

## **The complaint**

Mr B complains Tesco Personal Finance Limited trading as Tesco Bank (Tesco) irresponsibly provided him with a credit account because it didn't complete reasonable and proportionate checks to ensure he could afford the repayments.

## **What happened**

Mr B applied for a credit card with Tesco on 7 December 2014 with an initial limit of £3,800. The credit limit wasn't increased. Mr B said he struggled to afford the repayments, and he was sent a notice of default in December 2018. Mr B paid off the balance in April 2024.

Mr B complained to Tesco on 21 July 2024. He's concerned Tesco lent to him irresponsibly because he said a credit search at the time ought to have shown he was utilising payday loans, persistently overdrawn and had recently obtained further credit of £5,000 (and he was near his limit). He also said his monthly income at the time was only £1,700 and his existing debt was already too high in relation to this.

Additionally, he said Tesco ought to have realised there was a problem because he was regularly at the maximum of his credit limit and only made minimum payments during the interest free period. It said the only action Tesco took was to send reminders asking him to increase the amount paid rather than facilitate some kind of acceptable arrangement even though he was in regular contact.

Tesco responded to Mr B's complaint. It said the complaint had been made too late under the complaint handling rules of the Financial Conduct Authority (FCA).

Mr B remained unhappy and asked our service to investigate. Our Investigator didn't agree with Tesco about the time limits, so went on to consider the complaint. However, he didn't think the complaint should be upheld.

Mr B didn't agree with our Investigator's findings and asked for an Ombudsman's decision. Therefore, the complaint has been passed to me.

## **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 he didn't think we could look at a complaint about the lending decision that happened more than six years before the complaint was made. But he also explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in section 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 and think this complaint is one I can consider. I think this complaint can reasonably be considered as being about an unfair relationship as Mr B says the credit was unaffordable, made his financial situation worse and he could only afford the minimum repayments. He's also said Tesco didn't do enough to support him when he was struggling. I acknowledge Tesco still doesn't agree we can look at this complaint, but as I don't think it should be upheld, I won't comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr B'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.

As explained by our Investigator, 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 B), 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; and
- 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.

But the case law also says that the court may not make an award for an unfair relationship where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making it. So I've taken this into account when deciding a fair and reasonable outcome for this complaint.

The case law doesn't provide a fixed period that would constitute a substantial delay, but in the case of *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34, the Supreme Court approved the District Judge's comment that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

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 B has complained about, I need to consider whether Tesco's decision to lend to him and increase his credit limits, 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 B'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:

1. Did Tesco carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the credit?

- If not, what would reasonable and proportionate checks have shown at the time?
- If it did, did Tesco make a fair lending decision?

## 2. Did Tesco act unfairly or unreasonably towards Mr B in some other way?

Tesco had to carry out reasonable and proportionate checks to satisfy itself that Mr B 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 to satisfy itself that Mr B was in a position to sustainably repay the credit?

I've seen a copy of the checks carried out by Tesco and information it had about Mr B at the time it decided to lend. I can see Tesco understood Mr B was single, living with parents and in full time employment. Tesco understood his net monthly income was £1,702 and his gross annual income was £27,500. It didn't have a record of any dependents.

In respect of Mr B's credit information, it found Mr B had £6,001 of existing debt and no mortgage. I have noted what Mr B has said about his financial circumstances at the time. However, from the information obtained by Tesco, he seemed to be managing his active credit well as there were no missed payments or arrears. There was also no other adverse information such as defaults or County Court Judgments (CCJ). Tesco found Mr B had taken eight cash advances in the last three months and two searches had been carried out in the last six months, but none in the last three.

Mr B had six active accounts, and the credit balance was made up of £2,820 in loan balances and £3,181 in revolving credit. The utilisation of his existing credit was around 44%. It found the new total for his unsecured debt would be about 39% of his income. Although he did have some level of debt, I don't think there were indicators he was reliant on credit or that he might not be managing what he already had.

Tesco also thought about Mr B's other likely expenditure by using data from the Office of National Statistics. Lenders are able to use statistical data in affordability assessments, unless it has information to suggest it might not be appropriate. I don't think there was anything in the information it obtained to suggest it shouldn't use such data when assessing Mr B's expenditure. For example, he had declared his income, was servicing his existing credit and confirmed he lived with his parents.

Considering Mr B's income, the credit commitments and the estimated expenditure, Tesco calculated Mr B's total expenditure as being around £1,270. This figure also included inflation and repayments towards the new lending. This left him with £432 in disposable income.

Having considered the information obtained, I don't think there was anything which ought to have indicated to Tesco that it needed to carry out more checks and it seemed to have sufficient information to be able to make a fair lending decision.

### Did Tesco make a fair lending decision?

Although I have found Tesco completed reasonable and proportionate checks, it doesn't end there. I also need to be satisfied Tesco made a fair lending decision based on the

information it obtained. Having reviewed the affordability assessment carried out, I'm satisfied the disposable income of £432 reasonably demonstrated Mr B was likely to have been able to sustainably afford the credit. Additionally, although Mr B had some existing credit, I don't think there were any indicators on the credit search to suggest the credit was likely to have been unaffordable or worsen his financial position. Therefore, I'm unable to conclude Tesco made an unfair lending decision.

*Did Tesco act unfairly or unreasonably towards Mr B in some other way?*

I've reviewed Tesco's contact notes and the statement history, and I can't see there were any obvious signs which ought to have indicated to Tesco that Mr B might be struggling with repayments up until 2018. I can see there were some late payments, but they seem to have been brought back up to date quickly. Also, I note Mr B was making the minimum repayment in many of the months and has confirmed he received correspondence from Tesco about this. There were also a few months where he did pay more than the minimum. Having reviewed matters, I don't think there is anything to indicate Tesco ought to have done more at this time.

However, I can see when Tesco did understand Mr B was struggling with his commitments it arranged repayment plans. This included plans which were agreed on 30 June 2018, 6 October 2018, 29 July 2019 and 1 June 2021. It reduced Mr B's monthly repayment during these periods and froze interest and charges to support him. Additionally, on 17 July 2020 Tesco agreed a Covid-19 payment break with Mr B. Tesco also sent correspondence with the relevant signposting to services who might offer additional advice and support to Mr B. I can also see evidence from the contact notes that Tesco and Mr B were in regular contact throughout the years regarding his repayments.

Having reviewed matters, I'm unable to conclude Tesco treated Mr B unreasonably or unfairly in some other way as it seems to have provided him with appropriate support when it understood he was having difficulty managing his finances. I understand the account is still technically open, but the balance was repaid in April 2024.

Summary

Overall, and based on the available evidence I don't find that Mr B's relationship with Tesco is or was unfair. It's not clear enough to me that Tesco created unfairness in its relationship with Mr B by lending to him irresponsibly initially, or by how it supported him. I don't find that Tesco treated Mr B unfairly in any other way either based on what I've seen.

**My final decision**

For the reasons outlined above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 July 2025.

Laura Dean  
**Ombudsman**