DRN-3958469

The complaint

Mr L complains that Tandem Home Loans Ltd ("Tandem") lent to him irresponsibly as he had a significant gambling problem and numerous debts at the time he took out his secured loan.

Mr L took the loan out with 1st Stop Home Loans Limited, which subsequently became Oplo HL Ltd, and is now Tandem, so I will refer to Tandem throughout my decision for ease.

What happened

Mr L took out a second charge mortgage for £50,000 with Tandem through a broker in April 2019 in order to consolidate debt.

Mr L doesn't believe that Tandem carried out the necessary checks and says that, had it done so, it would have seen that he was a vulnerable customer with a significant gambling problem. Mr L says that his bank statements would have flagged this issue. He also says that he had a history of taking payday loans, credit cards and high street loans totalling hundreds of thousands of pounds and they were all on his credit file.

Mr L also doesn't believe that a proper valuation was carried out on the property, which meant that the combined amount for the loan offered by Tandem and his first charge mortgage was well above the actual value of his property. He says that a full valuation of the property would have flagged this issue.

Mr L says that he has missed several payments over the course of the loan. He has also paid a significant amount of fees which have been added to the loan and he will now have to pay back three times the amount he borrowed due to the interest. Mr L would therefore like the fees, charges and interest on the loan, along with any negative information on his credit file, to be removed.

Tandem says that it took Mr L through a robust underwriting process which demonstrates that it lent to him responsibly. It says that it conducted a full income and expenditure (I&E) assessment with Mr L and verified his income at the time of the loan as evidenced by his payslips. It conducted a full affordability assessment to account for all debt remaining, essential expenditure and living costs along with other outgoings it was made aware of. Tandem says that it uses government guidelines to estimate basic household essentials and living costs unless advised that they were higher or it found evidence of them being higher.

Tandem says that as part of its process to ensure it was lending responsibly, it also conducted a creditworthiness assessment to highlight how Mr L had managed his existing and previous debts as outlined within his credit file. It said in its final response to Mr L that there were no recorded County Court Judgments ('CCJs') or defaults registered. It also said that all debt repayments evidenced on the credit search, in Mr L's bank statements or additional debts declared were included in the affordability assessment. However, in its submissions to this service Tandem says that the loan was approved under its 'bank statement bypass process' without the need for supporting bank statements.

Tandem says that it could see that Mr L had 'got into a payday cycle' and Mr L told it (through the broker) that this stemmed from when he had to help his parents due to health issues and he had recently helped them move which was the reason behind the recent loans. Mr L had advised that they were now settled but he recognised that his credit had become unmanageable. Although there were two previous missed payments on a personal loan, Tandem says that all other credit had been maintained and Mr L told it that he would clear the outstanding personal loan arrears from his recent bonus. Tandem says that consolidating Mr L's debts put him in a better financial position.

Tandem says that there was no indication that Mr L declared that he had a gambling problem to it when he applied for the loan. It says that it carried out appropriate checks but that it was not obliged to carry out a forensic assessment of Mr L's financial circumstances. Tandem says that it must take information provided to it by a customer in good faith and it believed Mr L when he told it the background to his past financial difficulties and had no reason to doubt his explanation, which it describes as 'plausible'. It says that there was nothing in the checks it did that should reasonably have alerted it to suspect that Mr L had a gambling problem and that he had the opportunity to disclose this but chose not to do so. It says the customer must take responsibility for the accuracy of the information provided to it. Tandem says that Mr L's credit file showed no recent missed payments or arrears and there were no defaults or CCJs evident so it must assume that his gambling transactions did not have a detrimental impact on his finances.

In relation to the valuation, Tandem says that it conducted an online 'realtime valuation' on 13 April 2019 which showed a value range of £299,000 to £334,000. It therefore says that the market value of £316,000 attributed to Mr L's property was within this range. Tandem says that it does not obtain full valuations. It has provided a copy of its internal policy for acceptable valuations for different loan amounts and it says that the confidence level of Mr L's valuation fell within its acceptable parameters for a loan of £50,000.

Investigator's View

Our investigator looked at the case and concluded that Tandem hadn't acted fairly. He found that in view of the information shown on the credit report, and taking a common-sense view, Tandem did have reason to doubt the information it had been provided by Mr L about his expenditure and that simply asking for an explanation was not sufficient. The investigator therefore took the view that the checks were inadequate and that Tandem ought to have asked for further information in relation to Mr L's increasing debt. This would include reviewing copies of his bank statements to verify his expenditure and evidence his financial position before it agreed to lend to him.

