

The complaint

Miss D complains that Tesco Personal Finance Limited ('Tesco') irresponsibly granted her two credit cards she couldn't afford to repay.

What happened

In June 2015 Miss D entered into an agreement with Tesco to have access to credit by way of a credit card account. She was given an initial credit limit of £1,000 and there were no increases after that.

In August 2016 Miss D entered into a second agreement with Tesco for a credit card account. This time she was given an initial credit limit of £2,900 and once again, there were no increases after that.

Miss D says Tesco didn't complete adequate affordability checks and therefore failed to ensure she'd be able to manage each of the cards sustainably – and so worsened her financial situation. She also says Tesco failed to support her when she got into difficulties with meeting the payments on the cards.

Tesco said that Miss D's complaint about both cards had been made too late under our time limit rules. That was because each of the accounts had been opened more than six years ago. Tesco also said it had made Miss D aware of being in persistent debt and the way she was using her card more than three years before she started her complaint, so she ought to have been aware she could complain under the three-year part of the time limit rule.

Our investigator, on the other hand, thought Miss D's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140) which is in time under the rules. Having looked at the complaint on this basis, however, he found that there wasn't enough evidence or information to suggest that Tesco had acted unfairly or unreasonably in agreeing to grant each card. And he said that Tesco had done enough to help and support Miss D when she got into difficulty with meeting repayments.

As Miss D didn't agree, her 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Tesco thinks this complaint was referred to us too late because the decision to lend took place more than six years ago. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Miss D's complaint and given the reasons for this (which I'll go on to explain), whether Miss D referred her complaint about the specific lending decisions that happened more than six years ago in time or not has no impact on that outcome. And nor does the fact that I agree she ought reasonably to have known that she might have reason to make a complaint at least three years before she did so. That's because, like our investigator, I think Miss D's complaint should be considered more broadly than just the decisions to grant her the credit, seeing as she has complained not just about the decisions to lend but also the impact those decisions had on her over the course of her relationship with Tesco. Miss D's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Tesco. I acknowledge Tesco still doesn't agree we can look at the complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because Miss D's complaint can be reasonably interpreted as being about the fairness of her 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 (Miss D), 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 their 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 Miss D has complained about, I therefore need to think about whether Tesco's decisions to provide Miss D with credit on these two cards or its later actions created unfairness in the relationship between her 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.

Miss D'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. I will approach the complaint on that basis.

Did Tesco complete reasonable and proportionate checks to satisfy itself that Miss D would be able to repay the credit card in a sustainable way?

When assessing affordability, there wasn't a set list of checks that Tesco needed to complete, but they needed to be borrower-focused and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Miss D would need to maintain her repayments for.

Before granting the credit on each card, Tesco looked into Miss D's financial situation to find out whether the level of credit she'd requested was likely to be affordable for her, on the basis that it was both affordable and could also be paid off on a sustainable basis. This was based on the information Ms D put in her application and the credit check Tesco obtained from a credit reference agency. I would have expected Tesco to run some sort of affordability check as well but I haven't seen details of those. When looking into this complaint Tesco prepared some basic affordability calculations but that doesn't help us in understanding that Tesco saw at the time of each lending decision.

At the time of applying for the first card Miss D said she was working part-time and was renting her home. She said she had a monthly income of just over £700. At the time of applying for the second card, whilst she was still a tenant, Miss D was now working full time and receiving a net monthly income of £1,500. In terms of other credit, Miss D had three active accounts at the time of the first application which had increased to five by the time of the second one. At both times she had a clear credit history without any recent adverse markings on her credit file, such as late payments, defaults or court judgments.

Given that we don't know what Tesco saw in terms of each account being affordable – that is, how it would fit in with Miss D's other committed expenditure each month – like our investigator, I'm not able to make a finding that Tesco's checks were reasonable and proportionate before granting each account.

I think I should clarify here that to make a finding that Tesco had acted unfairly or unreasonably on this basis, I need to also establish what Tesco would have been likely to have seen had it carried out better checks. Saying that the lending checks weren't proportionate doesn't necessarily mean that the credit itself was unaffordable.

If reasonable and proportionate checks weren't completed, would reasonable and proportionate checks more likely than not have shown that Miss D was unable to sustainably repay what they were being lent?

The key issue I am looking at here is whether or not Tesco made a fair lending decision each time it approved one of the card accounts. So, I need to understand what, if anything, Tesco might have seen had it carried out better checks.

We've asked Miss D for some further details and evidence about her financial circumstances at the time of each account opening. This is to help us understand what, if anything, Tesco might have found out if it completed reasonable and proportionate checks. However, Miss D hasn't provided sufficient information, such as bank statement, to help us determine whether or not Tesco made a fair lending decision.

It follows that, as I'm not persuaded that Tesco acted unfairly, I don't think they need to do anything to put things right.

Did Tesco act unfairly or unreasonably in some other way?

In December 2019 and September 2020 Tesco wrote to Miss D to let her know she was at risk of slipping into persistent debt due to the low level of payments she was making to her account. In March 2020 Tesco wrote to advise Miss D of her arrears on the second account and that it may be necessary to default the account. And in June 2021 Tesco offered her a payment plan to help with this, although it looks like Miss D didn't take up the offer.

I've also seen that Tesco provided some help and support to Miss D during the pandemic. This help took the form of providing a number of breathing spaces/payment breaks, so as to

help Miss D when she was experiencing financial difficulties. Tesco also waived interest and charges. I've seen that Miss D is unhappy with the level of support she received and says the lack of support caused her debt to spiral. She also says she never discussed payment breaks with Tesco and never received any letters. Our investigator has noted that the credit card account statements suggest that payment breaks were offered – and I agree.

Taking into account the evidence and information I've seen about this aspect of the complaint, I therefore don't consider that Tesco acted unfairly or unreasonably when providing support to Miss D.

It follows that I won't be making a finding that Tesco acted unfairly or unreasonably. I don't find that Miss D's relationship with Tesco is currently unfair. It's not clear enough to me that Tesco created unfairness in its relationship with Miss D by lending to her irresponsibly. And I don't find Tesco treated Miss D unfairly in any other way either based on what I've seen.

I'm sorry to have to disappoint Miss D 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 Miss D to accept or reject my decision before 6 May 2025.

Michael Goldberg
Ombudsman