

The complaint

Mr H is complaining about Tandem Motor Finance Limited's (Tandem) decision to lend to him and their response when he told them he was in financial difficulties.

What happened

In December 2022, Mr H entered into a hire purchase agreement with Tandem to finance the purchase of a car. He paid a deposit of £100 and borrowed £16,219.33 over a 60-month term, with monthly repayments of £433.87.

Later the same month Mr H complained to Tandem about their lending decision. He said his credit file was already in an "adverse state" at the time the loan was approved, and said affordability checks weren't carried out. He also complained about some of Tandem's administration – he was unhappy about the set up of his direct debit and that they'd mixed up his home address and employer address. In relation to the administration points, Tandem upheld Mr H's complaint about his address but not about the direct debit – they said they'd used the only account details Mr H had provided and set the date as his pay date in line with their policy.

Tandem went on to explain how they'd decided the loan was affordable for Mr H. They said they'd carried out automated checks based on personal circumstances, employment status and credit file searches. They'd checked Mr H's annual salary using one of the Credit Reference Agencies' (CRAs) tools. They'd then carried out an assessment of Mr H's income and expenditure using this income figure and his existing creditor repayments (taken from his credit file). They said they'd assumed Mr H paid 50% of the mortgage and bills because he was married and assessed his disposable income as around £1,570. On that basis their view was that the loan repayments of £433.87 per month were affordable. Tandem added that they'd have still assessed the loan as affordable if they'd included 100% of Mr H's mortgage and bills.

Mr H was unhappy with Tandem's reply so he came to our service. He said Tandem didn't do enough checks when they decided to lend to him.

In their submissions to us, Tandem pointed out that Mr H had complained within the 14-day period he had to withdraw from the agreement but hadn't withdrawn. They also said Mr H had raised a separate complaint about Tandem not assisting him with his financial difficulties. In response to that complaint they offered to unwind the loan if Mr H returned the vehicle but he wasn't happy with this, saying he needed the car and couldn't get finance to swap it for a cheaper car.

One of our investigators considered Mr H's complaint. He said he thought Tandem had completed proportionate checks when deciding whether or not to lend to Mr H. And he thought they'd made a fair lending decision because there wasn't anything in the information Tandem gathered that ought to have highlighted any concerns about Mr H being able to repay the agreement in a sustainable way. Our investigator also commented briefly on the administrative points Mr H had made and on Tandem's offer to unwind the loan.

Mr H wasn't happy with our investigator's view. He said the other two car finance agreements he'd had at the time weren't taken into account in the lending decision and said this meant he was making repayments on car finance totalling £800 a month. He added that the investigator hadn't considered the fact that Tandem didn't check bank statements. And he raised concerns about the accuracy of the income and expenditure assessment. Mr H asked for an ombudsman's decision – so his complaint's come to me.

On 8 August 2023 I issued a provisional decision explaining why I didn't think Tandem's checks had been proportionate:

"The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did Tandem carry out proportionate checks?

Mr H thinks Tandem didn't carry out a proper assessment because he doesn't understand how Tandem arrived at their cost of living amounts and because they didn't look at his bank statements.

To be clear, CONC doesn't require lenders to look at a potential customer's bank statements. Instead, it says a lender must determine or estimate a customer's income and non-discretionary expenditure. CONC allows a lender to use CRA information as evidence of income. And it allows a lender to use statistical data to estimate non-discretionary expenditure (unless the lender had reason to expect that expenditure to be significantly higher than average). So I can't say Tandem didn't carry out proportionate checks simply because they didn't look at Mr H's bank statements.

The hire purchase agreement required Mr H to pay Tandem around £26,000 over five years. So it was a significant commitment which should have meant Tandem's assessment was thorough. To consider whether their checks were proportionate, I've thought more about what checks they did, and what those checks showed.

