

## **The complaint**

Mr C says that a secured (second charge) loan he took out in October 2021 with Tandem Home Loans Ltd (previously known as Oplo HL Ltd) was unaffordable and irresponsibly lent.

## **What happened**

Mr C bought the property in January 2021 for £105,000, taking a first charge mortgage of around £90,000 with a lender I'll refer to as H.

In October 2021 Mr C took out a secured loan with Tandem. He borrowed £27,500 plus £4,182.50 in fees, giving a total loan amount of £31,682.50. The loan was on a repayment basis over six years at an interest rate which was fixed at 11% for the first five years. That gave a monthly payment of around £600.

Mr C says he was in financial difficulties at the time, having moved into the property in January 2021 and subsequently taking out some further unsecured loans. He said he'd been unsuccessful in obtaining another unsecured loan and so he approached a broker who placed an application for this secured loan with Tandem. He said the granting of this loan made the situation even worse and led to him taking further loans out leading, eventually, to the repossession of his property. He also commented on the desktop valuation that was used by Tandem to agree to this lending, saying it was unlikely his property had increased in value from £105,000 to £122,000 in nine months.

Tandem says advice was given by an independent broker, and Mr C had said he wanted to consolidate some debts and fund some home improvements (namely, fit a new bathroom), with no mention of any financial difficulties.

The direct debit of 30 April 2022 was returned as unpaid, and no further payments were made, with Tandem stopping the interest from accruing from October 2022.

Mr C raised a complaint with Tandem on 19 September 2023. Tandem didn't uphold the complaint. It issued its final response on 8 November 2023 saying that it completed an affordability assessment at the time, and that showed Mr C would have around £630 disposable income each month after this loan was taken out (around £450 once the stress test was completed). It said its checks were thorough and suggested Mr C would likely have been able to sustainably afford the loan, with nothing in the information gathered which significantly suggested it would have been a substantial risk to lend.

Unhappy with Tandem's response Mr C referred the complaint to our service where it was looked at by one of our Investigators. Our Investigator said he didn't think the lending had been responsible as, taking a common sense view, Tandem should have asked for Mr C's bank statements which would have shown much higher expenditure, including substantial sums to gambling websites.

Tandem didn't accept our Investigator's findings and asked that an Ombudsman decides the complaint.

Whilst the complaint was ongoing, I understand the property was taken into possession by lender H and was sold for £114,000 in January 2024. Once the mortgage with lender H had been redeemed, and costs were paid, there was a residual amount of around £13,470. I understand that sum is being held by the solicitor that acted on behalf of lender H pending the outcome of this complaint.

### **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.

At the time of the lending decision, secured loan applications like this one were (and still are) covered by the rules of mortgage regulation, found in the MCOB section of the Financial Conduct Authority's Handbook.

The rules require a lender to assess affordability, and not lend unless a loan is affordable. In making the assessment, a lender must obtain evidence of income, and information about expenditure. It can assess expenditure based either on a borrower's actual declared expenses, or it can use modelled expenditure information – such as typical expenditure figures for a household of this type – for living expenses, but must always use actual figures for committed expenditure such as other credit agreements.

The rules also say that a lender is entitled to rely on what it's told about expenditure – unless, taking a common sense view, it has reason to doubt it.

Mr C's credit report showed a history of taking out loans, and then consolidating them, with him taking eight unsecured loans since April 2018. I understand that one of the loans Mr C wanted to consolidate was taken out so recently that it didn't yet show on his credit report, making a ninth loan in that period that Tandem knew about. The other loan that Mr C wanted to consolidate had, itself, only been taken out three months earlier in July 2021.

There are also parts of the declared expenditure that, taking a common sense view, seem low. For instance Mr C's total travel costs were noted as £134.32, with that figure needing to include car insurance, fuel, car tax, MOT, servicing and any maintenance or repairs. The car insurance was showing on Mr C's credit report as being £62 a month, leaving just £72.32 a month for fuel, car tax, MOT, servicing and any maintenance or repairs. Whilst this figure was possible, it was not so likely such that it should have been accepted without question.

I've taken into account what Tandem has said, and the information it received at the time, as well as what the rules of mortgage regulation say.

I do think that Tandem ought to have made further enquiries into Mr C's expenditure at the time. Although the minimum standard required by the rules is only to obtain information about expenditure, there is an overarching obligation to act fairly and as a responsible lender.

It seems reasonable to take from Mr C's wider circumstances that he may have been struggling to manage his finances at the time of his application. I think it should have been clear from the information presented to Tandem that his lifestyle was unsustainable on his income and he had been building up debts – appearing to be in a cycle of debt - including in the period leading up to this loan being taken out. In relation to unsecured loans it appears Mr C's debt had increased from around £1,500 in February 2020 to around £5,000 in January 2021, and then to around £20,000 by the time of this sale in October 2021.

In those circumstances, I think – acting responsibly – Tandem ought to have satisfied itself of Mr C's financial situation and stability by making more detailed enquiries into Mr C's expenditure rather than taking what it was told at face value.

