

Complaint

Mr L has complained about a credit card Tesco Personal Finance Limited ("Tesco PF") provided to him. He says that the credit card and the subsequent limit increases shouldn't have been provided as they were unaffordable for him.

Background

Tesco PF provided Mr L with a credit card in May 2000. Tesco PF is unable to confirm the credit limit it initially provided Mr L with when the card was opened. However, it is able to confirm that the earliest credit card statement that it has shows that Mr L's credit limit was £3,000.00 in November 2003¹. Mr L's credit limit was then increased to £6,000.00 in December 2003 and then £6,500.00 in August 2004.

As I understand it, Mr L entered into a debt management plan in or around April 2005. At this stage the balance on the credit card stood at £6,560.00. Mr L cleared the balance on the card in July 2015.

In December 2023, Mr L complained saying that the credit card and the limit increases Tesco PF provided to him were unaffordable for him and so shouldn't have been provided.

When responding to our request for its file on Mr L's complaint, Tesco PF told us that it believed Mr L had complained too late. On 21 October 2024, I notified the parties that I thought Mr L's complaint had been made in time and that I was able to consider it on its merits.

One of our investigators reviewed what Mr L and Tesco PF had told us. And he thought Tesco PF shouldn't have provided the credit card or increased Mr L's credit limit on the occasions that it did. So he thought that Mr L's complaint should be upheld and that Tesco PF needed to compensate Mr L.

Tesco PF disagreed with the investigator and asked for an ombudsman to look at the complaint.

My provisional decision of 4 April 2025

¹ In my provisional decision, I explained that Mr L is likely to have been given a credit limit of £3,000.00 at the time he applied for the card. I, in part concluded this was the case as I considered Mr L's application form suggested that he made an application to transfer a balance of £2,000.00, from another card to this card. However, Mr L has pointed out that the application shows a balance transfer of £200.

I issued a provisional decision – on 4 April 2025 - setting out why I was not intending to uphold Mr L's complaint.

In summary, I wasn't intending to uphold Mr L's complaint because I was not persuaded that Tesco PF had failed to act in accordance with the obligations, expectations and good industry practice at the time. Therefore, I wasn't persuaded that Tesco PF had acted unfairly or unreasonably to Mr L in these circumstances.

Tesco PF's response to my provisional decision

Tesco PF didn't respond to my provisional decision or provide anything further that it wished for me to consider ahead of my final decision.

Mr L's response to my provisional decision

Mr L responded to say that he disagreed with provisional decision. In summary this was because:

- A historical standard is not a shield for unfairness.
- Tesco PF had access to robust infrastructure and expertise.
- Tesco PF's lending decisions were not reasonable even then.
- Any assumption that £3,000.00 was the original limit is speculative.
- He did not say his financial difficulties began in 2005. They had begun well before then and Tesco PF's irresponsible lending worsened his position.
- The absence of records should not favour Tesco PF.
- He may have had a clean credit file but this misses the point but that doesn't mean that he could afford the credit.
- The Office of Fair Trading ("OFT") had encouraged affordability checks from as early as 2004 and Tesco PF was still responsible for lending fairly.

My findings

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

Having carefully considered everything provided, including what has happened since my provisional decision, I'm still not upholding Mr L's complaint. I'll now proceed to explain why this is the case.

Preliminary matters

I've read and considered everything provided. I accept and acknowledge that Mr L has raised a number of issues which extend past Tesco PF's actions when providing financial services. For example, he has referred to Tesco PF's conduct during his complaint and the conclusions of another institution in relation to these matters.

However, as this is a complaint about Tesco PF's decisions to lend and most importantly the matters considered by the other institution aren't matters that I am able to consider a complaint about, I've focused on what I am able to consider and the actions which I think are relevant and important in order for me to reach what I think is the right outcome.

I also want to reassure Mr L that I've read and considered everything he's said. Where I haven't directly commented on a specific issue he has referred to, or a comment that he may have made, it's not because I've failed to take it on board and think about it. The reason I will

not have commented on the issue is because I'm satisfied that I don't need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow, permit me to adopt such an approach.

