

The complaint

Mr and Mrs J complain that Tandem Home Loans Ltd (“Tandem”) lent to them irresponsibly and didn’t carry out sufficient affordability checks at the time they took out their second charge mortgage (secured loan).

Mr and Mrs J 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 and Mrs J took out a second charge mortgage for £25,000 with Tandem through a broker on 29 September 2018 in order to consolidate debt.

Mr and Mrs J have said that they were struggling financially in 2018 and they don’t think Tandem completed their income and expenditure forms correctly. They say that they had four children in full-time education (three under 16) and the surplus amount cited by Tandem did not exist. Mr and Mrs J have also said that Tandem calculated its figures based on Mr J owning 65% of the property when he actually only owns 40%.

Mr and Mrs J say that they kept up the payments for two years but were struggling financially in the background. They say that as a result of taking the loan they got into more debt on top of this loan as they struggled to make the payments and Mrs J ended up with an Individual Voluntary Arrangement (“IVA”) in 2020. Mr and Mrs J say that they are still struggling financially and Tandem has added lots of interest and charges and has threatened them with repossession once the arrears reach a certain amount.

Tandem says that it took Mr and Mrs J through a robust underwriting process which demonstrates that it lent to them responsibly. It says that it conducted a full income and expenditure (I&E) assessment with Mr and Mrs J and verified their income at the time of the loan as evidenced by their 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 it obtained a bank statement covering 30 days and no further outgoings were determined.

Tandem says that as part of its process to ensure it was lending responsibly, it also conducted a creditworthiness assessment to highlight how Mr and Mrs J had managed their existing and previous debts as outlined within their credit file. It said in its final response to Mr and Mrs J that there were no recorded County Court Judgments (‘CCJs’), defaults, missed payments or arrears on Mrs J’s credit report and that Mr J’s credit report was also reviewed and was satisfactory. It also said that all debt repayments evidenced on the credit search, in the bank statements or additional debts declared were included in the affordability assessment.

Investigator’s View

Our investigator looked at the case and concluded that Tandem hadn’t acted fairly. Mr and Mrs J provided a bank statement to Tandem which showed their outgoings and the

investigator wasn't persuaded that Tandem had sought sufficient clarification on some of their expenditure. The investigator concluded that, had it done so, Tandem wouldn't have been able to satisfy the requirements set out in the regulator's rules in that it wouldn't have been able to show that the loan was affordable for Mr and Mrs J at the time they took it out.

The investigator found that, although most of the information in the I&E was correct, there were some points where the figures and other information didn't match, which was concerning bearing in mind the affordability assessment was a crucial part of Tandem's lending decision. He also had concerns about the figures used for the stress test which didn't appear to take into account an increase in the interest rate of 3%, in line with the rules and guidance at the time. Further, the property valuation figure used appeared to be inaccurate bearing in mind Mr and Mrs J had shared ownership of the property.

In relation to Mr and Mrs J's bank statement provided to Tandem, the investigator found that there were several transactions shown as being paid to a religious organisation (which I will refer to as "R") totalling £850 over the month. Tandem had said that this linked in with file notes about Mr and Mrs J moving their child into a religious school, that Mr and Mrs J didn't declare any regular expenditure to this organisation on the I&E, and that the transactions didn't cause the account to go overdrawn. Therefore, it said that it had no reasonable cause to question the transactions or obtain any additional information.

The investigator disagreed with this. He noted that R was a different organisation than that to which payments had been previously made for their children's education. He found that, had the transactions related to Mr and Mrs J moving their child to a different school, this would likely be a regular outgoing so this alone would have been reason to ask further questions. However, Tandem did not do so. The fact that Mr and Mrs J didn't declare this didn't negate the fact that it was the lender's responsibility to carry out an affordability assessment to ensure it was lending responsibly. It was the investigator's view that Tandem should have asked more questions and for supporting information when seeing that hundreds of pounds was being paid to R.

As part of this, the investigator was of the view that Tandem should have asked for further bank statements to check the affordability and sustainability of the loan repayments. The investigator obtained further statements which also showed payments to R and an average monthly outgoing of £675 on top of the figures Tandem used in its I&E assessment. Even without using the correct stress test, the investigator found that this would have made the loan unaffordable for Mr and Mrs J as it left them with a deficit of around £250 a month. He found that it wasn't enough for Tandem to say that R wasn't a creditor as this was a significant regular outgoing on Mr and Mrs J's statements which meant their income wasn't enough to afford this loan.