Had Tandem requested bank statements, they would have shown that Mr L was in a cycle of payday loans, that there were lots of gambling transactions and that there were no outgoings towards day to day living costs (which Mr L says he was funding through credit cards). The investigator found that, had Tandem carried out sufficient checks and seen this information, it would not have been able to show that the loan was sustainable for Mr L. Overall, the investigator found that Tandem's decision to lend was irresponsible because the borrowing was unaffordable and unsustainable.

In relation to the valuation of the property, our investigator accepted that the use of a desktop valuation wasn't unusual within mortgage lending. However, Mr L had provided evidence showing valuations on similar properties in his area which were lower and the investigator also used a valuation tool himself which showed an estimated value of £300,000, compared to the £316,000 used by Tandem. Although this was not significantly lower, the investigator considered that he would expect a more robust approach given that the loan to value (LTV) was just under 90%. Given the rest of the evidence available, he concluded that the property may have been valued at a lower amount had a full valuation been conducted.

In order to put things right, the investigator recommended that Tandem should remove all interest and charges applied to the loan and that any payments made by Mr L should be treated as payments towards the capital amount. He also recommended that Tandem remove any negative information about the loan from Mr L's credit file.

Tandem's Response

Tandem disagrees with this so the case has come to me to make a decision. It says that it had no common-sense reason to doubt the information provided by Mr L as the explanation was plausible.

It says that its loan consolidated all outstanding unsecured debt and broke the cycle of short-term lending which was evident from the credit file. It says that there were cash advances of £101,000 over the last 36 months but only £4,000 in the last 12 months, which it says was a significant decrease so, whilst a higher current figure may have indicated a gambling problem, this was not the case with Mr L. It says that although there was a history of consolidation loans and payday lending, it took the view that it was prepared to offer this consolidation loan in order to assist Mr L in resolving his financial difficulties.

Tandem says that MCOB doesn't state that bank statements must be obtained but provides examples of how credit commitments should be corroborated (MCOB 11.6.13 (2)), including by making a credit reference agency search. It says that it corroborated Mr L's credit commitments through the credit file, which is in line with the guidance.

It says that there is an obligation on the customer to be open and honest with the information provided and it appears that Mr L was not. As Tandem says that it had no reason to doubt the accuracy of what Mr L said in his application, from the information it did gather it determined that the loan was sustainable. It disagrees that the loan could be harmful due to Mr L's gambling as it says that it cleared his outstanding debt and created a significant monthly saving.

In relation to the valuation, Tandem says that the desktop valuation fell within its policy parameters.

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.

Having looked at the evidence I agree with the investigator's view for broadly the same reasons and I've explained my reasons further below.

The loan taken out in April 2019 by Mr L was for £50,000 over a term of 240 months. The monthly repayment was £605.87, with the total amount repayable being £145,406.80. It was on a fixed rate of 12% for 5 years followed by a variable rate and with an APRC of 14.4%.

Tandem says that the purpose of the loan was for debt consolidation. Once the consolidated debts had been replaced by the loan repayment of £605.87, it says that the I&E assessment showed a saving of £2,400 a month on existing debt repayments and monthly free cash of £520.25 after the loan repayment to Tandem. Tandem says that this showed the loan repayment was affordable.

Mr L's secured loan is a regulated mortgage contract which means that the regulator's rules on mortgage lending (known as "MCOB") apply. At the time Mr L took out the loan, these rules set out – in summary – that it's the responsibility of the lender to carry out a detailed affordability assessment. MCOB sets out some of the key requirements, including (but not limited to):

- A lender must assess whether a consumer will be able to pay the mortgage repayments, not just at the start but over the term
- A lender must not enter into the mortgage agreement unless it can demonstrate that the mortgage is affordable for the consumer
- A lender must take full account of the customer's income, and must obtain adequate evidence of the income declared by the consumer

- A lender must take full account of the customer's committed expenditure (credit and contractual commitments) and take reasonable steps to obtain details of the customer's actual outstanding commitments
- A lender must take full account of the customer's basic essential expenditure and quality of living costs of the customer's household

The rules set out requirements and guidance in relation to the assessment of a consumer's expenditure. In particular, MCOB 11.6.12 sets out that for the purposes of its assessment of whether the customer will be able to pay the sums due a lender "may generally rely on any evidence of income or information on expenditure provided by the customer unless, taking a common sense view, it has reason to doubt the evidence or information". In other words, it's acceptable for a lender to rely on information about expenditure given by an applicant without seeking evidence to corroborate it – unless there are grounds to doubt what is said.