Our typical approach to complaints such as Mr L's

We do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website. However, the vast majority of our website guidance covers regulated lending. Furthermore, all of the decisions that Tesco PF made to lend to Mr L not only predate the regulation of consumer credit lending but they were also made prior to when the obligations, which our current guidance is based on, were introduced.

So I think that the information on our website and our typical approach to lending complaints has only very limited, if any, relevance to Mr L's complaint.

The parties' representations

Tesco PF hasn't been able to say much about the checks that it carried out at the time it accepted Mr L's application for a credit card, or agreed to increase his credit limit on the occasions that it did. It has only been able to provide a copy of Mr L's signed application form and a limited amount of credit card statements.

On the other hand, Mr L says that credit card and limit increases were unaffordable for him and shouldn't have been provided.

The expectations of Tesco PF when it agreed to lend to Mr L

Mr L applied for a credit card in May 2000 and his credit limit was firstly increased in December 2003 and then again in August 2004. All of these decisions to lend not only predated the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in, in April 2014, it also predated the regulation of consumer credit and the regulatory period of the previous regulator the OFT.

Prior to the regulation of consumer credit, while a number of lenders signed up to various voluntary codes, a lender wasn't required to be regulated in order to provide credit. Therefore, all the decisions Tesco PF made to offer Mr L credit took place prior to the introduction of the main regulations and standards in relation to irresponsible and unaffordable lending.

Indeed, irresponsible lending only became a nebulous concept when the 2006 revisions to the Consumer Credit Act 1974 came into force on 6 April 2007. Even then, the main guidance regarding this wasn't introduced until the OFT published its Irresponsible Lending Guidance in March 2010. Mr L has referred to publications that the OFT put out as early as 2004. However, it wasn't a requirement to hold a Consumer Credit Licence in order to lend money prior to 6 April 2007. Equally, the publication cited still does not involve the level of checking that Mr L believes was necessary at the time.

That's not to say that there weren't any expectations or standards in relation to lending at the time Mr L applied for a credit card and the limit increases were offered. The then British Bankers' Association ("BBA") had a Banking Code, which was in place at the time and represented good industry practice.

Mr L has referred to Tesco PF being 50% owned by an institution that was a member of the BBA and has therefore questioned whether Tesco PF may have been a member of the BBA.

However, I do not consider that this makes a difference as irrespective of whether or not Tesco PF was a member of the BBA, I consider that its Banking Code to constitute good industry practice and therefore a reasonable yardstick to consider Tesco PF's actions against.

Nonetheless, it is fair to say that the obligations and responsibilities set out in the Banking Code were much more limited and they certainly were not the same as the more detailed rules in guidance that are in place now. For example, the concepts of irresponsible lending, borrower focused assessments and proportionate checks, which the investigator appears to have relied on in his assessment of Mr L's complaint, were not part of the expectations or requirements at the time.

What subscribers to the Banking Code agreed to do at the time of Mr L's application for a credit card and its decision to offer limit increases, was assess whether it felt that he would be able to repay any credit provided. I therefore need to consider Mr L's complaint in relation to these expectations that were in place on a lender (like Tesco PF here) at this time.

Application to Mr L's complaint – Bearing in mind the expectations at the time did Tesco PF act fairly and reasonably towards Mr L?

What's important to note is that Mr L was provided with a revolving credit facility rather than a loan. And this means that Tesco PF was required to understand whether credit limits of up to £3,000.00², £6,000.00 and £6,500.00 could be repaid within a reasonable period of time, rather than in one go.

It's fair to say that credit limits of up to £3,000.00, £6,000.00, and £6,500.00 will have required reasonably sized monthly payments in order to clear the full amount that could be owed within a reasonable period of time. Although the size of the limits would suggest any assumptions regarding a reasonable period of time would probably be based on a standard term had an equivalent amount been borrowed on an unsecured personal loan. So perhaps around five to seven years.

