DRN-5064890

The complaint

Mrs B complains that Tandem Home Loans Ltd gave her a secured loan without adequately checking if it was affordable.

What happened

In 2018, Mrs B took out a secured second charge loan with 1st Stop Home Loans, which is now called Tandem. I will refer to Tandem throughout the decision. The loan was for £7,500 repayable over 48 months with a fixed interest rate of 18% and monthly payments of £265.75.

Mrs B maintained the payments due to the loan until February 2022 when she missed a payment. From May 2022 until the loan was repaid in July 2023, Mrs B did not make any payments to the loan.

Mrs B complains that Tandem did not properly assess whether the loan was affordable and sustainable. She said she had to incur further debt to manage the loan repayments. She wants any interest and fees refunded with interest.

An investigator thought the complaint should be upheld. She said that based on the information available to it, Tandem had evidence that Mrs B was in a debt cycle and was using debt to support her income. In view of that, Tandem ought to have asked to see Mrs B's bank statements. And they showed that Mrs B's expenditure was higher than declared to the extent that it could not have considered the loan was affordable.

The investigator said that Tandem should:

1.Calculate the amount borrowed without any fees or charges (£7,500). It should then treat any payments made to it by Mrs B as payments towards this capital amount.

2. If this results in an overpayment, Tandem should pay Mrs B simple annual interest of 8%* on any overpayments, running from the date they were paid to the date of settlement.

3. Remove any adverse information about the loan from Mrs B's credit file.

Tandem did not accept what the investigator said. It made a number of points, including:

- Mrs B's credit file was "*fully investigated and documented with plausible reasons, along with a letter from* [Mrs B] *explaining the reasons* [the investigator] *had raised* (sic)".
- Mrs B had divorced and was struggling to adapt to the reduction in income. The purpose of the loan was to get Mrs B out of the debt cycle and to put her in a better position.
- Mrs B had no missed payments or arrears on any of her active credit accounts.
- The difference between the amount declared for overdraft fees and the amount showing on Mrs B;s bank statements was only £7.25. That would not make any difference to the

affordability of the loan.

- The figures on the bank statements for socialising and clothing are “far too excessive”. It is “common practice” to use data from the Office for National Statistic (ONS) to determine affordability. There was nothing in Mrs B’s application to suggest she should not be treated as an “average customer”.

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.

Rules

The relevant rules in this case are the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). I must take those rules, amongst other things, into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. MCOB 11.6 covers responsible lending. Its requirements for lenders include:

- Before agreeing a mortgage, a lender must assess whether a customer will be able to pay the sums due under the mortgage and be able to demonstrate the mortgage is affordable.

- A lender must take full account of the net income of a customer, their committed expenditure, and the basic essential expenditure and basic quality-of-living costs of the customer’s household.

- A lender may generally rely on any evidence of income or information on expenditure provided by a customer unless, taking a common-sense view, it has reason to doubt the evidence or information. A lender must have evidence of income and take reasonable steps to obtain details of a customer’s committed expenditure. A lender can either obtain details of a customer’s expenditure or use statistical data.

- If a lender is or should reasonably be aware from information obtained during the application process that there will, or are likely to, be future changes to the income and expenditure of the customer during the term of the mortgage, the lender must take them into account when assessing affordability.

Income and expenditure

Tandem said that Mrs B’s income was £2,786.10 from employment plus £89.70 from child benefit. That was reasonable based on the information available to it.

Tandem recorded Mrs B’s household expenditure as £1,400.32. It said that it uses ONS figures for basic household expenditure and living costs unless the applicant said they were higher or it found evidence of them being higher. I agree that is a reasonable approach. The question is whether it was fair and reasonable for Tandem to understand that Mrs B’s expenditure was in line with the ONS figures based on the information available to it?

Tandem said that Mrs B was using the proceeds of the loan to repay unsecured debt. So her outgoings on unsecured debt repayments would reduce from around £2,634.35 to £398.20. Mrs B’s stress tested mortgage payment was £882.08.

Overall, Tandem thought that Mrs B would be left with just over £100 a month disposable income after all of her expenditure was taken into account including the stress tested mortgage payment – and over £400 a month if the actual mortgage payment was used.

Credit file

Mrs B's credit file showed:

- 27 unsecured loans, 10 of which were active at the time of lending and 16 had been opened in the preceding 12 months.

- Three credit card accounts that were close to the credit limit. Two had been taken out in the preceding six months,

- 28 credit searches in the past 12 months.

That is a significant amount of debt to take out in a short space of time. Tandem accepted an explanation from Mrs B that she had divorced and was struggling to adapt to the change in income. But the evidence it had showed that she'd divorced a few years before. It was not clear why the change in income because of the divorce was still having such a significant impact on Mrs B.