Overall, the investigator found that Tandem didn't carry out sufficient checks when considering the information which was available to it. It should have questioned the payments, conducted the correct stress test and ensured all the figures it used to assess affordability were correct. He concluded that Tandem's decision to lend was irresponsible because the borrowing was unaffordable and unsustainable.

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 and Mrs J should be treated as payments towards the capital amount. He also recommended that Tandem remove any negative information about the loan from Mr and Mrs J's credit file.

Tandem's Response

Tandem disagrees with this so the case has come to me to make a decision. It says that the transactions shown on the bank account were a 'discretionary spend' as opposed to essential living costs and are not captured under any MCOB requirements. It also says the amounts were variable, they weren't shown as credit commitments on the credit files and

were't declared as an expense on the I&E form by Mr and Mrs J. Tandem says that its affordability assessment captured all expenditure required under MCOB.

Tandem maintains that its checks showed the loan to be affordable and sustainable over the repayment period. It says that the subsequent financial difficulty was not as a result of its decision to lend but due to unforeseen circumstances which it could not have envisaged at the time of its assessment.

Tandem says that the reason for Mr and Mrs J's financial difficulties appears to be due to the impact of the COVID-19 pandemic and this was not something which it could have foreseen when the loan was approved. It says that all payments were made on time and in full for 18 months until April 2020. In March 2020, Mr J had contacted Tandem to say that he was off sick and Mrs J was unemployed due to the pandemic so they would be unable to make their contractual payments. A payment holiday was applied to the account at that stage. Tandem has detailed various discussions in the following months about Mr and Mrs J's financial difficulties and confirmed that a period of forbearance was applied to the account in December 2020. It has confirmed that it received documentation relating to Mrs J's IVA dated 24 August 2022.

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 was taken out by Mr and Mrs J in September 2018 for £25,000 (plus an acceptance fee of £995 and a broker fee of £2,750) over a term of 15 years. The monthly repayment was £373.35, with the total amount repayable being £67,202.20. The loan was on a fixed rate of 13.5% for 5 years followed by a variable rate and with an APRC of 17.6%.

Tandem says that the purpose of the loan was for debt consolidation. £23,852.05 of the loan was going to consolidate other loans with the remaining £1,147.95 going directly to Mr and Mrs J. Once the consolidated debts had been replaced by the loan repayment of £373.35, it says that the I&E assessment showed a saving of £492.05 a month on existing debt repayments and monthly free cash of £447.30 after the loan repayment to Tandem. Tandem says that this showed the loan repayment was affordable.

Tandem says that it also stress-tests repayments on all variable rate mortgages to ensure that the loan remains affordable if interest rates rise. It says that this showed monthly free cash of £424.30.

Mr and Mrs J'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 and Mrs J 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.

Tandem did obtain a copy Mr and Mrs J's credit reports and one bank statement for their joint account covering the period of 14 July to 13 August 2018. So I accept that it did take reasonable steps to obtain details of their actual credit commitments as it was required to do under MCOB 11.6.13. However, I think once Tandem obtained these documents that should have led it to question what Mr and Mrs J had said about their expenditure on credit commitments and living and other expenses – for a number of reasons which I will expand upon below.

Tandem says that it obtained a bank statement covering 30 days and no further outgoings were determined. Having looked at this bank statement, I disagree that no further outgoings were apparent over and above those declared on the I&E.

I can see from the bank statement provided to Tandem that there were payments totalling £850 to R, made up of £25 and £100 on 20 July, £30 on 23 July, £65 and £450 on 27 July, £30 on 3 August, and £50 and £100 on 7 August. It appears that Tandem didn't ask any questions about what these payments were for.

Tandem has said that R was a religious organisation and this linked with its file notes about Mr and Mrs J moving their child to a religious school. It also says that Mr and Mrs J didn't declare any regular expenditure to this organisation on the I&E, that the transactions didn't cause the account to go overdrawn and that they weren't shown as credit commitments on the credit files. Therefore it said it had no reasonable cause to question the transactions or obtain any additional information.