Tesco PF hasn't been able to provide any details on what it found out about Mr L as a result of the credit checks that it carried out prior providing the card or increasing his credit limit on the occasions that it did. Mr L argues that I should draw adverse inferences in light of this. However, as I explained in my provisional decision, the initial card application took place almost twenty-five years ago and the last limit increase took place more than twenty years ago.

Furthermore, the balance on the card was settled almost ten years ago too and it is Mr L that chose to make his complaint in August 2023. While I've concluded that Mr L's complaint may have been made in time, there is no expectation upon financial businesses to hold information on settled accounts indefinitely on the off chance that the customer may decide to make a complaint at some undefined period. So there is no reason for Tesco PF to have this information at this stage and I remain satisfied that it wouldn't be fair and reasonable for me to draw adverse inferences as a result.

That said, I'm also mindful that I've not been provided with any information and neither has it even been argued, that Mr L had any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") recorded against him at the time of these lending decisions.

² Even if the limit at the start had been lower and it was gradually increased to £3,000.00, given the time any increases would have been granted, I don't think the expectations would have been any different.

Mr L's response to my provisional decision states that I misrepresented his position as he did not state that his financial difficulties began in 2005. However, my provisional decision did not make a finding that Mr L's difficulties began in 2005. What my provisional decision said was that Mr L's submission was that the position in relation to his credit file went downhill from 2005 onwards.

Bearing in mind Mr L's arguments since my provisional decision, particularly what he has said about making his payments, I remain satisfied that it is more likely than not that any adverse information only began being recorded against Mr L from 2005 onwards. As this is the case, I don't think that any credit checks carried out at the time of the initial application or the credit limit increases would have shown any adverse information recorded against Mr L.

I also note that our investigator concluded that Mr L received a monthly income of around £850. However, this is taken from Mr L's bank statements. What is more important here is that Mr L's completed application form shows that he declared receiving an annual salary of £18,000.00. Mr L has said that this wasn't verified. But there wasn't a requirement to verify a customer's income at this time. So I think that Tesco PF was reasonably entitled to rely on what Mr L had declared even if this amount may have, based on the information contained in Mr L's bank statements, been inflated.

I'm also mindful that Mr L declared that he was living at home with his parents at the time of this application. So Tesco PF was reasonably entitled to believe that Mr L's living costs weren't high. I note that Mr L has said that no effort was made to explore his actual outgoings. However, given I've not seen anything to indicate that Tesco PF was actually aware that Mr L was experiencing difficulty making his payments at this stage, I don't think that there was anything to indicate that Tesco PF needed to check or verify Mr L's actual expenditure.

Furthermore, while I've seen that the debt management company Mr L sought assistance from in April 2005 stated that Mr L had 16 creditors and a total debt of just under £115,000.00, some of this will have been accumulated after this credit card and the associated limit increases had already been provided. Even then obligations such as the principles of reciprocity, which required lenders to report to all credit reference agencies, did not exist at this time. In these circumstances, I can't reasonably say that Tesco PF will have known about the extent of Mr L's existing debt, that it ought to have taken this into account when it lent, or that this debt meant that Mr L shouldn't have been lent to.

The only debt I can say that Tesco PF will have for sure known about is the balance that Mr L was transferring at the time that he opened this credit card. In my provisional decision, I referred to the transfer being for an amount of £2,000.00. However, as Mr L has correctly pointed out that extra zeros are in the pence column and the actual amount transferred was £200. As this is the case, I'm only able to say that Tesco PF was actually aware of a lower amount of debt.

As I explained in my provisional decision, the investigator upheld Mr L's complaint on the basis of an income and expenditure assessment based on the content of his bank statements. I accept that the rules and obligations in place today require a lender to carry out a borrower focused assessment of affordability before lending. In these circumstances and looking at today's standards, I can understand why Mr L may feel that Tesco PF treated him unfairly. But I would reiterate that a lender isn't required to consider a customer's bank statements before agreeing to lend to them even under today's regulations.

