

The complaint

Mr and Mrs M complain that Tandem Home Loans Ltd continued to contact them regarding their debt despite them being declared bankrupt in 2017. They also said it has recorded incorrect information on their credit files.

What happened

In 2014, Mr and Mrs M took out a secured loan of £12,295 over a term of eight years with 1st Stop Home Loans. The loan had an interest rate of 30%. 1st Stop Home Loans is now called Tandem – and I will refer to Tandem throughout this decision.

In June 2017, both Mr and Mrs M were made bankrupt. They were both discharged in June 2018.

Mr and Mrs M complain that Tandem:

- Has continued to contact them regarding the arrears on the account. The loan was included in their bankruptcy, so Tandem should stop contacting them regarding the loan.
- Recorded incorrect information on their credit files. It should show the loan as closed on the date of the bankruptcy.

The investigator thought the complaint should be upheld. She said:

- The evidence we had was that Mr and Mrs M were not aware of the information Tandem was recording on their credit files until 2022. So we can consider events from June 2017.
- Mr and Mrs M's liability for the loan finished when they were made bankrupt. Tandem should record that Mr and Mrs M defaulted in June 2018 and was partially settled in July 2018 – however Tandem only needs to amend the past six years as credit reference agencies only record information about the past six years.
- Tandem made a mistake in telling Mr and Mrs M they were in arrears. But the debt still exists and remains secured against Mr and Mrs M's home. So it was not unreasonable for Tandem to contact them regarding the debt – but it should take more care to make sure that the information it sends Mr and Mrs M is accurate.
- Tandem should pay Mr and Mrs M £300 for any inconvenience.

Tandem did not accept what the investigator said. It said the debt sat outside the bankruptcies. And as Mr and Mrs M had made token payments to the debt it would not record a default.

Mr and Mrs M said that because of the information recorded by Tandem on their credit files they were charged higher interest rates on loans they had taken out. They provided an email from a mortgage broker that said it would be “very difficult to confirm” what interest rates Mr

and Mrs M would have been charged if the correct information had been recorded. But he would have expected an interest rate of around 15 to 25% rather than the 35% they were paying.

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.

Jurisdiction

This complaint was made on 4 July 2023. But it concerns the information recorded by Tandem on Mr and Mrs M's credit files from June 2017. We would only usually be able to consider events going back six years from the date of the complaint. But our rules allow us to go back further if the complainant only became aware there was a problem within three years of complaining.

The evidence we have is that Mr and Mrs M did not discover the information being recorded by Tandem until March 2022. I agree with the investigator that Mr and Mrs M only became aware of the problem at that time. SO that means we can consider events from June 2017.

The bankruptcies

The law is one of the things I must take into account in deciding what I consider to be fair and reasonable in the individual circumstances of this complaint. The Insolvency Act 1986 (the Act) is relevant here. Section 382 (1) of the Act defines a "bankruptcy debt" as:

- a) any debt or liability to which the bankrupt is subject at the commencement of the bankruptcy, and
- b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy.

Mr and Mrs M were liable for the loan at the time they were made bankrupt. So I consider this loan and any ongoing liability formed part of the bankruptcy debt.

Section 281(1) of the Act says that once discharged the bankrupt is released from all bankruptcy debts and isn't liable for them. Section 281(2) goes on to say that discharge does not affect the right of any secured creditor to enforce the security.

I consider that Mr and Mrs M were not liable for the loan debt from the date they were discharged from bankruptcy. But the debt still exists and Tandem can still enforce its security. So Tandem could ask a court to grant it possession so it could sell Mr and Mrs M's home to repay the debt that remains.

Credit files

The information recorded on a credit file should be a true and accurate reflection of how the borrower has conducted their account. In this case Mr and Mrs M were not liable for the payments due under the mortgage. So I do not see how it was an accurate to record that they had made or had not made payments to the loan once they were discharged. They had no liability to make any payments to the loan. Therefore I do not consider that it was fair or reasonable for Tandem to continue to record information about Mr and Mrs M in respect of the loan on their credit file.

I consider it would be accurate for Tandem to record a default against the mortgage debt for Mr and Mrs M on the date of bankruptcy and for it to show the mortgage as partially satisfied or settled on the date of discharge.

I note that credit file information only goes back six years and the date of default and discharge was more than six years ago. So Tandem should make sure that the information it records about Mr and Mrs M on their credit files now is the same as it would have been had it recorded accurate information when Mr and Mrs M were made bankrupt and then discharged. I understand that to be that the mortgage was partially satisfied in June 2017.

Contact

As Mr and Mrs M were no longer liable for the mortgage then Tandem should not have contacted them regarding "arrears". But the secured debt remains. It is not unreasonable for Tandem therefore to contact Mr and Mrs M regarding the secured debt – especially if it intends to take recovery action and in view of the potential serious consequences of that for Mr and Mrs M. But it should take care to make sure the information it gives Mr and Mrs M is accurate.

Debt

Mr and Mrs M have told us that the cost of their debts is higher than it otherwise would have been had Tandem recorded accurate information on their credit files.

I understand why they might think that. But they have not provided any persuasive evidence to support that they could have obtained cheaper borrowing but for the information recorded by Tandem. Lenders take into account a number of factors when deciding who to lend to and on what terms. Many lenders ask if a borrower have even been made bankrupt.

I do not have sufficient evidence that the interest rates Mr and Mrs M were charged or the difficulty they had obtaining credit was solely due to the inaccurate information recorded by Tandem.

Putting things right

I consider that Tandem should amend Mr and Mrs M's credit files as set out above.

Mr and Mrs M have had the unnecessary inconvenience of pursuing the matter to this extent and I accept that the incorrect information will have caused them some worry. But I consider the investigator's recommendation of £300 is a fair amount to compensate them for what happened,

My final decision

My final decision is that Tandem Home Loans Ltd should:

- Amend both Mr and Mrs M's credit files to show that the loan was partially satisfied in June 2018 on the date of their discharge.
- Pay Mr and Mrs M £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 20 November 2024.

Ken Rose
Ombudsman