Credit file

I've looked at the credit report obtained by Tandem. In summary it shows:

- *Mr H had three defaulted accounts, all of them were defaulted at least five years prior to the lending decision.*
- *Mr H had nine active credit cards at the time of applying for the loan. He was making payments on time against most of them but had missed the last two payments on one of the credit cards.*
- *Mr H's water account was classed as delinquent but he was up to date with the most recent months' payments and had last missed one in June 2022.*
- *Mr H also had a mortgage, an active hire purchase agreement, two unsecured loans, a mail order account, and an overdraft. There were no issues with any of these.*

The total repayments on Mr H's loans were around £300 per month and his mortgage was £586 per month. The total balance on his credit cards, mail order account and overdraft was just under £10,000.

Although Mr H's payment history was generally good, I'm inclined to say the credit file should have been a source of concern for Tandem. As well as his mortgage, Mr H had three loans and eleven revolving credit accounts. This strikes me as a high number. The total balance on these revolving credit accounts, at around £10,000, wasn't insignificant. And the issues with his water account and the two recent missed payments were indicators that Mr H might have had some financial difficulties. Because of this, I'd expect Tandem to do more than their basic affordability checks and consider Mr H's income and expenditure in detail.

Income and expenditure

Tandem were satisfied with the results of the CRA check on Mr H's income. They used statistical data and the information from Mr H's credit file to estimate his expenditure.

As I've explained above, CONC allows a lender to use this kind of data unless they had reason to suspect Mr H's expenditure might differ from the average. I'm inclined to say the fact that Mr H had so many lines of credit and had missed a couple of credit card payments was a reason to suspect Mr H's expenditure might differ from the average.

In summary I don't think Tandem carried out proportionate checks given the amount and duration of the loan and the status of Mr H's credit file."

I then looked at what Tandem would have found if they had carried out more checks on Mr H's income and expenditure. In my provisional decision I said I thought Mr H's monthly income was around £2,770 and his monthly non-discretionary expenditure was around £2,187. Once the payments for the new agreement (£434) had been deducted, I calculated this would leave Mr H with around £150 per month in disposable income.

Finally, I looked at Mr H's other complaint points and commented as follows:

"Financial difficulties

Mr H has also complained that Tandem didn't offer any other repayment options after he contacted them about his financial difficulties. He wasn't happy that they offered to unwind the loan agreement because he needs a car and now can't get finance for a less expensive car. I've thought about this aspect of Mr H's complaint. I can't say Tandem have acted unfairly – their offer to unwind the loan was based on Mr H paying only the monthly repayments for the time he had use of the car and none of the additional charges for early termination that are usually associated with exiting a hire purchase agreement. Mr H paid a deposit of over £10,000 when he entered into the hire purchase agreement, so I'd expect him to be able to buy a car if this was returned to him as part of unwinding the loan.

I've also read through Tandem's notes of their conversations with Mr H and listened to two call recordings from April 2023. It's clear from these that Tandem did suggest a number of other options to Mr H. They offered a reduced payment plan and a payment holiday and discussed the amount that Mr H thought might be affordable and income and expenditure at the time. Mr H didn't want to take up any of the suggestions because he was concerned about the build up of arrears which might lead to repossession of the car. Tandem assured him that they wouldn't repossess the car whilst waiting for an outcome for our service – but Mr H said he was concerned that he'd build up arrears on a reduced payment plan and then our service might not uphold his complaint and then he'd have a large arrears balance to clear and again risk the car being repossessed.

Whilst I can understand Mr H's concerns I'm inclined to say Tandem treated him fairly. They suggested a number of different options to help him in the short term while we reviewed his complaint and said they'd look at an affordable repayment plan once that was done.

Administrative issues

I haven't looked into these as Mr H didn't raise them when he brought the complaint to us, and hasn't raised them when responding to our investigator's view. So I believe this aspect of Mr H's complaint to Tandem has been resolved."

