

complaint

Mr D complains about Tesco Personal Finance PLC's decision to lend to him.

Mr D is represented by his mother, but, to keep things simple, I'll refer to everything that's been said on his behalf as if Mr D had said it himself.

background

I set out the background to Mr D's complaint in my earlier decision which was a provisional decision. However, for ease of reading, and so that all relevant information is in this one document, I will repeat that background here.

In July 2018 Mr D took out a personal loan with Tesco Personal Finance for £4,000. Mr D says he could not afford the loan. In particular, he suggested that because he was using almost the whole of his authorised overdraft for his day-to-day living, Tesco Personal Finance, ought to have been well aware that he couldn't afford the loan. Moreover, Mr D indicated that he had been constantly using his overdraft, in this way, for the two years immediately before applying for the loan.

Further, just before he took out his loan with Tesco Personal Finance, he had taken out a new loan, a new credit card and a new store card with third parties. Between them these three new accounts represented about £9,000 worth of new debt.

Moreover, Mr D also had a pre-existing credit card account with another third party. He told us that on this pre-existing account, his borrowing increased by around £3,000 in January 2018 alone. It appears he was right up to his limit on this account too. In addition, he was just making minimum payments to this account, as a result he was not making any headway in clearing the balance in any significant way.

Also, Mr D told us that he had a gambling problem in July 2018, which had made his already precarious financial situation even worse.

In short, Mr D explained that he was in no position to service any more debt in July 2018. So, when in August 2018, the first payment became due on the Tesco Personal Finance loan, he missed it because he simply didn't have the money to pay it. Moreover, he tells us this wasn't a one-off he has never been in a position to make any repayments to the loan. Instead his mom made the first repayment and she together with her husband has continued to make all the monthly repayments ever since, fearful of what would happen to their son's credit rating if they did not.

For all of these reasons, he explained that the debt from Tesco Personal Finance, which came at a time when his debt was escalating, has caused him distress.

He also mentioned the impact of the loan on both his mom and his dad who have experienced respectively, stress and ill health in part, they think due to this debt.

In light of the above, Mr D asked that the debt be written off.

Tesco Personal Finance didn't agree it had done anything wrong. It told Mr D his online application had passed its internal scoring process. Further, it confirmed his salary by looking at his bank statement for June 2018, that is the month before he received the loan. While it was doing this it also assessed his conduct of this account. It also took a look at

his pre-existing credit commitments. In its opinion all of the accounts it knew about were up to date in their payments and the payment history was satisfactory.

In contrast to Mr D's stance, Tesco Personal Finance did not think that Mr D's use of his full agreed overdraft facility indicated that he was over- indebted. Rather, it pointed out that many people choose to use their overdraft like this without issue. From its perspective having finished its checks, it concluded it need do no further checks and he could afford the repayments for the loan. Moreover, it didn't agree that there was any indication of problem gambling on the bank statement it looked at.

For all these reasons, Tesco Personal Finance did not accept it needed to do anything further in response to Mr D's complaint.

Dissatisfied with this response, Mr D came to our service.

I took a look at Mr D's complaint. I issued a provisional decision. I set out my reasoning from my provisional decision below.

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

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

When Tesco Personal Finance lent to Mr D it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to him. Under the relevant regulations at that time Tesco Personal Finance was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate in the circumstances, which might include considerations about the amount borrowed and Mr D's borrowing history. Exactly what a lender should consider was for each lender to decide and the rules listed a number of factors which a lender such as Tesco Personal Finance might have wished to take into account.

Further, Tesco Personal Finance had to be able to demonstrate that it did enough to ensure that Mr D could repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. This assessment needed to be borrower focused.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide

what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did Tesco Personal Finance complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr D would've been able to do so?
- Did Tesco Personal Finance act unfairly or unreasonably in some other way?

I explained that if I determined that Tesco Personal Finance didn't act fairly and reasonably in its dealings with Mr D and that he has lost out as a result, I'd go on to consider what is a fair way to put things right.

As set out above, the regulatory framework requires Tesco Personal Finance to have carried out a proportionate assessment, based on sufficient information, of whether Mr D could afford to repay the loan with it in a sustainable manner.

This affordability assessment had to be borrower focused in the sense that rather than focusing on the credit risk for Tesco Personal Finance the assessment needed to have sufficient checks to satisfy Tesco Personal Finance that Mr D would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Mr D's financial situation.

Tesco Personal Finance has told us, as I have already mentioned, that before lending to Mr D, it requested proof of his income by asking for his bank statement for June 2018. It said Mr D passed its internal scoring process and affordability checks although it did not explain what these were.

