't have expected him to as he was seeking to be approved for the loan.

It follows that I don't think Tesco had any reason to think that Mr J wouldn't be able to sustainably repay the loan when it agreed to lend to him.

Therefore, based on the available evidence, I don't find that Mr J's relationship with Tesco in connection with this loan was unfair. I don't consider that Tesco created unfairness in its relationship with Mr J by lending to him irresponsibly. And I don't find Tesco treated Mr J unfairly in any other way either based on what I've seen.

I'm sorry to have to disappoint Mr J on this occasion.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 18 April 2025.

Michael Goldberg

Ombudsman