

Complaint

Mrs N has complained that Tesco Personal Finance Limited (trading as “Tesco Bank”) irresponsibly provided a credit card as well as a subsequent credit limit increase to her. She says that this credit was unaffordable and caused her continued financial difficulty.

Background

In September 2016, Tesco Bank initially provided Mrs N with a credit card, which had a limit of £2,600.00. Tesco Bank subsequently offered to increase Mrs N’s credit limit to £4,600.00 in October 2019.

In March 2024, Mrs N complained saying that the credit card and the limit increase Tesco Bank provided were unaffordable and caused her continued financial difficulty as the repayments resulted in ongoing debt which she’s still struggling to clear.

Tesco Bank didn’t uphold Mrs N’s complaint. It believed that it had carried out reasonable and proportionate checks before lending. Furthermore, it considered that Mrs N had complained too late. Mrs N remained dissatisfied and referred her complaint to our service. When responding to our request for its file on Mrs N’s complaint, Tesco Bank told us that it believed she had complained too late.

One of our investigators reviewed what Mrs N and Tesco Bank had told us. He thought that he hadn’t seen enough to be persuaded that Tesco Bank failed to act fairly and reasonably either when initially providing Mrs N with her credit card or the credit limit increase. This meant that the investigator didn’t recommend that Mrs N’s complaint be upheld.

Mrs N disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Tesco Bank has argued that Mrs N’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and all of the credit limit increases as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to conclude that Mrs N’s complaint was one alleging that the relationship between her and Tesco Bank was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mrs N's complaint. Given the reasons for this, I'm satisfied that whether Mrs N's complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mrs N's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Mrs N has not only complained about the respective decisions to lend but has also alleged that these lending decisions created an unfair relationship.

I'm therefore satisfied that Mrs N's complaint is a complaint alleging that lending relationship between herself and Tesco Bank was unfair to her. I acknowledge Tesco Bank still doesn't agree we can look at Mrs N's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mrs N's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs N's complaint can be reasonably interpreted as being about the fairness of her relationship with Tesco Bank, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Tesco Bank) and the debtor (Mrs N), 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. S140B 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 Mrs N's complaint, I therefore need to think about whether Tesco Bank's decision to lend to Mrs N and increase her credit limits, or its later actions resulted in the lending relationship between Mrs N and Tesco Bank being unfair to Mrs N, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs N's relationship with Tesco Bank is therefore likely to be unfair if it didn't carry out reasonable enquiries into Mrs N's ability to repay in circumstances where doing so would have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Tesco Bank didn't then somehow remove the unfairness this created.

Were the decisions to provide the credit card and the subsequent credit limit increase unfair?

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 Mrs N's complaint.

Bearing in mind Mrs N's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were

affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Did Tesco Bank carry out reasonable and proportionate checks before accepting Mrs N's application for a credit card or deciding to offer her a limit increase?

Tesco Bank says it initially agreed to Mrs N's application after it obtained information on her income and carried out a credit search. And the information it obtained indicated that Mrs N would be able to make the monthly repayments due for this credit card. Due to Mrs N's account being relatively well managed and the information present on the credit checks it carried out, Mrs N was then subsequently offered her credit limit increase.

On the other hand, Mrs N says that the credit card and the subsequent limit increase were unaffordable and caused her ongoing hardship.

I've considered what the parties have said.

What's important to note is that Mrs N was provided with a revolving credit facility rather than a loan. This means that Tesco Bank was required to understand whether credit limits of £2,600.00 and £4,600.00 could be repaid within a reasonable period of time, rather than all in one go. It's fair to say that credit limits of £2,600.00 and £4,600.00 required reasonably sized monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

As Mrs N was being provided with limits of £2,600.00 and £4,600.00, I would have expected Tesco Bank to have found about Mrs N's regular living costs (as well as her income and credit commitments in the way that it did) before providing this credit card or the limit increase. As Tesco Bank hasn't provided me with any indication that it did find out about

Mrs N's regular living costs, I've not been persuaded that the checks it carried out before it provided Mrs N with her credit card or the limit increase were reasonable and proportionate.