Moreover, it said it also looked at the conduct of Mr D's accounts which it found acceptable. It was aware that Mr D was using his full overdraft, but it suggested he was using the overdraft in an appropriate manner. It didn't agree that the information it saw in Mr D's bank statement indicated that Mr D had a gambling problem. It asked for no further information and chose to do no further checks.

On the basis of the steps I've outlined above Tesco Personal Finance thought it had done enough to check if the lending was appropriate before it agreed to lend to Mr D.

It has been helpful to see the checks Tesco Personal Finance undertook. I do not doubt that Tesco Personal Finance concluded it had gone far enough to establish it was appropriate to lend. That said, I do not think those checks were proportionate in these specific individual circumstances. This is particularly so when I also take into account what Tesco Personal Finance knew about Mr D.

Mr D has told us about the situation with his overdraft and how the use he made of it showed he was having serious money troubles even before he took out the loan. I take his point in large part. But it is not correct to say he was using it permanently for two years before he took out the loan with Tesco Personal Finance. Rather, the situation was more nuanced than that. I have looked at his bank statements for the two years before July 2018. Between July 2016 and August 2016 Mr D was almost at the limit of his overdraft. His situation changed at the end of September 2016 he did not use his overdraft again until mid-February 2017. After that point, Mr D continued to use his overdraft until March 2018. For part of March 2018 he

wasn't using his overdraft and then he started to use it again right up until July 2018.

Further, although Mr D's income seemed to easily cover his priority outgoings his spending particularly his spending on gambling always ended up eating away at the sometimes significant credit in his account, until once again, he was near the top end of his overdraft and barely managing. I'll say more about his gambling later. Moreover, it seems that on more than one occasion Mr D's mom had to make payments into Mr D's account to stop him going into an unauthorised overdraft. This is notable because it wasn't as if the overdraft was small it was £5,000 at some points and £4,000 at others, almost twice Mr D's salary. Plus, although he did sometimes clear the overdraft this was only by virtue of one-off payments such as money from the sale of his house.

Tesco Personal Finance is correct to say that there are many people out there who never clear their overdraft for months on end. But it is also correct to say that is not how an overdraft is meant to be operated. Instead what is expected is that a consumer should go into and then out of an overdraft on a monthly basis. I think the fact that Mr D did not run his overdraft in that orderly way indicates that even before he took out the loan he was indeed having money troubles.

Moreover, an overdraft is repayable on demand. If Mr D's bank had ever decided to take his overdraft away Mr D's financial position would have collapsed entirely. By July 2018, Mr D was at the top of his overdraft limit with apparently no realistic prospect of clearing the overdraft and he'd been in that situation for several consecutive months. The only way Mr D had of making his repayments to his loan with Tesco Personal Finance was by using credit. In other words, he had to use credit to repay credit which was inappropriate. That said, he could not even do that because he'd run out of credit by the time he had to make his first repayment to his loan.

The way Mr D was relying on his overdraft to keep afloat financially was obvious even from a cursory look at his statements, including the statement Tesco Personal Finance saw. I think this is enough by itself to say that Tesco Personal Finance ought to have looked more closely at Mr D's financial situation before it lent.

But then we also have Mr D taking out three new credit accounts very close to the point when he also borrowed from Tesco Personal Finance. The size and timing of this new debt plus the fact that it was plain that Mr D would only be able to make these repayments with more credit ought reasonably to have prompted Tesco Personal Finance to make further checks. I also think that this combination of events should also have alerted Tesco Personal Finance to the realisation that Mr D could not in all likelihood repay the borrowing in a sustainable manner without it adversely impacting on his financial situation.

It follows that, I am not satisfied that the checks Tesco Personal Finance undertook before lending to Mr D were proportionate in the circumstances or that it undertook a reasonable assessment of what it did know about Mr D.

It also follows from what I've said above that I am satisfied that Mr D could not afford to borrow from Tesco Personal Finance when he was allowed to.

When I looked at Mr D's statements for the two years before he borrowed from Tesco Personal Finance they showed that Mr D was constantly capsizing his financial stability with his gambling. That said that picture only became clear when I looked at these statements in their entirety. But Tesco Personal Finance only looked at his statement for the month before

it lent to Mr D. And nothing in that statement would have shown Tesco that Mr D had an established pattern of problem gambling. I'd not expect Tesco Personal Finance, in these very individual circumstances to have checked two years' worth of bank statements before agreeing this loan. Neither do I think the borrowing that Mr D took out immediately before his loan with Tesco Personal Finance ought reasonably to have alerted it to Mr D's problem gambling. There was nothing about the type of lending he was taking, its amount and timing that might reasonably have suggested to Tesco Personal Finance that Mr D took out that finance to gamble with it.