It is accepted by Tandem that it didn't request any bank statements from Mr L to corroborate his expenditure and the loan was approved under its 'bank statement bypass process' without the need for supporting bank statements. Tandem says that the relevant rules don't require it to request bank statements and that it corroborated Mr L's credit commitments using the credit file.

I would accept that – in obtaining Mr L's credit file – Tandem did take reasonable steps to obtain details of his actual credit commitments as it was required to do under MCOB 11.6.13. However, I think once Tandem obtained the credit report that should have led it to question what Mr L had said about his expenditure – on credit commitments and living and other expenses – for a number of reasons which I will expand upon below.

I can see that the broker provided Tandem with information relating to Mr L's creditworthiness which explained that he had taken payday loans in 2013-15 due to financial difficulty following a relationship breakdown but had got out of the cycle about two years later. The broker said that the payday loans started again in 2017 as Mr L had to help his parents and they needed to move out of their home due to their health issues. The broker said that recent credit in the form of three personal loans was also used to help cover costs to move his parents. It explained that the reason for missed payments was due to the outgoings being much higher due to a large amount being paid on high interest payday loans and that Mr L wanted to consolidate all of his high interest credit into one manageable payment.

In its rationale to approve the loan, Tandem reiterated the information provided by the broker and said that, although recent payments had been missed, this was due to Mr L being overcommitted helping his parents move property and that this loan would be saving him £2,400 per month on his outgoings.

I've looked at the credit report which was available to Tandem at the time of Mr L's loan application. The summary showed that Mr L had opened 13 accounts in the last six months, that he had £101,334 of cash advances in the last 36 months, £4,012 cash advances in the last 12 months, 38 credit searches in the last 12 months, and that he was making minimum payments.

Tandem relies on the fact that the cash advances had decreased to around £4,000 in the last 12 months (compared to over £101,000 over the last 36 months) to support its position that this didn't indicate a gambling problem. However, it was clear from the credit report that a number of other sources of funding had been obtained within the previous 12 months. This included three significant unsecured loans around six months before this loan was taken – of £14,000 on 10 October 2018, £20,960 on 12 October 2018 and £12,557 on 17 October 2018.

In addition to the £47,500 of personal loans taken out in October 2018, the credit report showed that Mr L had obtained various other sources of funding. One of Mr L's credit cards which had previously been cleared had gone from a zero balance to £8,673 in January 2019 and was now over the credit limit and another previously cleared credit card had gone from a negative balance to £2,232 in December 2018. Mr L had also taken out a new credit card on 17 October 2018 which was now over the limit of £5,800. The credit report showed that he had also taken short term loans of £3,996 and £750 in November 2018; of £1,280 £1,500, £1,000 and £60 in December 2018; of £1,000, £215 and £200 in January 2019; and of £600 and £683 in February 2019. These are all within six months of the lending in April 2019.

Tandem says that although there were two previous missed payments on a personal loan, all other credit had been maintained by Mr L. I disagree with this. In addition to the two missed payments on one of the personal loans, the credit report shows that the last payment had been missed on three of Mr L's credit cards, that he was over or close to his limit on a number of credit cards and that he was only making minimum payments. So I don't think it's reasonable to say that Mr L was maintaining his other credit commitments sustainably.

Whilst the loan reduced Mr L's monthly expenditure by consolidating some – but not all – of his debts, it increased his overall indebtedness by £11,700. It also meant that the debt was secured against his home over 20 years which would add a significant amount of interest to the amount he initially borrowed and mean that his home could be repossessed if he was unable to maintain his repayments.

I note that the debts consolidated by Mr L were largely for credit cards and short-term loans. His credit report indicated that he appeared to have consolidated credit card debts previously and then used them back up to the credit limit again shortly thereafter as set out above. Whilst a lender cannot be held responsible for whether a customer closes a credit card account or reuses the funds available after paying off the debt, I think in the circumstances of this case it should have raised further concerns that this pattern might be repeated following this lending – impacting Mr L's ability to manage this loan. This is particularly in light of the fact that – after the consolidation payments were made – a further £11,700 was being paid to Mr L directly rather than being used to consolidate some of the large personal loans which remained.

I can see that Mr L sent an email to Tandem on 13 April 2019 questioning the fact that the total value of the consolidation payments didn't add up to the £50,000 he was borrowing and asked what happened to the remaining balance. It is not clear if Tandem responded to this or questioned why Mr L needed the additional £11,700 given that the purpose of the loan was to consolidate debt – or whether it considered requiring him to use this amount to consolidate some of the personal loans that would otherwise remain outstanding.

