

The complaint

Ms L is complaining about Tandem Motor Finance Limited trading as 1st Stop Car Finance. She says they were irresponsible in lending to her because the repayments were unaffordable.

What happened

In November 2019, Ms L took out a hire purchase agreement with Tandem to finance the purchase of a vehicle. She paid a £50 deposit and borrowed £7,176 - the cash price of the car was £7,226. The agreement required Ms L to make 59 monthly repayments of £241.98 and a final instalment of £261.78. Ms L made her payments on time for the first six months, and again for many months after a short Covid-related payment holiday. She stopped making regular payments in November 2021 and her arrears built up quickly. She terminated the agreement voluntarily and the vehicle was collected in March 2023, but with an outstanding balance on the agreement of around £4,400.

In May 2023, Ms L complained to Tandem, saying they'd failed to adequately assess whether the agreement was affordable for her. She said at the time of the agreement she had multiple debts and arrears including council tax, utilities and rent, and had a recent County Court Judgment (CCJ) against her. She said she hadn't had job stability for some time and had also spent time off sick during the year.

Ms L also complained about the way Tandem had treated her once her arrears started building up, saying voluntary termination wasn't offered until a year later which added to the deterioration of her credit file.

Tandem didn't uphold Ms L's complaint. They said they'd verified Ms L's net monthly income as £1,564 using an automated verification tool. Her monthly payment was less than 20% of this so she met their lending criteria. Tandem also said they'd checked Ms L's credit file. They said this showed a CCJ but no defaults. And it showed she had just one active line of credit, with monthly payments of £95. It showed although she'd had some arrears on utility and telecommunications accounts these were up to date at the time of lending.

Tandem said Ms L hadn't told them that her job was unstable, or that she'd been unwell – and they had no reason to suspect either of these.

In relation to their treatment of Ms L during the course of the agreement, Tandem gave a detailed history of the account. In summary, they said the issues seemed to have been caused by a problem with the vehicle and Ms L's decision to stop making payments while this was investigated and inability to return to employment due to caring responsibilities. They added that this wasn't foreseeable when they approved the loan.

Ms L was unhappy with Tandem's response so brought her complaint to our service. One of our investigators looked into it but didn't uphold it. She said from the evidence she'd seen, she thought Tandem hadn't conducted proportionate checks. But when she looked at Ms L's bank statements from the time of lending, she thought these showed the agreement was affordable for Ms L.

Ms L disputed our investigator's view, saying that some of her outstanding debts weren't included in the findings. And she said she was temporarily homeless at the time, living between friends and family – which wasn't a permanent option. She said our investigator hadn't included anything in her affordability calculation for rent and bills which wasn't realistic. Because Ms L disagreed with our investigator, the complaint was referred for a decision – and it's come to me.

What I've decided – and why

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

Having done so, I'm not upholding Ms L's complaint for broadly the same reasons as our investigator – I'll explain further below.

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?

Tandem said they carried out the following checks:

- reviewed Ms L's credit file; and
- verified Ms L's income using an automated CRA tool.

They also said they'd carried out a validation call to confirm Ms L could afford the loan.

Whether or not these checks were proportionate depends on various factors, including the size and length of the loan, the cost of credit, and what Tandem found. The loan was a significant amount, for five years, and at a high interest rate – so my starting point is that checks needed to be thorough.

Tandem said Ms L's credit file didn't give them any particular cause for concern. They said it showed a CCJ and a few missed payments but that it suggested Ms L was in a more stable position by the time of the lending. And because Ms L's repayments were less than 20% of her net monthly income they decided the loan was affordable.

I note Ms L provided us with a copy of her credit report which showed substantially more adverse information than that on the credit report obtained – it shows Ms L had four accounts defaulted between August 2018 and June 2019. It's unusual for credit reports to be this different but CRAs can report different information and I can't say Tandem should have obtained additional credit reports – they were entitled to rely on the one they had.

I've not had a copy of the validation call so I can't comment on what was said in that call but I'm not satisfied Tandem carried out proportionate checks. They didn't make any attempt to estimate Ms L's monthly non-discretionary expenditure. CONC 5.2A.18 says a firm should determine or estimate a customer's expenditure unless it can demonstrate that it's obvious that there's no material affordability risk. Tandem haven't demonstrated this. And with a CCJ and missed payments within the last nine months, it was clear Ms L wasn't in a strong position financially.