Mr D has asked that the debt be written off. However, I cannot see that it would be fair and reasonable to say that the debt should be written off, that would overlook that Mr D has had the benefit of the money he borrowed, and I find it is fair and reasonable that he ought to be responsible for paying back the capital. That said I find it fair and reasonable that the interest and charges he has paid in relation to this money should be refunded with interest.

Mr D mentions the impact of his borrowing on his parents. Mr D appears to be very fortunate in having caring and proactive parents who have told us about their worries for Mr D and the actions they took to help him. Whilst I appreciate that they have been impacted by Tesco Personal Finance's decision to lend to their son, I can't compensate them. I have no power to do so, this is because only Mr D is an eligible complainant here. Under our rules I only have the power to make an award to benefit him. I have no leeway here.

For all of these reasons I concluded that Tesco Personal Finance had to do the following to put things right.

My provisional decision is that I intend to require Tesco Personal Finance PLC:

- To refund all interest and charges that Mr D has paid in relation to his loan. Interest should be added to that refund at the rate of 8% per year simple. The interest to run from the date the payments were made until the date of settlement.
- It can pursue Mr D for the balance of the capital of the loan, but it must charge Mr D no further interest on that capital. Mr D may want Tesco Personal Finance to apply the refund to the outstanding balance of the capital, if he wants it to do that please can he say so if he chooses to respond to this provisional decision.
- It must ask the credit reference agencies to remove any adverse information it has asked them to register on Mr D's credit file in relation to this loan.

I invited the parties to respond to my provisional decision. Mr D responded to accept it and ask that the redress be used to help reduce his debt with Tesco Personal Finance. Tesco Personal Finance also responded to reject my provisional decision and provide a detailed rebuttal. I'll go into the details of its response below.

my findings

I thank Mr D and Tesco Personal Finance for their responses to my provisional decision. I've re- considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

problem gambling

First, I'd like to clear up some apparent confusion. It seems from reading Tesco Personal Finance's response to my provisional decision that it thinks I have found it ought reasonably to have been aware of Mr D's problem gambling. I confirm I am saying the opposite. I found in my provisional decision and find again here, that in the circumstances, Tesco Personal Finance could not reasonably have known that Mr D had a gambling problem. I say this for the reasons I set out in my provisional decision and repeated again above. It seems no one is disputing this any longer in any event.

pre-lending checks and affordability

Tesco Personal Finance sets out a number of reasons why it rejected my provisional decision. In summary, its stance is, that it looked at both Mr D's likelihood to repay and his ability to repay. When assessing these two points it took into account a number of factors. Specifically, when it looked at Mr D's outgoings including his other debts and his repayments to it, Mr D still had £320 per month to spare. Further, Tesco Personal Finance, acknowledged that Mr D was using his overdraft. However, it did not agree that there was any cause for further investigation because:

"The bank statement did show his overdraft balance increased by nearly £1,500 but it would not be reasonable for us to reach the conclusions that Mr D was living outside his means - the statement also shows a single large outbound payment of £1,327.50 that does not look like regular expenditure, and it is not unusual to see revolving credit go up and down depending on the timing of large purchases.

It's also not unusual to see an increase in revolving credit followed by a new loan application - the customer was a homeowner with a mortgage who stated the loan was for home improvements, he may have paid for these improvements on revolving credit then applied for the loan.

As outlined above the customer could afford to repay all his existing debts and the new loan in a reasonable time period and with a large amount to spare. Based on the above, I don't think it was apparent that Mr D wouldn't be able to afford the loan or that the loan was proportionate to his situation that would warrant further bank statements being viewed."

Moreover, Tesco Personal Finance pointed out that from its perspective all of Mr D's credit accounts were in good order. It accepted it was possible that Mr D's parents might have masked the situation, to some extent, by helping out their son with his finances, but that was not something it could have been expected to know about.

I think it is worth repeating what I am looking at when assessing this complaint. I am looking at whether Tesco met its regulatory obligations to carry out sufficient checks. And I am also looking at whether Mr D could afford the borrowing. When I do that there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did Tesco Personal Finance complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr D would've been able to do so?
- Did Tesco Personal Finance act unfairly or unreasonably in some other way?