I can see that Tandem has noted on its file in relation to Mr and Mrs J's creditworthiness that they had recent borrowing as they had moved their child from school and had to pay for private school for which they had to take out loans. They had now moved their child to another school. It was noted that they had made two payments of £640 each to an organisation on 27 and 30 July 2018 and that these were the final payments for school fee arrears.

It is clear from the statements that R was a different entity to the organisation Mr and Mrs J had paid the school fees to. Had Tandem thought that the payments to R were for a new school then I think it would have been reasonable for it to have made further enquiries about this, as they would likely have been a regular outgoing. The fact that the payments weren't part of a credit agreement noted on Mr and Mrs J's credit files doesn't mean that these weren't part of Mr and Mrs J's regular expenditure, nor does the fact that the payments didn't lead them to go overdrawn at the time they were paid.

At the very least, I would have expected Tandem to have questioned this expenditure to understand what it was and whether Mr and Mrs J considered it a regular obligation, even if it was not a payment under a credit agreement or a contract such as one for school fees. Payments such as this could be in return for services, could be one-off donations – or could be part of a regular commitment a member of a religious organisation considers themselves

obliged to make. But Tandem didn't consider these questions, or consider whether these were regular payments and, if so, whether it was likely Mr and Mrs J would reduce or stop them when the loan was taken out.

Therefore, I disagree that Tandem had no reasonable cause to question these payments. It is Mr and Mrs J's responsibility to declare relevant information as part of their 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.

The payments to R totalled £850 during the month for which Tandem had the bank statement. This was a significant outgoing and amounted to over 20% of Mr and Mrs J's declared income. I think this ought to have led Tandem to ask further questions about what this money was for and whether it was regular expenditure for Mr and Mrs J. This is because – taking a common-sense view – Tandem had reason to doubt the evidence or information it had been provided by Mr and Mrs J about their outgoings.

Likewise, there are further transactions shown in the bank statements which don't seem to be reflected in the outgoings in the I&E. There are direct debits totalling £49.74 which appear to be for life insurance (£25.29), appliance insurance (£16.99 and £5.46) and a charity donation (£2.00) which haven't been listed in the outgoings. There are also standing orders totalling £214 which haven't been taken into account. It appears from Tandem's file that it was noted that some (but not all) of these standing orders were weekly payments to Mr and Mrs J's children but they still haven't been entered as outgoings in the I&E.

These direct debit and standing order payments – which were clearly regular financial commitments coming out of Mr and Mrs J's account – would have added a further £263.74 to Mr and Mrs J's outgoings. But Tandem doesn't appear to have questioned these or added the figures to the outgoings in the I&E – or alternatively satisfied itself Mr and Mrs J would no longer pay them - despite the information in the bank statement, which I think ought to have given it reason to doubt the evidence or information it had been provided by Mr and Mrs J about their outgoings.

The I&E shows 'verified' figures of £500 a month for food, £50 for petrol and £0 for travel expenses. However, the statement provided to Tandem shows payments of £230.20 that month to 'TFL Travel' and 'LUL Ticket Machine' (including three payments of £58.20) which seem highly likely to be payments for travel within London – yet the 'verified' figure says there are no outgoings for travel.

There are in the region of £650 worth of payments to supermarkets and food shops and £160 to petrol stations. I accept that the entirety of these amounts may not have been for food or petrol respectively, but it doesn't appear that Tandem has used any of the information available to it in the bank statement to question whether the outgoings in the I&E are accurate despite having reason to doubt the evidence or information it had been provided by Mr and Mrs J about their outgoings.

The bank statement and credit reports available to Tandem also show the amounts paid out by Mr and Mrs J for their credit commitments. In some cases, these don't match the amounts on the I&E listed as the 'verified payment'. For example, for one lender Mr and Mrs J had three unsecured loans, the 'verified payment' noted on the I&E show amounts of £63.02, £41.91 and £46.02 for these loans. On the bank statements, there are direct debits for £59.11, £73.65 and £39.46 for this lender and the credit reports show monthly payments of £63, £39 and £59. Yet Tandem doesn't appear to have asked any questions to resolve these discrepancies and has simply used the figures provided by Mr and Mrs J as the 'verified payment' despite having reason to doubt the evidence or information it had been provided by Mr and Mrs J about their outgoings.

