

The complaint

Mrs S and Mr S say that a secured (second charge) loan they took out in February 2022 with Tandem Home Loans Ltd trading as Oplo was unaffordable and irresponsibly lent.

Whilst Mrs S held another two loans with Tandem they were lent by its unsecured lending arm and so don't form part of this complaint. A separate complaint is being dealt with by the Financial Ombudsman Service about those. Any reference to the unsecured loans in this decision are simply for context as I am not reaching a decision about whether or not those were responsibly lent.

What happened

Mrs S and Mr S took out a secured loan with Tandem in 2022. They borrowed £72,000 plus £6,295 in fees. The loan was on a repayment basis over nine years at an interest rate which was fixed at 8.50% for the first five years. That gave a monthly payment of around £1,040.

Mrs S and Mr S say they were in financial difficulties at the time, taking out loans and missing payments on their credit cards, with their overdraft borrowed up to the maximum. They applied for this loan and managed to keep up with the payments at first, but then fell into arrears.

Tandem didn't uphold the complaint, and neither did our Investigator. As Mrs S and Mr S didn't agree with our Investigator's findings the case was passed to me to decide.

I asked our Investigator to obtain some further information from both sides, including copies of Mrs S and Mr S' bank statements from the time of the application.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

'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.

Mrs S and Mr S' credit report showed a history of taking out loans and credit cards, and then consolidating them, before repeating the pattern. It showed they'd taken out a second

charge secured loan in April 2019, which from the dates of other debts being settled appeared to be for debt consolidation purposes. They then took out a further second charge secured loan less than a year later in February 2020, which repaid the April 2019 secured loan plus other unsecured debts. Since then Mrs S and Mr S had taken on further unsecured debts, including a hire purchase agreement, various credit cards and budget accounts and three unsecured loans.

There were late payments showing on the most recent secured loan, as well as on various unsecured credit commitments. Whilst Tandem recorded the reasons for each of these I don't think all the different reasons should have just been accepted when looked at as part of the bigger picture. Instead I think the bigger picture shows consumers that were in a debt spiral and that weren't managing their finances.

There are also parts of the declared expenditure that, taking a common sense view, don't seem right. For instance Mrs S and Mr S' mortgage payment was noted as £160 a month, but based on what we know about the balance, interest rate and term that means it can't have been a full repayment mortgage. It may be Mrs S and Mr S had an interest only mortgage with a repayment vehicle, but this wasn't asked and there was no note of an outgoing towards a repayment vehicle on the affordability assessment. It is possible this was a temporary concession and it would then need to have been taken into account that the payment would increase substantially once it reverted to being a repayment mortgage. I don't know any of these things because it seems the question wasn't asked, but what I do know is that a payment of £160 a month can't have been a repayment mortgage.

In addition Mrs S and Mr S' council tax payment was noted as £145 a month (including water), which seems a low figure for the two combined for a four bedroom property. A simple check of their local council's website would have shown the true monthly payment was around £195 a month.

This was a household with two adults and two teenage children, aged 15 and 16. But there was no expenditure noted for the internet, and communications as a whole was only noted as £50 a month. Whilst these figures were possible, they were not likely such that they should have been accepted without question.

Tandem completed three affordability assessments to take into account the change in income once the children were no longer eligible for child benefit payments. I agree that was the right thing to do as that income stream wouldn't have continued for the full life of the loan. However, Tandem then also decreased the food/housekeeping element by £100 a month for each time the child benefit would cease, which it shouldn't have done as just because a child reaches an age that the family no longer are in receipt of child benefit doesn't mean they leave home / get a job / no longer need to eat or be kept. There's nothing to say the children wouldn't remain in education in some form, which arguably could increase the family's outgoings rather than decrease it depending on what the children decided to do.

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 Mrs S and Mr 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 Mrs S and Mr S' wider circumstances that they were struggling to manage their finances at the time of their application, and had been for some

time. Mrs S and Mr S gave reasons for the various missed payments. But whatever the reasons given, I think it's clear from the information presented to Tandem that their lifestyle had been unsustainable on their income and they had been repeatedly running up debts, including in the period leading up to this loan being taken out. In those circumstances, I think – acting responsibly – Tandem ought to have satisfied itself that this was no longer the case by making more detailed enquiries into Mrs S and Mr S' expenditure rather than taking what it was told at face value.

