

The complaint

The estate of Mr B's complaint is, in essence, that Tandem Personal Loans Ltd (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with the late Mr B under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA'), (2) deciding against paying a claim under Section 75 of the CCA and (3) that the Lender lent to him irresponsibly.

What happened

The late Mr B was an existing timeshare member (referred to in this decision as 'Fractional Membership 1'). He then subsequently traded that membership in towards the purchase of membership of an asset-backed timeshare (the 'Signature Collection') from a timeshare provider (the 'Supplier') on 7 January 2019 (the 'Time of Sale'). He entered into an agreement with the Supplier to buy a total of 1,540 fractional points at a cost of £12,748 (the 'Purchase Agreement').

The late Mr B paid for his Signature Collection membership by taking finance of £12,748 from the Lender in his sole name (the 'Credit Agreement').

The late Mr B called the Lender on 15 July 2022 to complain. He was then admitted to hospital in September 2022.

The Lender issued their final response letter (the 'FRL') to that complaint on 5 October 2022. Following receipt of this FRL, the late Mr B and his daughters (who now represent the estate) contacted a professional representative (the 'PR') on 21 November 2022 regarding the complaint. However, having already been in hospital, Mr B passed away a few days later, on 24 November 2022.

The estate of Mr B, via the PR, then wrote to the Lender on 30 March 2023 (the 'Letter of Complaint') to make a further complaint under Section 140A of the CCA that the Lender was party to a credit relationship with the late Mr B that was unfair to him. This was because:

1. Commission was paid to the Supplier which was not disclosed.
2. The documentation provided in relation to the product was unclear.
3. The Lender didn't undertake an appropriate assessment of the late Mr B's ability to afford the loan and it wasn't adequately explained to him.
4. The late Mr B wasn't given sufficient time to read the relevant documentation prior to purchase.
5. Sufficient information wasn't provided at the time of sale regarding the annual management fees and the potential for these to increase.
6. The sale was pressured.

In addition to this, they also brought a claim against the Lender under Section 75 of the CCA due to a breach of contract and misrepresentations they say had been made by the Supplier at the Time of Sale which had induced the late Mr B into the purchase.

The Lender responded to the Letter of Complaint on 3 April 2023 by email. They explained to the PR that a complaint had already been made by the late Mr B, which had been responded to, so they wouldn't be logging a new one.

The PR then referred the complaint it had made on behalf of the estate of Mr B to the Financial Ombudsman Service on 23 August 2023.

On 5 September 2023, the Lender responded to our Service to say that they didn't consent to our Service looking into the complaint as they felt it had been brought outside of the six month time limit to refer the matter to our Service.

As the Lender was disputing whether our Service had jurisdiction to consider the estate of Mr B's complaint, this aspect was assessed by an Investigator. But, as no agreement could be reached at that stage, the complaint came to me to decide whether our Service has jurisdiction to consider it.

I considered this and issued a decision on 1 October 2024, that our Service could consider the complaint.

The complaint was then returned to an Investigator for them to look into the merits of the complaint. Having considered the information on file, they upheld the complaint on the basis that the late Mr B had been lent to when it wasn't affordable for him.

The Lender disagreed with the Investigator's assessment and asked for an Ombudsman's decision – which is why it was again passed to me.

I also wish to make clear here that I'm aware that the estate of Mr B has made other complaints to this Service about other previous purchases Mr B made. As those loans were provided by different lenders, those will be considered separately.

I considered the matter and issued a provisional decision on 11 February 2025. In that decision, I said:

“The legal and regulatory context

In considering what is fair and reasonable in all the circumstances of the complaint, I am required under DISP 3.6.4R to take into account: relevant (i) law and regulations; (ii) regulators' rules, guidance and standards; and (iii) codes of practice; and (where appropriate), what I consider to have been good industry practice at the relevant time.