I've looked at the credit report which was available to Tandem at the time of Mr and Mrs J's loan application. The summary showed that Mrs J had opened three accounts and Mr J

opened one account in the last six months. Of the credit shown on the credit reports, over £21,000 had been borrowed within the nine months prior to the application.

Whilst the loan reduced Mr and Mrs J's monthly expenditure by consolidating some – but not all – of their debts, it increased their overall indebtedness by almost £5,000 (for the additional amount of £1,147.95 on top of the consolidation, the acceptance fee of £995 and the broker fee of £2,750). It also meant that the debt was secured against their home over 15 years which would add a significant amount of interest to the amount they initially borrowed and mean that their home could be repossessed if they were unable to maintain their repayments.

For the reasons above, I don't think Tandem carried out adequate checks having regard to the information it held about Mr and Mrs J's financial circumstances, particularly given the large amount of the loan and the fact it would be secured against their 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. And in any case, regardless of whether or not it *should* have obtained bank statements, the fact is that it did – so this was information in its possession. In the circumstances of this case I think it would have been prudent for Tandem to ask more questions about what was shown on the bank statement it *did* have and to request further bank statements in order to verify their expenditure to resolve those common sense concerns.

Mr and Mrs J have provided us with their bank statements from mid-June until 31 August 2018. I've looked at the month prior to the statement already seen by Tandem, so from 14 June to 13 July 2018. It is my view that the monthly expenditure is consistent with the figures shown on the subsequent statement seen by Tandem.

In relation to the payments to R, over this period Mr and Mrs J made payments of £420 on 3 July and £100 on 10 July. So for this monthly period there were payments of £520, compared to £850 over the subsequent month. So this is an average of £685 a month over that two-month period. There is also a further payment of £400 on 28 August 2018. I note that the investigator didn't include the payment of £420 on 3 July in his view so calculated an average of £675 a month over July and August. But taking this into account, in fact Mr and Mrs J paid £1,770 to R over the full months of July and August which is an average of £885 a month.

Tandem has said that these transactions were a 'discretionary spend' as opposed to essential living costs and are not captured under any MCOB requirements. I don't think it's necessarily reasonable to consider payments to be discretionary simply because there is no credit agreement or other contract in place – it will depend on all the circumstances. In this case, Mr and Mrs J have explained that the payments to R were their religious offerings, which were paid regularly as a form of worship. They have said that they felt that it wasn't really an option not to pay them. Tandem doesn't appear to have asked any questions about these payments at the time the loan was taken out. I think if it had made further enquiries, it would have been apparent that this was regular expenditure for Mr and Mrs J, to which they considered themselves committed, and should have been included on the I&E.

The payments to R alone would have meant that the loan wasn't affordable for Mr and Mrs J as – without these payments being included on the I&E – they only had monthly free cash of £447.30.

I also note from the statements from 14 June to 13 July 2018 that Mr and Mrs J again had a number of other outgoings which were similar to those on the August statement provided to Tandem and not entered as outgoings in the I&E. These again included direct debits of £49.74 (the same figure as the August statement), standing orders of £194 (compared to £214 in the August statement) and £210.90 for travel expenses (compared to £230.20 in the

August statement. These figures alone add a further £454.64 to Mr and Mrs J's monthly outgoings for the July statement period and £493.94 for the August statement period, which again demonstrates that the loan was unaffordable for Mr and Mrs J.

Had Tandem considered whether the information in its possession gave common-sense grounds for doubting what was on the I&E, as I think it fairly should have done, it would have asked for the further information I've set out above. And had it considered any of this evidence, I think it ought reasonably to have questioned whether the loan was affordable and sustainable for Mr and Mrs J. And given the amount of this loan, and that it was secured on their property, the impact of that on Mr and Mrs J could be significant. I think this ought to have led Tandem, acting fairly, to question whether it was responsible to lend in these circumstances.

I note that Tandem says that it stress-tested the repayments on Mr and Mrs J's mortgage to ensure it remained affordable. The rules and guidance at the time set out that, when assessing affordability, lenders should apply an interest rate stress test to assess whether borrowers could afford their mortgage if the interest rate was 3% higher.