In saying that, I agree that the divorce could have a longer-term impact that might account for Mrs B's reliance on debt – and her explanation included some specific points that supported some ongoing strain on her finances because of the divorce. But equally the amount of debt taken in a relatively short space of time and reliance on short term debt could indicate wider problems or that day-to-day expenditure was higher than declared.

In the circumstances here, where Mrs B was securing previously unsecured debt against her home, where the lender thought that she would be left with a relatively small disposable income after the debt was repaid and there was evidence of unsustainable reliance on debt, I can see the argument that a responsible lender acting reasonably should act cautiously bearing in mind its duty to act in Mrs B's best interests.

In view of that and considering the information available to Tandem, I consider it had enough reasons on a common-sense basis to doubt the information it had about Mrs B's expenditure. In the circumstances, I consider a responsible lender acting reasonably would have asked to see Mrs B's bank statements to verify the expenditure that was declared.

I note that Tandem had received a "Castlight" report that summarised data from Mrs B's bank statements. But I don't consider the report was sufficiently detailed to properly verify Mrs B's expenditure in the circumstances of this case.

We have copies of Mrs B's bank statements covering the three months before the loan was approved. The investigator said that they showed that Mrs B spent just under £400 a month on food and around £377 a month on socialising – against the Tandem's figures of £200 a month on food and £40 on socialising. I think it is difficult to separate what was spending on food, drink, takeaways and eating out and what was "socialising". But I agree that the figures on the bank statements show spending on food, drink and socialising were significantly more than Tandem recorded. Even if I were to take a very conservative view of the spending and give Tandem the benefit of the doubt, the average spending was over £550 a month – that alone wipes out all of the disposable income that Tandem recorded.

Tandem recorded spending of £30 a month on clothes. But the bank statements show Mrs B's actual spending on clothes was significantly more on average each month. My own figures give an average of around £135 a month on average on clothing. But there is also a significant amount of spending with other retailers (not food, drink, socialising) that averages at least £190 a month. The bank statements also show that Mrs B withdrew on average over £200 a month in cash.

Further, there was additional debt showing on the bank statements that was not declared to Tandem and presumably Mrs B would need to continue to maintain.

In saying that, Tandem recorded £200 a month spending on fuel. The statements show that spending was around £120 on average. But that difference would not make the loan affordable.

I don't see how a responsible lender could reasonably have approved any new borrowing if it had seen the bank statements. The bank statements show that Mrs B's expenditure was consistently and significantly above what Tandem had recorded. If Tandem had used average figures, for food, socialising and other retail spending from the bank statements Mrs B would have had a negative disposable income – even taking into account that the spending on fuel was less than declared.

Additionally, the bank statements show that – other than for two days in January 2018 and two days in March 2018 – Mrs B was consistently overdrawn. But I agree with Tandem that the difference between the overdraft charges it had recoded and the actual amount was only a small difference and not material bearing in mind the other expenditure.

<u>Summary</u>

I consider that Tandem had reasons to doubt the information provided by Mrs B about her expenditure. While she had given an explanation about why she had fallen into a debt spiral, it did not fully account for the extent or timing of the debt she had taken. There was a large amount of debt taken in the twelve months before the loan was taken out. In view of that and the potential harm to Mrs B of securing previously unsecured debts, I consider it would have been reasonable for Tandem to obtain Mrs B's bank statements to verify her expenditure. If it had done so, it would have seen that Mrs B's spending was significantly more than she had declared across several categories.

If Tandem had used the average spending showing on the bank statements. I do not see how it could reasonably have concluded that the loan was affordable. The average expenditure was more than Mrs B's income. So if Tandem had acted fairly and reasonably it would not have approved this loan.

I agree that the redress proposed by the investigator is largely a fair way to put things right. It is reasonable for Tandem to look for the capital to be repaid – but it is not reasonable for it to apply interest or fess to the redress.

In saying that, the broker charged a fee of £750 that was added to the loan. I don't consider Tandem would be required to refund that fee – it did not charge it.

I also do not consider it would be in Mrs B's interests for the loan to be removed from her credit file. Rather, if Mrs B accepts my decision, it should be updated to reflect the revised position in line with my decision.

As I was intending to change the outcome reached by the investigator, I put that to Tandem and Mrs B's representative to give them a chance to comment. Neither side responded substantively.

My final decision

Tandem Home Loans Ltd should:

1. Remove all interest, fees and charges from Mrs B's loan – apart from the broker fee of £750..

2. Treat all of the payments made by Mrs B as payments towards the capital balance.

3. If after following the steps in 2 there is an overpayment, Tandem should refund the overpayments to Mrs B.

4. For any overpayments, Tandem should apply interest at 8% simple per year from the date any overpayment was made until date of settlement. If Tandem considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

5. Amend Mrs B's credit file so that it reflects the above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 16 December 2024.

Ken Rose
Ombudsman