Tandem has said that the explanation given by Mr L for his past financial difficulties was 'plausible' and that it had no reason to doubt what he said. It also says there was nothing in the checks it did which should reasonably have alerted it to the fact that Mr L had a gambling problem. Tandem has said that it took the information provided by Mr L in good faith and suggests that it was Mr L's responsibility to disclose his gambling problem but he chose not to do so. It is Mr L's responsibility to declare relevant information as part of his application – but it is the lender's responsibility to ensure that the loan is affordable for the customer, and to carry out proper checks to make sure it is. It is clear from the regulations outlined above that a lender must take into account a number of factors when assessing affordability.

Given the significant amount of credit taken by Mr L in the period shortly before he applied for this loan and the frequency with which he continued to use short term loans and credit cards even after having borrowed £47,500 in October 2018, I think this ought to have led Tandem to question what Mr L had said about borrowing money to help his parents move – or at least to make further checks to confirm it. I therefore think that the information available from the credit file should have prompted Tandem to ask further questions about Mr L's circumstances and requested supporting information. This is because – taking a common-sense view – Tandem had reason to doubt the evidence or information it had been provided by Mr L.

For the reasons above, I don't think Tandem carried out adequate checks having regard to the information it held about Mr L's financial circumstances, particularly given the large amount of the loan and the fact it would be secured against his home. Whilst MCOB doesn't say that a lender *must* obtain bank statements, it is good practice within the mortgage industry for a lender to obtain bank statements to verify the expenditure information provided. In the circumstances of this case I think it would have been prudent for Tandem to request Mr L's bank statements in order to verify his expenditure.

I've looked at Mr L's bank statements from 20 December 2018 until the loan was advanced on 16 April 2019. These show a significant amount of short-term loans (including some which were not present on his credit file) and gambling transactions. Between 24 December 2018 and 1 April 2019, Mr L took out 14 short term loans ranging from £60 to £1,500 and amounting to over £8,000 in total. Whilst I accept some of these may have been taken to pay off other debts, the amounts and frequency of the loans indicate that Mr L was not managing his debts sustainably.

I also note that there were a number of monthly direct debits shown on the statements (for three insurance payments, three telecommunications providers and a football club) which may not have been reflected in the figures used for Tandem's I&E assessment. Some of this may have been discretionary expenditure which Mr L could stop to service this loan – but that wasn't considered or discussed with him. The statements do not appear to show outgoings for day to day living expenses and Mr L has since indicated that these were paid using credit cards. The majority of payments out of the account were for either paying off credit commitments or gambling.

The statements also showed that in the three months before Tandem approved the loan, Mr L incurred bank fees for using an unarranged overdraft, arranged overdraft and for an unpaid transaction fee. These fees amounted to £86 in March 2019, £78 in February 2019 and £46 in January 2019. This again suggests that Mr L was not maintaining his credit commitments well.

Most notably from looking at the bank statements, these show a significant amount of gambling transactions in the period before the loan was approved. In the three months between 21 December 2018 and 31 March 2019 the statements show at least £9,395 of gambling transactions (for payments identified as being directly to gambling organisations) – in addition, there are a number of payments from the account via mobile phone transactions.

By way of example, these included gambling transactions totalling £1,600 on 24 December 2018 and £4,000 on 25 December 2018. Mr L then took two short-term loans totalling £2,750 on 27 December 2018 and made a further gambling transaction of £150. Likewise, on 31 December 2018, Mr L took out two short-term loans totalling £460 and spent £200 on gambling transactions. On 31 January 2019, he took out a short-term loan of £200 and then on 1 February 2019 spent £900 on gambling transactions whilst he was already over £1,000 into his overdraft. These examples indicate that Mr L was clearly not managing his debts sustainably and that he potentially had a significant gambling problem.

While some of these debts would have been consolidated into this loan, and therefore the lending would improve Mr L's immediate position, I think the evidence of the statements shows that Mr L had a pattern of borrowing to consolidate debt and then immediately running up further borrowing, and borrowing to fund gambling and debt repayments. Had Tandem considered any of this evidence, I think it ought reasonably to have questioned whether the same pattern would recur with this loan – making the loan unsustainable. And given the amount of this loan, and that it was secured on his property, the impact of that on Mr L could be significant. I think this ought to have led Tandem to question whether it was responsible to lend in these circumstances.

I've also looked at Mr L's bank statements from after the loan was given. These show that in the three weeks after the loan was advanced by Tandem (including the £11,700 directly to him) he took out a total of £5,500 over four new short-term loans and also opened a new credit card with a cash advance of £3,000. This reinforces my conclusion that Tandem should have considered whether it was likely this pattern would continue as part of its lending decision.