So while I've seen Mr L's arguments on what Tesco PF could have done given the banking infrastructure it had access to that's not the question I'm required to consider here.

Regardless of whether or not I agree with Mr L that Tesco PF could have done more, for the sake of completeness I would add that I'm not making this finding here, it would not automatically follow that it will have acted unfairly because it did not do so. In my view, Tesco PF will only have acted unfairly if it failed to do more in circumstances where it was required to do so.

In these circumstances, I have to consider Tesco PF's actions against the obligations and expectations that were in place at the time, rather than through the prism of today's standards, and in light of this make a call on whether it acted fairly and reasonably at that stage. I can't reasonably say that Tesco PF failed to treat Mr L fairly and simply because it may have been possible for Tesco PF to have gone further even if it wasn't expected or required to do so.

In considering this matter, I have to keep in mind that there wasn't a need for verification at the time Mr L applied for this credit card and when any limit increases were applied. Particularly as there were also no requirements around what Mr L has referred to as a pattern of rapid credit escalation at this stage either.

As this is the case, I can't jump to considering bank statements, in the way that the investigator did simply because the information from the time is limited and it is Mr L who chose to make his complaint as late as he did. To be clear, I'm satisfied that this doesn't mean Tesco PF is being favoured. It is simply reflecting the fact that there wasn't a requirement to obtain bank statements from a customer and therefore reconstructing an affordability assessment using them at this stage, simply doesn't reflect what Tesco PF was expected to do, in order to have acted fairly and reasonably at the time.

In reaching my conclusions, I've also considered what Mr L has said about it being the case that my remit is to determine his complaint by reference to what is fair and reasonable in all the circumstances. And that in doing so I'm not confined to legal or regulatory minimums. I agree with Mr L when he says this.

Nonetheless, considering what a firm was required and expected to do, at the respective time, is relevant to determining whether it acted fairly and reasonably in the circumstances. And finding that a firm was required to do something that it wasn't or retrospectively applying rules that didn't apply at the time, would not only result in a decision that is not fair and reasonable all the circumstances, it would result in a decision that was unlawful.

I would also add that I disagree with Mr L when he says that I have a duty to protect consumers from harm as part of determining what is fair and reasonable in all the circumstances. In determining whether a firm acted fairly and reasonably, I must decide whether a firm did something wrong and if it did whether this resulted in the consumer lost out. I'm required to act impartially when determining this. The task of consumer protection is a typically matter for the relevant authority regulating a firm.

Overall and having considered everything, Tesco PF clearly felt that Mr L could repay up to £3,000.00, £6,000.00 and £6,500.00 within a reasonable period of time. Indeed, I think it is unlikely that Tesco PF would have lent in circumstances where it didn't consider that there was a decent chance of it being repaid any sums that it advanced. Equally, as I've explained the expectations at the time were more geared towards a customer being creditworthy, rather than being concerned with how a customer was actually managing to make their payments.

As the standards expected of lenders at this time was far more light touch than it is today and given what the information that I know Tesco PF did actually have at the time shows, I'm

not persuaded that it was unreasonable for Tesco PF to feel that Mr L could repay £3,000.00, £6,000.00 or £6,500.00 within a reasonable period of time.

As this is the case and while I appreciate that this will disappoint Mr L, while I've considered the further points he has made, I've still not been persuaded that Tesco PF failed to act in accordance with the standards and obligations in place at the time it agreed to provide Mr L with a credit card, or increase his credit limit on the occasions that it did. Therefore, I'm not persuaded that Tesco PF failed to act fairly and reasonably towards Mr L.

So while I can understand Mr L's sentiments and appreciate why he is unhappy, I'm not upholding his complaint. I appreciate this will be very disappointing for Mr L. This is particularly as he has carried out a significant amount of research and clearly feels strongly about this matter. However, I hope he'll understand the reasons for my likely decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 4 April 2025, I'm not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 June 2025.

Jeshen Narayanan
Ombudsman