I think there were grounds for doubting some of the individual expenditure Mrs S and Mr S declared. And, more broadly, there were grounds for doubting whether Mrs S and Mr S were really living within their means – or whether, as their 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 their 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 insurance companies totalling around £155 a month, communications at around £260 a month, socialising at around £500 a month, spending on clothing over £1,000 a month, and gambling and lottery payments of around £50 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 Mrs S and Mr S' history of debt, debt consolidation, and debt management plans, it seems unlikely they would have reduced their spending to the level required even if advised to do so to get this loan.

For all those reasons, I think the information Tandem used to assess Mrs S and Mr S' affordability significantly underestimated their 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 Mrs S and Mr S, and that Tandem didn't take reasonable steps to ascertain whether it was or carry out a sufficiently robust affordability assessment.

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

I set out what I thought needed to be done to put things right and asked both sides for any further submissions they wanted to make in light of my provisional decision and proposed redress.

Mrs S and Mr S accepted my provisional findings, albeit they asked I reconsider the section of the redress about not amending their credit files. They said they only had two late payments in 2020 with the previous loan but this one became unmanageable, and if they'd kept the previous one with lower payments they believe they wouldn't be in the same position.

Tandem responded, however it didn't raise anything new. Instead it reiterated its previous submissions, saying it seemed they hadn't been considered.

It's unclear why Tandem feels those points haven't been considered as I dealt with them in my provisional findings, saying:

"There were late payments showing on the most recent secured loan, as well as on various unsecured credit commitments. Whilst Tandem recorded the reasons for each of these I don't think all the different reasons should have just been accepted when looked at as part of the bigger picture. Instead I think the bigger picture shows consumers that were in a debt spiral and that weren't managing their finances."

And

"There are also parts of the declared expenditure that, taking a common sense view, don't seem right. For instance Mrs S and Mr S' mortgage payment was noted as £160 a month, but based on what we know about the balance, interest rate and term that means it can't have been a full repayment mortgage. It may be Mrs S and Mr S had an interest only mortgage with a repayment vehicle, but this wasn't asked and there was no note of an outgoing towards a repayment vehicle on the affordability assessment. It is possible this was a temporary concession and it would then need to have been taken into account that the payment would increase substantially once it reverted to being a repayment mortgage. I don't know any of these things because it seems the question wasn't asked, but what I do know is that a payment of £160 a month can't have been a repayment mortgage."

Tandem has said *"We did identify the low mortgage payment of £160.00 but we did not challenge this as the mortgage interest rate was 1.14% which would be acceptable while baring in mind the low rates from the previous years."* But Tandem held information to show the mortgage balance was around £168,000 with a 20-year term. Even if the mortgage was interest free, payments of £700 a month would be needed to repay that sum over the stated term ($£168,000 \div 240 = £700$), so this mortgage clearly wasn't on a repayment basis at that time. Despite that Tandem asked no questions about whether that was a temporary measure, and if it wasn't what their outgoing was towards the repayment vehicle for that mortgage.

Tandem has said that it isn't required to obtain bank statements, and there were no triggers that alerted it to any red flags. MCOB 11.6.12 says *"a firm 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"*. I set out in my provisional decision some of the triggers that should have alerted Tandem to the fact, taking a common sense view, there was reason to doubt the information.

In summary those issues were:

- Mrs S and Mr S' credit reports showed a history of taking out loans and credit cards, and then consolidating them, before repeating the pattern.
- There were late payments showing on various credit commitments, and I don't think all the different reasons should have just been accepted when looked at as part of the bigger picture. I think the bigger picture shows consumers that were in a debt spiral and that weren't managing their finances.
- The first charge mortgage payment being noted as £160.
- The council tax payment was noted as £145 a month when their local council's website would have shown the true monthly payment was around £195 a month.

- There was no expenditure noted for the internet, and communications as a whole was only noted as £50 a month despite it being a household of two adults and two teenage children, aged 15 and 16.
- Tandem decreased the food/housekeeping element by £100 a month for each time the child benefit would cease, which it shouldn't have done as just because a child reaches an age that the family no longer are in receipt of child benefit doesn't mean they are no longer financially dependent.

As I said in my provisional decision:

'It seems reasonable to take from Mrs S and Mr S' wider circumstances that they were struggling to manage their finances at the time of their application, and had been for some time. Mrs S and Mr S gave reasons for the various missed payments. But whatever the reasons given, I think it's clear from the information presented to Tandem that their lifestyle had been unsustainable on their income and they had been repeatedly running up debts, including in the period leading up to this loan being taken out. In those circumstances, I think – acting responsibly – Tandem ought to have satisfied itself that this was no longer the case by making more detailed enquiries into Mrs S and Mr S' expenditure rather than taking what it was told at face value.