On the I&E, following the stress test this showed monthly free cash of £424.30 (compared to £447.30 before). For a loan of £28,745 over 15 years, a difference of £23 doesn't appear to equate to an interest rate rise of 3%. However, given that I am of the view that this loan was unaffordable even before the stress test was carried out, it will be unnecessary for me to come to any specific conclusion in relation to this aspect.

Tandem says that the reason for Mr and Mrs J's financial difficulties appears to be due to the impact of the COVID-19 pandemic and this was not something which it could have foreseen when the loan was approved. However, Mr and Mrs C have said that they were already struggling prior to the pandemic and this loan escalated their difficulties and led to missed payments.

I think the information available supports that the loan was not affordable or sustainable for Mr and Mrs J and that it was not assisting them by consolidating some of their debts. I accept that Tandem could not have foreseen or been expected to take into account the impact of the pandemic when making its lending decision. But I think it ought to have understood that the loan was not affordable and might lead to future financial difficulties. It is my view that had Tandem properly reviewed the information available to it and requested further information – 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 and Mrs J.

Overall, I don't think it was reasonable for Tandem to offer Mr and Mrs J the loan secured against their 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 and Mrs J and should not have been offered. In all the circumstances I think Tandem lent irresponsibly.

In relation to the valuation, Mr and Mrs J have said that Mr J only owned 40% of the property and not the 65% used by Tandem in its I&E. Tandem says that the broker provided the information suggesting Mr and Mrs J owned a 65% share of the property and it didn't obtain any additional verification of this but 'sense checked' this against the declared shared ownership rental payment.

In relation to the valuation figure used for the property, Tandem says that the estimated value given by Mr and Mrs J was £400,000. It used a figure of £193,000 which was from its 'pre-valuation' which it says fell within its policy parameters at the time of the loan and a full valuation wasn't required. This meant that with the total borrowing of £211,626 against the property, the loan to value ('LTV') used by Tandem in its I&E was 109.7%..

Tandem says the value of £193,000 reflected the shared ownership nature of the property against the Mr and Mrs J's estimated value of £400,000 and, in reality, the valuation attributed was significantly lower than 65% of £400,000.

Given the information available, it may well be that the property may have been valued at a higher amount had a full valuation been conducted, which would have decreased the loan to value ('LTV') in itself. However, had Tandem verified the proportion of shared ownership then this may have increased the LTV.

Assuming that the value of £400,000 was accurate (which seems reasonable given the pre-valuation figures I have seen for similar properties) and that Mr J owned 40%, this would give a valuation of £160,000. This would have given a LTV of 132.3%, taking into account the existing first charge loan.

Given the LTV used by Tandem was already high, I might expect Tandem to take this into account when determining whether it was appropriate to lend in the other circumstances of this case. I would also expect it to use accurate figures when calculating the LTV. 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 lent irresponsibly 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 and Mrs J have had the benefit of the money borrowed, so I think it right that they should have to repay that amount. However, had the loan not been given then they 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 and Mrs J 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 and Mrs J did consolidate some (though by no means all) of their existing debts, and have therefore, through my award, saved interest on that debt they would otherwise have paid. However, given the interest rates charged by Tandem, and the difficulty of estimating what Mr and Mrs J 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 and Mrs J having paid no interest on any of the consolidated debt. In recognition of the fact that this may, to some extent, leave Mr and Mrs J 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 (£25,000). It should then treat any payments made to it by Mr and Mrs J as payments towards this capital amount.
- If this results in an overpayment, Tandem should pay Mr and Mrs J 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 and Mrs J.
- Tandem should remove any information about the loan from Mr and Mrs J's credit

files.

* HM Revenue & Customs requires Tandem to take off tax from this interest. Tandem must give Mr and Mrs J a certificate showing how much tax it's taken off if they ask for one.

I also note that Mrs J was previously in an IVA, which completed in December 2022. This loan does not appear to have formed part of the IVA. However, it will be for Mrs J to satisfy herself that she has complied with any obligations she may have under the IVA.

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 Mrs J and Mr J to accept or reject my decision before 29 June 2023.

Rachel Ellis
Ombudsman