I accept Tesco Personal Finance's point that if I look in isolation at Mr D's outgoings and his incomings it seems he had a reasonable surplus. If Tesco Personal Finance was able to rely on just that then it would have grounds for saying it had done enough in terms of pre-lending checks. But Tesco Personal Finance was obliged to look in the round at Mr D's situation, and if it had done that I don't find that any reasonable lender would have gone ahead without further checks. I say this because the number of new debts (new loan, new credit card, and new store card) the size of debt (£9,000) and its timing (immediately before he took out his loan with it) were all significant. I think this would have caused a reasonable lender to probe further. In addition, Mr D had maxed out his pre-existing credit card and was merely making minimum payments towards it. This all speaks to a consumer who was stepping up his borrowing rapidly and significantly. And again, I think this would have made a reasonable lender take a closer look.

Further all of this new borrowing, the pre-existing borrowing and the new borrowing from Tesco Personal Finance was all going to come out of Mr D's overdraft. He was going to pay credit with credit. Tesco ought reasonably to have been aware of this.

The situation with Mr D's overdraft was not quite as Tesco Personal Finance says either. There was indeed what seems to have been a one-off payment of £1,327.50. But even without that payment Mr D would still have been thousands of pounds into his overdraft.

Moreover, I recognise that Tesco Personal Finance asked to see Mr D's bank statement for June 2018 primarily to validate his salary. But it also told us in its response to my provisional decision that it also asked to see the bank statement "*for a more complete understanding of his financial situation*". I think the statement said a lot about Mr D's financial situation. It would have seen or ought to have that at the end of June, the overdraft, which was substantial (£5,000), was being used almost to its full extent. If Mr D's mother had not made an urgent payment into Mr D's account it would have been very close to going into an unauthorised overdraft. The overdraft was about twice the size of Mr D's salary. He had no realistic prospect of clearing it, certainly not that month and for many months to come.

Further, Mr D had not cleared his overdraft for several months before he took out the loan with Tesco. Rather than clearing the overdraft every month as an overdraft is meant to be used. It had become "hardcore", in that it remained uncleared for several consecutive months leading up to Mr D borrowing from Tesco Personal Finance. This was not just therefore a case of revolving credit going up and down. Neither did Mr D's self-declared home renovations explain the situation. Rather, even the June statement alone would have shown Mr D was using his overdraft for day-to-day living and was within a hair's breadth of going into an unauthorised overdraft.

Tesco Personal Finance said, "*Whilst Mr D was utilising his overdraft, his credit record indicated that he was managing it well*". I don't agree, that the situation I have described above would be reasonably viewed by a reasonable lender as managing an overdraft well. Even more so when I also take into account everything that Tesco Personal Finance knew about Mr D. I

accept that the credit records would not have shown Mr D's mother swooping in with a vital payment in June 2018, but the statement I saw did show this.

Moreover, I find it is telling that Mr D has been unable to make any repayment towards his loan. Not even the first payment, despite having taken out all the new credit before taking out his loan with Tesco Personal Finance.

For all of these reasons I find that Tesco Personal Finance did not carry out proportionate checks. If it had done so it would have found that Mr D's financial situation each month was very precarious and that he would not be able to make repayments to it in a sustainable manner without it adversely impacting on his financial situation

In its response to my provisional decision Tesco Personal Finance also said, *"we have shown that the loan was affordable based on Mr D's finances and you seem to agree with this, as you feel it would be unfair for Mr D to not pay for the capital of the loan."* This is not why I think Mr D should have to pay the capital of the loan. I find it is fair and reasonable he should repay the capital because he has had the benefit of that capital. And I underline, again, that I find that the loan was not affordable.

I have not been persuaded by the points that Tesco Personal Finance raised following my provisional decision. It follows that I have come to the same conclusions for the same reasons as I went through in my provisional decision and above.

my final decision

My final decision is that I intend to require Tesco Personal Finance PLC:

- To refund all interest and charges that Mr D has paid in relation to his loan. Interest should be added to that refund at the rate of 8% per year simple. The interest to run from the date the payments were made until the date of settlement. *
- It can pursue Mr D for the balance of the capital of the loan, but it must charge Mr D no further interest on that capital. Mr D wants Tesco Personal Finance to apply the refund to the outstanding balance of the capital and it must do this.
- It must ask the credit reference agencies to remove any adverse information it has asked them to register on Mr D's credit file in relation to this loan.

*If Tesco Personal Finance considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this, if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 April 2021.

Joyce Gordon
ombudsman