I think there were grounds for doubting some of the individual expenditure Mrs S and Mr S declared. And, more broadly, there were grounds for doubting whether Mrs S and Mr S were really living within their means – or whether, as their 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 their bank statements.'

Had it requested copies of Mrs S and Mr S' bank statements, as it should have done, Tandem would have seen it wasn't just a case of increasing the housekeeping by £100 and the council tax by £50 as it has said in its response to my provisional decision. Instead the bank statements would have shown outgoings to the point that, had they been correctly taken into account, would have shown this loan to be unaffordable.

Mrs S and Mr S have asked that I reconsider what I said about the impact on their credit files of any missed payments, saying if they'd kept their previous secured loan they wouldn't have been in the same situation as they'd only made two late payments towards that. But I don't agree. This Tandem loan had a monthly payment of around £1,040 whereas the previous secured loan had a monthly payment of around £1,090, so was in fact higher. If Mrs S and Mr S struggled to afford the £1,040 a month to the Tandem loan, then it follows they would also have struggled to afford the higher £1,090 to their previous secured loan. So it seems most likely that they would have missed broadly the same payments to their previous secured loan as they did to this Tandem loan.

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, and having considered everything both sides have said in response to my provisional decision, I see no reason to depart from my provisional findings.

Putting things right

I must keep in mind, when putting things right, that if Tandem hadn't lent to Mrs S and Mr S then they would still have had a secured loan with a different provider. So that's the position I need to put them back in, as far as possible.

Whilst I can't replicate that position I'm satisfied Mrs S and Mr S didn't lose out in terms of interest due to them moving their secured loan from their previous provider to Tandem. I say this because their previous interest rate was 13.90% and the Tandem loan decreased that to 8.50%, so saving them interest each month.

To be clear that reduction in interest rate, doesn't mean the lending was responsible as just because Mrs S and Mr S were already in a bad position doesn't mean that by slightly improving part of it, this was responsible lending. And I don't think it likely that if Tandem had said it couldn't lend the extra amounts to repay the unsecured debt, and instead would just refinance the existing secured loan, that Mrs S and Mr S would have agreed to that, bearing in mind it would have cost them over £6,000 in fees to do so. I think they would instead likely have looked at other options.

To put matters right, Tandem should remove all fees added to the loan. Tandem should also remove the interest charged on those fees as well as the interest charged on all amounts over and above the £61,454 that paid off the existing secured loan. I don't think the interest needs to be removed on the element that repaid the existing secured loan because, if Tandem hadn't provided this loan, Mrs S and Mr S would still have owed that sum and would have been paying interest on it.

I do, however, think the interest should be removed from the other elements as Tandem shouldn't have lent and had it not done so Mrs S and Mr S may have had other options open to them for their unsecured debts, such as an arrangement with their creditors, or considered solutions such as a formal debt management plan – and if those loans had been defaulted or written off, they wouldn't have paid interest. It can't now be known what would have happened had Tandem not lent, all I do know is that interest would have continued to be due on the secured loan as it is unlikely there would have been any debt management solutions available for that.

I don't think it would be fair to write off any element of the capital since Mrs S and Mr S had the benefit of that. But I don't think it would be fair for Tandem to collect interest on a loan it shouldn't have lent, over and above that due on the £61,454 (reducing as this was a repayment loan) that repaid the existing secured loan.

Tandem should rework the account on that basis and treat all payments Mrs S and Mr S have made as payments to reduce the capital over and above that needed to cover the interest on the part used to repay the existing secured loan.

I don't think Tandem needs to make any amendments to Mrs S and Mr S' credit file, other than to report a lower loan balance, as had it not lent these funds Mrs S and Mr S would still have held a secured loan, with a similar monthly payment amount, that would have been reported to their credit files. I think it is likely that if Mrs S and Mr S missed a payment to this loan, then they would equally have missed the same payment to their previous secured loan, so the information would have been reported in a broadly similar way. It also can retain the charge on their property for the same reason.

Going forward, Mrs S and Mr S need to speak to Tandem about their situation either directly or with the help of someone trained to give them free debt advice - such as StepChange or Citizens Advice - and have an open and honest conversation about their circumstances and

worries for both now and the future. They'll need to work together and that means Mrs S and Mr S will need to be frank about their situation. And Tandem will need to listen to what they have to say and, fairly and sympathetically, see if there's a way to work with them to agree a way forward.

If a suitable way forward can't be agreed then that would be a new complaint Mrs S and Mr S could make at the time, if they 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 trading as Oplo to put things right as I've set out above in the section 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 25 July 2024.

Julia Meadows
Ombudsman