I will refer to and set out several regulatory requirements, legal concepts and guidance in this decision, but I am satisfied that of particular relevance to this complaint is:

- *The CCA (including Section 75 and Sections 140A-140C).*
- *The law on misrepresentation.*
- *The Timeshare Regulations.*
- *The Consumer Rights Act 2015 (the 'CRA').*

- *The Consumer Protection from Unfair Trading Regulations 2008 (the 'CPUT Regulations')*
- *The FCA's Consumer Credit Sourcebook (CONC) – in particular, CONC 5 – which set out the rules and guidance that an authorised firm had to consider and follow when lending responsibly.*
- *Case law on Section 140A of the CCA – including, in particular:*
 - *The Supreme Court's judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ('Plevin') (which remains the leading case in this area).*
 - *Scotland v British Credit Trust [2014] EWCA Civ 790 ('Scotland and Reast')*
 - *Patel v Patel [2009] EWHC 3264 (QB) ('Patel').*
 - *The Supreme Court's judgment in Smith v Royal Bank of Scotland Plc [2023] UKSC 34 ('Smith').*
 - *Carney v NM Rothschild & Sons Ltd [2018] EWHC 958 ('Carney').*
 - *Kerrigan v Elevate Credit International Ltd [2020] EWHC 2169 (Comm) ('Kerrigan').*
 - *R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd and R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service [2023] EWHC 1069 (Admin) ('Shawbrook & BPF v FOS').*

Good industry practice – the RDO Code

The Timeshare Regulations provided a regulatory framework. But as the parties to this complaint already know, I am also required to take into account, when appropriate, what I consider to have been good industry practice at the relevant time – which, in this complaint, includes the Resort Development Organisation's Code of Conduct dated 1 January 2010 (the 'RDO Code').

What I've provisionally decided – and why

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

And having done that, I'm intending to reach the same overall outcome as the Investigator, and for broadly the same reasons. I currently think the Lender wrongfully entered into the Credit Agreement contrary to CONC and this caused Mr B to lose out financially.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I recognise that there are a number of aspects to the estate of Mr B's complaint, it isn't necessary to make formal findings on all of them. This includes the allegation that the Lender ought to have accepted and paid the claims under Section 75 of the CCA for misrepresentations and a breach of contract by the Supplier. It also includes the allegation that the credit relationship between Mr B and the Lender was unfair to him under Section 140A of the CCA.

This is because, even if those aspects of the complaint ought to succeed, the redress I'm currently proposing puts the estate of Mr B in the same or a better position than it would be if I were upholding those other aspects of the complaint.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

The Lender's responsibilities

Under CONC 5, the Lender was obliged to lend to Mr B responsibly.

At the Time of Sale, CONC 5.2A 4 [R] said that the Lender had to assess Mr B's creditworthiness before entering into the Credit Agreement. When carrying out that assessment, CONC 5.2A 12 [R] said they had to consider the customer's ability to make repayments under the agreement:

“

- (1) As they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;*
- (2) out of, or using, one or more of the following:*
 - (a) the customer's income;*
 - (b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or*
 - (c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;*
- (3) without the customer having to borrow to meet the repayments;*
- (4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and*
- (5) without the repayments having a significant adverse impact on the customer's financial situation.”*

CONC 5.2A 20 [R] said that the extent and scope of a creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent on and proportionate to, the individual circumstances of each case. And, that the firm must consider a number of different factors.

CONC 5.2A 21 [G] (2) also said:

“When considering, having regard to the factors in CONC 5.2A.20R, what steps the firm needs to undertake to make the creditworthiness assessment a reasonable one, the firm should consider whether the factors point towards a more or less rigorous assessment. Certain factors may point towards a more rigorous assessment and others towards a less rigorous one in which case the firm should weigh up the factors before deciding what type of creditworthiness assessment is required.”

And, CONC 5.2A 22 [G] said:

“The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:

- (1) the customer is in, has recently experienced, or is likely to experience, financial difficulties...”*

I acknowledge that the FCA didn't specify what level of detail such an assessment might require, nor did it set out how such an assessment needed to be carried out in practice. But, as per the above, it did say that the necessary level of detail depended on the risk to the borrower relative to their financial situation.

