

## The complaint

Mr M complains that Tesco Personal Finance Limited trading as Tesco Bank lent to him irresponsibly and added a default to his credit file unfairly.

## What happened

Mr M applied for a loan with Tesco for £25,000 over 84 months to refinance his existing debt. On 30 March 2016, the bank wrote to him agreeing the loan in principle and asking that he send it his last month's bank statement. Tesco said it would review that and make a final decision on whether it would offer the loan. Mr M supplied his statement for 28 February to 27 March 2016 and the loan was agreed with an annual percentage rate (APR) of 10.8%, and monthly repayments of £418.90.

On 18 February 2022, Tesco's notes show it received contact from a debt charity on behalf of Mr M and a reduced repayment was offered. On 2 April 2022, Tesco sent Mr M a default notice requesting outstanding payments of £837.80. He'd missed payments in September 2021 and March 2022. It said if this amount wasn't paid by 30 April 2022, a default would be recorded with the credit reference agencies. Mr M didn't repay the arrears and from 8 April 2022, Mr M began to pay £272.15 per month. He increased it to £284.44 from April 2023 until he'd repaid the loan in full on 20 March 2024.

On 14 May 2024, Mr M complained to Tesco. He said he felt the loan had been lent to him irresponsibly as he had been *"missing payments and struggling and wracking up credit cards"* he had thought the loan would help his situation but *"it only caused me more financial hardship"*. He said once he spoke to the debt charity, Tesco didn't help and defaulted him rather than supporting him. To resolve his complaint Mr M asked for the default to be removed and the interest he'd paid refunded.

Tesco looked into his complaint and issued a final response letter. It said it was unable to look into the lending decision as Mr M had brought his complaint too late under the complaint handling rules. It looked into his complaint about the default but felt there was no error.

Mr M disagreed with Tesco's response, so he referred his complaint to our service. One of our investigator's looked into it. She felt it would be reasonable to consider Mr M's complaint as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s.140). She said on that basis she felt we could consider the whole of Mr M's complaint and she went on to do so. But she didn't feel Tesco had treated Mr M unfairly by lending to him or by defaulting the account.

Mr M didn't agree with our investigator, so as there was no agreement, the complaint has been passed to me for a 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. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the decision to grant the loan as that happened more than six years before the complaint was made. But she also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in s.140, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr M says the loan shouldn't have been agreed and caused him further financial hardship. This may have made the relationship unfair as he had to pay more in interest than he could afford. I acknowledge Tesco doesn't agree we can look at this complaint, but as I don't think it should be upheld, 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 Mr M'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.

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 M), 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 M has complained about, I need to consider whether Tesco's decision to lend to him, 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 M's relationship with Tesco is therefore likely to be unfair if it didn't carry out proportionate affordability checks and 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 think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Tesco carry out reasonable and proportionate checks to satisfy itself that Mr M was in a position to sustainably repay the loan?
  - If not, what would reasonable and proportionate checks have shown at the

time?

- Did Tesco make a fair lending decision?
- Did Tesco act unfairly or unreasonably towards Mr M in some other way?

Tesco had to carry out reasonable and proportionate checks to satisfy itself that Mr M would be able to repay the credit sustainably. It's not about Tesco assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on him.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

#### Did Tesco carry out reasonable and proportionate checks?

When Mr M applied for the loan, he declared he was working full time, had a monthly income of £2,678, owned his home with a joint mortgage, and had one dependent. Tesco checked his credit file with two credit reference agencies and saw he had debts elsewhere. The two agencies gave different figures; one showed unsecured debt (loans and credit cards) of £21,070 with repayments of £794 per month. The other showed £24,716 with repayments of £905. Neither agency had showed any defaults or County Court Judgements (CCJ) and his payments to existing creditors were up to date.

Mr M applied for the loan to refinance his external debts and using either figure from the agencies meant that £25,000 appeared to be sufficient to cover those. And the payment to this new loan - £418.90 – was comfortably less than he was spending at the time. So if Mr M had used the loan for the purpose intended, it would help reduce the amount he was spending on servicing his debt monthly.

Tesco also asked Mr M for a copy of his bank statement as part of its' decision process. This supported his income figure and also showed that he received £740 per month in rent on a property he rented out, and paid £600 for rent for a property he lived in.

I think the checks Tesco carried out were reasonable and proportionate in the circumstances. Mr M had a good salary and, while he did have debt elsewhere, the purpose of the loan was to consolidate that into one reduced payment, saving over £350 per month. Based on the information Tesco could see, he was up to date with his commitments elsewhere. The bank statement provided supported the information Tesco had obtained from Mr M and the agencies.

All things considered, I think Tesco reached a fair decision to lend to Mr M.

#### Did Tesco act unfairly or unreasonably towards Mr M in some other way?

Having entered into the loan agreement, Mr M agreed to pay Tesco £418.90 each month to repay it. He was able to keep to that arrangement by and large for six years. In that time, he did miss payments in March, April and May 2020 due to the COVID pandemic, and made his payments for June 2020 onwards on time and in full. Tesco didn't take any action at that stage.

In September 2021, Mr M missed a payment again and moved the payment date to the 1<sup>st</sup> of the month rather than 24<sup>th</sup>. And then he missed a payment again in March 2022.

I've seen copies of letters sent by Tesco to Mr M dated 16 March 2020 and 22 January 2021 which offered support if his circumstances had changed for any reason. While I can see there was some contact from Mr M following the March 2020 letter, I can't see any evidence

he told Tesco he was struggling after that until it received contact from the debt charity.

At the point of contact from the charity, Mr M's account was already two payments in arrears – a total of £837.80 - and he told it he would need to make reduced payments going forward. So it's clear the terms of the loan had been broken and was in default. I've reviewed the charity's website and it says *"You may get a default notice or 'notice of default' if you miss or do not make agreed payments"*.

Given Mr M was already in arrears and was seeking to reduce his payments, I don't think it was unfair for Tesco to issue a default notice on 2 April 2022.

I'm sorry to disappoint Mr M but having carefully reviewed all the evidence provided by both Mr M and Tesco, I haven't seen anything which leads me to think that Tesco treated him unfairly in some other way.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 June 2025.

Richard Hale  
**Ombudsman**