Mr H responded to my provisional decision, saying his essential expenditure was higher than I'd estimated and providing some more evidence. I considered this and agreed it showed his monthly expenditure was around £100 higher than I'd thought previously. I emailed both parties on 4 September 2023 to explain that I'd changed my view – this meant Mr H would have had only around £50 a month disposable income which I didn't think was enough to say the agreement was affordable for Mr H.

Mr H accepted my revised view, but Tandem didn't. They agreed that they would conclude that an agreement was unaffordable if the income and expenditure assessment showed only £50 disposable income. But, they said, they felt they were entitled to rely on their income figure of £3,018, which they'd verified using one of the CRA's tools. Using this income figure rather than mine, they'd have decided the agreement was affordable.

Tandem also commented on a part exchange that Mr H made at the time of buying this vehicle. They questioned whether Mr H part exchanged a vehicle for which the monthly repayments were included in my income and expenditure assessment – and said that if so, this expense should be excluded.

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.

Neither party commented on whether the checks were proportionate, or the aspects of the provisional decision covering financial difficulties and administrative issues, so my findings on these elements are unchanged.

In relation to the income and expenditure assessment, I can understand Tandem's point about the CRA verification of income – they said they were entitled to rely on it, and CONC does indeed allow them to do so. In Mr H's case, he received significant amounts of reimbursements for work expenses and it's possible this is what's led to the CRA tool overstating his income.

I didn't include Mr H's work expenses in his expenditure – because I'd deducted them from his income. But as Tandem hadn't made this distinction when looking at Mr H's income, they'd have needed to include the work expenses when looking at his non-discretionary expenditure. In my provisional decision, I said I'd estimated his work expenses at around £813 per month.

Using Tandem's income figure of £3,018 and then including work expenses of £813 in my income and expenditure assessment would leave Mr H with disposable income of just £18 from which to pay the £434 on this agreement – making it clearly unaffordable.

I've also checked on the vehicle which was part exchanged. Mr H told us it was his wife's car. And I can see from a more recent version of Mr H's credit file that he is still making the

£208 per month payments – which satisfies me that this car wasn't part exchanged and it's appropriate to include this amount in the income and expenditure assessment.

In summary, Tandem's comments haven't changed my mind – I still think the agreement was unaffordable for Mr H and if they'd done proportionate checks they couldn't reasonably have decided to lend to Mr H.

Putting things right

As I don't think Tandem should have approved the lending, I don't think it's fair for them to charge any interest or other charges under the agreement. But Mr H has had use of the car for around 10 months, so I think it's fair he pays for that use. There isn't an exact formula for working out what fair usage should be. However, in deciding what's fair and reasonable, I've thought about the valuation of the car when Mr H entered into the agreement, the amount of interest that was charged under the agreement, the usage Mr H likely had of the car and what his costs to stay mobile might have been had he not entered into this agreement. In doing so, I think a fair amount Mr H should pay is £265 for every month he had use of the car. I put this figure to both Mr H and Tandem in my emails of 4 September and neither party has disputed it. So I think it would be fair and reasonable for Tandem to retain £2,650.

To settle Mr H's complaint, Tandem need to do the following:

- End the agreement with nothing further to pay.
- Refund all the payments Mr H has made (including the deposit), less £2,650 for fair usage:
 - If Mr H has paid more than the fair usage figure, Tandem should refund any overpayments, adding 8% simple interest per year from the date of each overpayment to the date of settlement. Or;
 - If Mr H has paid less than the fair usage figure, Tandem should arrange an affordable and sustainable repayment plan for the outstanding balance.
- Once Tandem have received the fair usage amount, they should remove any adverse information recorded on Mr H's credit file regarding the agreement.

If Tandem consider tax should be deducted from the interest element of my award they should provide Mr H a certificate showing how much they've taken off so that he can reclaim that amount, assuming he is eligible to do so.

My final decision

As I've explained above, I'm upholding Mr H's complaint. Tandem Motor Finance Limited need to take the steps outlined above to settle Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 October 2023.

Clare King
Ombudsman