As this is the case, I'll now proceed to consider whether it is more likely than not that Tesco Bank finding out more about Mrs N's circumstances, would have resulted in it taking different decisions to lend to her.

I've considered the information Mrs N has provided us with. Having done so, this information appears to show that Tesco Bank was reasonably entitled to reach the conclusion that Mrs N did have the funds, at the respective times of the lending decisions at least, to make the required payments.

Mrs N has provided some bank account statements. The first thing for me to say is that Tesco Bank did not need to obtain Mrs N's bank statements before lending. So I've not looked at these bank account statements because it is my conclusion that Tesco Bank should have requested them and then analysed them prior to lending. I've looked at them to extract the missing information I think that Tesco Bank ought to have obtained before lending.

Nonetheless, the information on these statements don't clearly show me that Mrs N shouldn't have been provided with this card or the credit limit increase. I say this because I've not been persuaded that Mrs N's regular monthly living costs means that she shouldn't have been lent to.

I know that Mrs N has said that she was on maternity leave at the time of the initial application. However, I can't see that she notified Tesco Bank of this. Furthermore, as Tesco Bank cross checked the income Mrs N declared against the funds that were going into her account each month (which she says was inflated by her receiving her partner's income into account) it was reasonably entitled to believe that Mrs N was earning more than she was at this stage.

Furthermore, when the amount of Mrs N's living costs are added to what Tesco Bank believed were her monthly commitments and deducted from the amount it believed that she was earning, I'm satisfied that Tesco Bank was reasonably entitled to believe that the monthly repayments were affordable for Mrs N.

In reaching my conclusions, I've noted that the limit increase was offered after Mrs N had been declined for a loan. However, this loan application was for £8,000.00 and therefore significantly more than the extra £2,000.00 that Mrs N was offered as a result of the limit increase. Furthermore, it also appears as though this was a joint loan application. As both applicants will have been credit scored, it doesn't automatically follow that Mrs N was personally deemed uncreditworthy by Tesco Bank. Equally, I don't think that the declined loan application in itself means that Mrs N shouldn't have been offered the limit increase.

I appreciate that Mrs N has said that in the lead up to the limit increase she was only paying £40 a month towards her existing balance and that this should have been taken as a sign of difficulty. I accept that Mrs N was making these payments. However, I note that this was more than the minimum payment due on the account. Most importantly of all, the vast majority of Mrs N's balance, at this stage, was made up of an interest free balance transfer. So the £40 was going towards reducing the capital rather than simply servicing the interest. Bearing in this in mind, I don't think that Mrs N's repayment record ought to have caused concern or suggested that she shouldn't have been lent to.

I accept that Mrs N has carried out her own income and expenditure assessment. And she's suggested that her actual circumstances at the time were worse than what our investigator

concluded. For example, she's referred to her overdraft use as an indication that she was struggling financially and shouldn't have been lent to.

However, what I need to think about here is what were Mrs N's living costs bearing in mind this was the missing information from Tesco Bank's checks. Bearing in mind checking bank statements wasn't the only way for Tesco Bank to have found out more about Mrs N's living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining the bank statements which Mrs N has now provided us with.

In my view, proportionate checks certainly wouldn't have gone into the level of granularity whereby Tesco Bank ought reasonably to have picked up on whether Mrs N was using her overdraft sustainably or having the returned payments she has referred to. In any event, under the regulations Tesco Bank was entitled to place more weight on Mrs N's conduct on the credit card, which for the reasons I've already explained was reasonable. And if Mrs N is unhappy at the way that she was allowed to use her overdraft, then this is a matter she needs to take up with her overdraft provider rather than Tesco Bank.

Overall, and based on the available evidence I don't find that Mrs N's relationship with Tesco Bank was unfair. I've not been persuaded that Tesco Bank created unfairness in its relationship with Mrs N by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of offering the credit limit increase to her. I don't find Tesco Bank treated Mrs N unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can see that Mrs N has had a difficult time and I can appreciate why she may be unhappy with Tesco Bank, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs N. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 21 April 2025.

Jeshen Narayanan
Ombudsman