So, there are a number of questions I need to consider in this case:

- Did the Lender carry out reasonable and proportionate checks to satisfy itself that Mr B was likely to have been able to repay the borrowing in a sustainable way?*
- If the Lender didn't carry out such checks, would the requisite checks have revealed that Mr B was unlikely to have been able to repay the borrowing in a sustainable way?*
- Did Mr B lose out as a result of the Lender's decision to lend to him?*

I've considered each of these questions in turn.

Did the Lender carry out reasonable and proportionate checks?

The first question I need to consider here was whether the Lender carried out reasonable and proportionate checks, as it was required to under its aforementioned regulatory responsibilities.

Following the Investigator's findings, the Lender provided some further detail about the checks that it undertook at the Time of Sale. And, from what they've provided, this amounted to a credit search and some form of 'TAC verification' tool which appears to be related to Mr B's income. They've also said they used standardised Office for National Statistics (ONS) data to calculate Mr B's household expenses.

I'd firstly note that Mr B both purchased the product in question and entered into the Credit Agreement at the Time of Sale, which indicates that the Lender agreed to lend to him almost as soon as he submitted his loan application. So, it seems unlikely to me that the Lender had the time and space to consider the results of the above checks in any depth and carry out any further enquiries.

And, the credit search the Lender completed showed that Mr B had defaulted on an over £20,000 debt within the previous twelve months. I think this alone ought to have raised some concerns about Mr B's ability to sustainably repay the new borrowing. Or, at least prompted the Lender to take a closer look at his financial position.

I also have some concerns about the 'TAC check' the Lender has referred to and I don't think this adequately interrogated Mr B's income at the Time of Sale.

The Lender has said Mr B's 'stated income' was £45,000 resulting in a monthly net income of £2,831. It's unclear where this figure was obtained, and the Lender hasn't provided any evidence to support that this figure was potentially given at the Time of Sale. But the tool used by the Lender doesn't appear to verify that a consumer was actually earning a particular amount and through what means (i.e., employment or some other means). The results of that check only note two figures. One figure of £16,963 which is noted as 'annual gross income' and one figure of £1,243 which is noted as 'net monthly income', neither of

which align with the income figure the Lender states was provided by the late Mr B at the Time of Sale¹.

Standardised tools and data sources may well suffice or be a good starting point for lenders in assessing affordability in some cases, but that is subject, in my view, to proportionality and considerations such as, for example, the size and term of the loan and what a lender knows of the applicant.

The loan being applied for here was for a significant amount – nearly £13,000 and was for a lengthy period of fifteen years. And, the interest rate was just over 11%. So, as outlined in the regulatory guidance above, I'd expect more detailed and robust checks to have been carried out accordingly, which in turn would have revealed more information about Mr B's financial circumstances at the Time of Sale.

With all of that being the case, I'm not persuaded that the Lender is likely to have carried out reasonable and proportionate checks before agreeing to lend to Mr B.

Given this, I need to consider what such checks would likely have shown. So, this is what I've considered next.

What would reasonable and proportionate checks have demonstrated?

I acknowledge here that it isn't possible to determine with certainty what such checks would have shown the Lender. This is because I don't know what checks it would have decided to carry out and what information from those checks it would have relied on.

But that doesn't matter because what I am deciding here is the likelihood of reasonable and proportionate checks showing the Lender that Mr B either would or would not have been able to sustainably repay his loan.

To be clear, I'm not saying or suggesting that the Lender had to rely on the same amount or type of information that I've relied on below in order to have carried out reasonable and proportionate checks before lending to Mr B. It's also now approximately six years since the Time of Sale and Mr B sadly passed away in 2022. This means it's difficult to paint a reliable picture of his circumstances at that time. So, it's necessary to consider the information that is now available and more information than the Lender might otherwise have done at the relevant time in order to determine what reasonable and proportionate checks would likely have shown it.

The guidance I've outlined above said that the Lender could have used a variety of types and sources of information to assess affordability at the Time of Sale.