I think there were grounds for doubting whether Mr C was really living within his means – or whether, as his credit history suggested – living beyond it.

I'm therefore satisfied that, acting responsibly, Tandem ought to have made further enquiries as it had reason to doubt what it had been told, and that should have included requesting copies of his bank statements.

I've reviewed the bank statements and I'm satisfied that, had Tandem viewed these at the time, then it shouldn't have lent because the loan would have been shown to have been unaffordable.

The bank statements show spending way in excess of that which was declared, with some examples being payments to communications at around £75 a month, socialising at around £480 a month, food expenditure of around £500 a month, general shopping of around £200 a month, and gambling and lottery payments of between around £400 and over £3,000 a month, plus large purchases of bitcoin. In addition, there were payments to a car manufacturer of £265 a month.

Whilst some of this could be discretionary expenditure, it still needs to be considered and a discussion held about which payments could possibly be reduced and to what level. But bearing in mind what Tandem knew, or ought to have known, about Mr C's history of debt, plus what I can see on Mr C's bank statements, it seems unlikely he would have reduced his spending to the level required even if told to do so to get this loan.

For all those reasons, I think the information Tandem used to assess Mr C's affordability significantly underestimated his expenditure and, based on the information that would have been available at the time (had it been asked for), it's more likely than not that the loan wasn't affordable for Mr C. I don't think Tandem took reasonable steps to ascertain whether the lending was affordable and sustainable, nor do I think it carried out a sufficiently robust affordability assessment.

Having considered everything very carefully I'm not persuaded Tandem acted responsibly when it agreed to lend to Mr C, and so I uphold this complaint.

### **Putting things right**

To put matters right, Tandem should bring the loan agreement to an end and remove any adverse entries associated with this loan from Mr C's credit file. It should remove the £4,182.50 fees from the balance, as well as all interest charged on the borrowing to date. If any other fees have been added to the balance over the life of the loan those should also be removed.

Tandem should then treat all the payments Mr C has made as payments reducing the capital balance, and also take into account the funds it will receive from lender H's solicitor from the sale of the property.

If this results in a balance outstanding, Tandem should reach a sustainable arrangement with Mr C for the repayment of the remaining outstanding capital balance, without applying future interest.

If, however, this means that Mr C has already repaid more than the capital he borrowed, the excess should be refunded to him, adding simple annual interest of 8% running from when any payments above the total capital amount were made to the date Tandem refunds them. In this scenario, Tandem may deduct income tax from the 8% interest element of my award, as required by HMRC – but should tell Mr C what it has deducted so he can reclaim the tax if he is entitled to do so.

I don't think it would be fair to ask Tandem to write off the remaining capital balance, if there is one, or to refund the payments made towards that capital. Mr C received the capital and used it to pay off other debts, so it's fair and reasonable that he pays back what he borrowed. But it's not fair and reasonable for Tandem to charge fees and interest for a loan it should not have entered into.

It is possible Mr C would have come to some arrangement with his unsecured creditors had this loan not existed. So it's not possible to be sure exactly what capital or interest Mr C would have had to pay if the debts had not been consolidated into this loan. It's likely that removing all interest from this loan results in a saving to Mr C compared to the amount he would have had to pay towards the consolidated debts had they not been consolidated. But it's also possible he would have entered an arrangement such as an IVA or bankruptcy which would have led to him paying less (though with other consequences).

It's likely there is some saving in removing interest from the loan. But nevertheless I think it's a fair outcome to this complaint because I don't think it's fair and reasonable for Tandem to recover fees and interest charged under a loan agreement that ought never to have been entered into.

Although the existence of this loan caused Mr C distress and inconvenience, with the added worry that it was secured over his property, I must take into account that much of the loan went to consolidate debts and so there is already some saving in removing interest from the loan. However, not all the loan was for debt consolidation. Mr C was also granted an additional sum for some home improvements that he said he ended up being unable to afford to do, instead using that extra money to maintain his debt repayments. I must also keep in mind that whilst it was lender H rather than Tandem that took his property into possession and sold it, this loan played a part in Mr C's position worsening, removing some of his options that he would instead have had if the debt had remained unsecured.

Having considered all these circumstances very carefully I order Tandem to also pay Mr C £250 compensation in recognition of the distress and inconvenience caused.

Going forward, if a debt remains once the above work is completed and the sale proceeds are paid to the account, Mr C needs to speak to Tandem about his situation either directly or with the help of someone trained to give him free debt advice - such as StepChange or Citizens Advice - and have an open and honest conversation about his circumstances and worries for both now and the future. They'll need to work together and that means Mr C will need to be frank about his situation. And Tandem will need to listen to what he has to say and, fairly and sympathetically, see if there's a way to work with him to agree a way forward.

If a suitable way forward can't be agreed then that would be a new complaint Mr C could make at the time, if he so wished, and that could then be referred to us as a new matter at the time (subject to our usual rules).

### **My final decision**

I uphold this complaint and order Tandem Home Loans Ltd to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 October 2024.

Julia Meadows

**Ombudsman**