Tandem has confirmed that Mr L has dipped in and out of arrears during the period of the loan but says this is not something it could have foreseen when it approved the loan. Tandem says that Mr L paid the loan on time for seven months until December 2019 when the account fell into arrears. However, I can see from the notes from collections that Tandem was chasing arrears as early as October 2019 due to an unpaid direct debit that month. Mr L called Tandem in November 2019 to indicate that he had some financial difficulties the previous month but said that he would bring the account back up to date by the middle of December 2019. Mr L contacted Tandem again in January 2020 to indicate that he had approached a debt advice agency due to his financial difficulties. Mr L informed Tandem in December 2021 that he was experiencing financial difficulty, but he expected this to be temporary.

I think the information supports that the loan was not affordable or sustainable for Mr L and that it was not assisting him by consolidating some of his debts. I disagree that Tandem could not have foreseen these financial difficulties at the time it approved the loan. It is my view that had Tandem requested the bank statements for the period before the loan was taken – as I think it ought to have done in the circumstances – it would not have been able to demonstrate that the loan was affordable or sustainable for Mr L.

Overall, I don't think it was reasonable for Tandem to offer Mr L the loan secured against his home. I am of the view that it didn't carry out sufficient checks and, had it done so, it would have shown that the loan was unaffordable and unsustainable for Mr L and should not have been offered. In all the circumstances I think Tandem lent irresponsibly.

In relation to the valuation figure used for the property, Tandem says that the value of £316,000 attributed to Mr L's property was in the middle of the range given by the desktop valuation and that the confidence level for this fell within its policy parameters for a loan of this amount. It therefore believes that the type of valuation and amount attributed was appropriate.

Mr L has provided some examples of sale prices for similar properties in his area. These show that for 2019, with the exception of one property, nothing sold for more than £300,000. An online valuation tool showed a value of £300,000.

Given the information available, it may well be that the property may have been valued at a lower amount had a full valuation been conducted. And given the high LTV of just under 90% including Mr L's first charge mortgage, I might expect Tandem to take this into account when determining whether it was appropriate to lend in the other circumstances of this case. The fact that Tandem says the valuation met the requirements of its internal policy doesn't of itself mean it has acted fairly. However, given that I am of the view that this loan was mis-sold in its entirety, it will be unnecessary for me to come to any specific conclusion in relation to this aspect.

Putting things right

Whilst I don't think the loan should have been given, Mr L has had the benefit of the money borrowed, so I think it right that he should have to repay that amount. However, had the loan not been given then he would not have had to pay the fees, charges or interest incurred on this.

In order to put things right, Tandem should therefore treat all payments made by Mr L as payments towards the capital amount of the loan. It should not include any borrowing for fees and charges.

I recognise that this is not an ideal way of putting things right – it doesn't take into account the fact that Mr L did consolidate some (though by no means all) of his existing debts, and has therefore, through my award, saved interest on that debt he would otherwise have paid. However, given the interest rates charged by Tandem, and the difficulty of estimating what Mr L would have paid towards other debts, I think it's reasonable to take a relatively simple approach to resolving this matter by simply saying that Tandem should not retain fees and interest on money it ought not fairly to have lent. I'm satisfied that this is as close to fair compensation as it is reasonably possible to get in this case.

So I recognise that there is likely to have been some saving through consolidating high-interest short-term loan and credit card debt into the secured loan, albeit I don't think I can accurately estimate that saving, and I don't think it's likely to be very substantial. However, my award for financial loss will result in Mr L having paid no interest on any of the consolidated debt. In recognition of the fact that this may, to some extent, leave Mr L over-compensated, I do not intend to award further compensation for any distress and inconvenience in addition to that award.

In light of the above, I require Tandem to do the following:

- Tandem should calculate the amount borrowed without any fees or charges (£50,000). It should then treat any payments made to it by Mr L as payments towards this capital amount.
- If this results in an overpayment, Tandem should pay Mr L simple annual interest of 8%* on any overpayments, running from the date they were paid to the date of settlement.
- If there is still a balance outstanding, Tandem should agree a suitable repayment plan with Mr L.
- Tandem should remove any information about the loan from Mr L's credit file.

* HM Revenue & Customs requires Tandem to take off tax from this interest. Tandem must give Mr L a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained above I uphold this complaint against Tandem Home Loans Ltd and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 April 2023.

Rachel Ellis
Ombudsman