In the course of this complaint, the estate of Mr B has provided a variety of information, including comments about Mr B's circumstances at the Time of Sale, supported by various documentation from around that time, including from other lenders in relation to other debt Mr B had at the time. I've also considered the results of the Lender's aforementioned credit search conducted at the time.

As noted above, the Lender has said Mr B's stated income was £45,000, but it's unclear where this figure was obtained. And, in my view, their checks left unanswered questions about this which the Lender did not follow up on. The Lender may argue in response to this

¹ I note the latter figure appears to be the minimum monthly income that, in the Lenders' view, was required to 'satisfy' the loan. But again, it's unclear how exactly they reached that figure.

provisional decision that it wouldn't be fair to uphold this complaint if Mr B gave them inaccurate information about his income at the Time of Sale. But, the regulatory guidance in CONC anticipated that consumers may not always provide accurate information in lending applications. CONC 5.2A 36 [R] said:

"A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment."

And, CONC 5.2A 37 [G] said:

"An example of when a firm has reasonable cause to suspect that the customer has not been truthful may be where information supplied by the customer concerning income or employment status is clearly inconsistent with other information of which the firm is aware."

As outlined, there already appeared to be some inconsistency in what the 'TAC check' showed compared to the stated income the Lender had purportedly been given. But in any event, if the Lender had known more about Mr B's circumstances before lending to him (as I think they ought to have done), I can't see how it would have justified a decision to lend to him that would have been consistent with the regulatory rules and guidance it had to follow.

Upon my request, the estate of Mr B provided some information about Mr B's employment status at the Time of Sale. They've provided medical evidence which shows that Mr B had in fact been off work due to a work-related accident since March 2016. And, that he therefore received the full amount of Industrial Injuries Disablement Benefit which was at that time £221.50 per week. He lived mortgage free at a property he had purchased in 2016, after downsizing from his previous one, but he still would have had all the usual bills and essential spending one would expect, and the estate of Mr B say that at the Time of Sale he had no disposable income or savings. So, based on the information available, I can't see that it's likely Mr B had sufficient income to be able to sustainably repay the loan over the life of the agreement (as per CONC 5.2A 12 [R]).

I also think an important consideration here was Mr B's other credit commitments at the Time of Sale and his current financial position in relation to these.

I've seen copies of the various correspondence Mr B had received from his existing creditors. At the Time of Sale, it appears he had an existing loan with another lender where he owed over £21,000 including arrears of over £1,500. Shortly before the Time of Sale, in September 2018, an arrangement to pay had been put in place for this loan, with a notice of default subsequently issued in November 2018.

Mr B also had another loan with another lender which he entered into in June 2016 and borrowed just under £30,000. And, from the information available, he was also in arrears with that loan around the Time of Sale. He also had a credit card with another lender and in November 2018 owed just under £4,000.

So, I think it's fair to say that Mr B had a significant level of existing debt, and that there were signs he was struggling with this at the Time of Sale.

I've looked at the credit search results the Lender obtained, and this appears to align with the above. I'm unable to see exactly which account/lending is which, but I do think these results should have given the Lender cause for concern.

The copy of the credit search results the Lender has provided shows that in December 2018, Mr B owed just under £21,000 to a particular lender and payments were at that time up to 5 months late. It also shows that for a number of years the account either had an arrangement to pay in force or was in sustained arrears (switching back and forth between the two for the majority of the life of the lending so far). The Lender has said in relation to this account that the balance was at that time at its lowest point since the account had been opened. But, I fail to see the relevance of this when the amount of money Mr B still owed remained significant. The Lender has also said the account was, at the time, given a 'U' status and there must have been a reason this account had not yet been defaulted. But, this only denotes that the account has an unknown or unspecified update and I don't think this detracts from the other points of concern about how the account was being managed.

Mr B also had an account which was in default and had been since January 2017 after a period of being in arrears. The Lender has acknowledged this but said Mr B had been making payments towards it which they factored into their lending decision (although they haven't said how exactly). I acknowledge what the Lender has said here, but I think it's important to note that by November 2018 (shortly before the Time of Sale), Mr B still owed over £2,000 in relation to that account.