If Tandem had carried out proportionate checks, what would they have found?

As I've explained above, I think proportionate checks would have involved Tandem finding out more about Ms L's expenditure and comparing this to her income.

It was apparent from Ms L's application that she was living with family at the time of the lending but this had only been for a short time and that her living situation wasn't stable. So it's difficult to say what conclusions Tandem would have drawn about Ms L's expenditure if Tandem had done more to understand it.

I've looked at Ms L's representations about what she was supposed to be paying to creditors at the time, and at her bank statements for the three months leading up to her application – which give an indication of what she was spending.

Ms L's bank statements show she was spending around £150 per month on fuel, £250 per month on food, £95 per month on insurance and £30 per month on other vehicle costs. She was paying £58 per month for her phone and £100 per month to a debt collector – from what she's sent us this appears to be in relation to council tax arrears. Despite having no fixed address Ms L was also paying £25 per month for water. Ms L's told us she was paying other individuals when she could do contribute towards rent and bills. It appears she did this through a combination of cash withdrawals and direct transfers and on average this looks to have been around £300 per month.

But I appreciate Ms L was hoping to move into stable rented accommodation at the time. It's likely that if Tandem had thought about Ms L's expenditure in a reasonable and proportionate way they'd have arrived at a figure of around £500 for rent and bills instead of the £300 contributions. Adding up all these costs gives total non-discretionary expenditure of £1,208 per month. When adding on the repayments to Tandem of £242 per month this would come to £1,450 per month – leaving Ms L with around £100 left over.

Ms L has told us that she'd left a difficult relationship in early 2019 which has left her in arrears with a number of different creditors. So I'm aware my above assessment might not reflect her reality. But I have to think about what she'd have made Tandem aware of if they had asked – she's also told us she was desperate for a car and was persuaded by the finance broker to take a £242 per month deal when she'd already told them she could only afford £100 per month. Note I haven't considered the broker's actions here because the complaint is about Tandem, rather than the broker.

In summary, I'm not satisfied Tandem carried out proportionate checks – in order to do so they'd have had to take reasonable steps to estimate her expenditure. But if they had, I think it's likely they'd have still concluded the agreement was affordable for Ms L. That's because her bank statements suggest non-discretionary expenditure of around £1,250 per month and if Tandem had made reasonable estimates to increase this to reflect a more long-term living solution I think it's likely they'd have arrived at non-discretionary expenditure of around £1,450 – so a headroom of around £100 per month. So even if Tandem had carried out proportionate checks, they could have fairly decided to lend to Ms L.

Have Tandem acted unfairly in any other way?

Ms L has also complained about not being offered voluntary termination earlier, and about Tandem's handling of her account once she'd started to build up arrears.

I've considered this carefully, looking at Tandem's notes of their contact with Ms L. I can see they spoke with Ms L in September 2021 and discussed voluntary termination on this date. I appreciate Ms L was paying for a second car by that point because the vehicle attached to this agreement was undriveable. So she was unable to pay the settlement figure offered by Tandem and in fact stopped making any payments at all after that point.

Ms L raised complaints about the quality of the car which appear to have been looked at by both our service and the Motor Ombudsman. It seems that she didn't want to hand the car back while the complaint was being dealt with, which took some time. Tandem kept Ms L up to date and informed her that her account would continue to accumulate arrears. I can see they tried to contact her to discuss exit options on several occasions but she replied by email simply saying she was waiting for the ombudsman and for legal advice.

I can see Tandem passed Ms L to their Specialist Support Team and repeatedly suggested discussing exit options, but Ms L's responses were minimal. The car was eventually collected in early 2023, with Tandem taking care to do this via voluntary termination rather than a default and forced repossession.

Ms L also commented on the fact that Tandem hadn't accepted her offer of £1 a month – but I can see they were willing to accept this temporarily on condition that Ms L completed an income and expenditure form – which they sent her in October 2022. I'm satisfied that's a fair approach.

In summary, it seems Ms L ran into trouble with the agreement because of a combination of circumstances, including issues with the car being undriveable and also a change in her employment circumstances. I can't hold Tandem responsible for either of these. And they are allowed to try to recover their funds as long as they do so with forbearance and due consideration – I'm satisfied they've done this.

My final decision

As I've explained above, I'm not upholding Ms L's complaint about Tandem Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 22 February 2024.

Clare King
Ombudsman