There was one other account not settled at the Time of Sale which didn't seem to have any payment issues. But, Mr B did still owe nearly £4,000 on that account at that time.

Taking all of this into account, I don't think it was responsible for the Lender to have lent to Mr B considering the existing amounts he already owed and the clear signs of difficulty he had in managing that lending. As outlined, I also think that with further appropriate checks of Mr B's income, this would have shown that he could not afford to sustainably repay the loan over its term.

I therefore think increasing Mr B's indebtedness to facilitate his timeshare purchase put him at real risk of undue difficulty or further borrowing given his circumstances.

Did Mr B lose out financially?

I think it's clear from the evidence available that shortly after the loan was taken out, Mr B was struggling with it. As far as I can see from copies of the annual loan statements provided in relation to the loan taken out at the Time of Sale, Mr B never made any payments towards it and therefore quickly fell into arrears less than a year after the loan was taken out. From the correspondence provided, Mr B was asking the Lender for help with the loan as soon as November 2019. This included a payment holiday around 2020 and subsequently an arrangement to pay (which doesn't seem to have been successfully completed).

I've also seen that following the Time of Sale, Mr B's other loan (which had had a notice of default issued in November 2018) was then sent to debt collectors in November 2019. And, in relation to his aforementioned credit card, by August 2019 he was also in arrears in relation to that and a default notice sent at that time.

So, I think it's clear that Mr B did lose out financially due to the decision to lend to him at the Time of Sale, and this put him in a worse financial position including making worse his already existing issues in relation to his other debt.

And, even if Mr B's application had been rejected (as I think it ought to have been), I'm not persuaded that he could and/or would have pressed ahead with the purchase anyway.

I say this because from the evidence available, there doesn't seem to have been any other way Mr B could have funded his purchase had his application for finance been turned down.

Given his circumstances, I don't think it's likely Mr B would have been approved for finance by another Lender, undertaking reasonable and proportionate checks at the Time of Sale. And, as I've already said, it did not seem that he had sufficient appropriate savings or further credit utilisation to fund the purchase either.

With all of the above being the case, I'm not persuaded that Mr B would have pressed on with his purchase regardless – particularly when a decision by the Lender to reject his loan application on the basis that the repayments weren't sustainable would have highlighted such concerns to him.

Conclusion

For the above reasons, I think the Lender wrongfully entered into the Credit Agreement contrary to CONC. And I think that had a significant effect on Mr B. He ended up borrowing and trying to repay a substantial sum of money while also being subjected to another long-term financial commitment in the form of the timeshare membership. And, had the Lender carried out its affordability assessment in line with CONC, I think Mr B would have been protected from the financial burdens of both the Credit Agreement and the associated Purchase Agreement.

Fair Compensation

Where I've found that a business has done something wrong, I would normally direct them to – as far as it's reasonably practicable – put the consumer in the position they would be in now if their error hadn't happened.

As explained above, I've found that Mr B was unlikely to have entered into the Credit Agreement or the Purchase Agreement. So, I think it's fair and reasonable to put the estate of Mr B in the position it would be in now had Mr B not entered into either agreement at the Time of Sale, provided the estate of Mr B agrees to assign to the Lender the Signature Collection Points or hold them on trust for the Lender if that can be achieved.

Mr B was an existing fractional member ('Fractional Membership 1') and from the information available, his membership was traded in against the purchase price of the Signature Collection membership in question. And, like the Signature Collection, Mr B had to pay annual management charges as part of Fractional Membership 1. So, had Mr B not purchased the Signature Collection membership, he would have always been responsible to pay an annual management charge of some sort. With that being the case, any refund of the annual management charges paid by Mr B from the Time of Sale as part of his Signature Collection membership should amount only to the difference between those charges and the annual management charges he would have paid as part of Fractional Membership 1.

I'm conscious that, under Fractional Membership 1, Mr B was entitled to a share in an allocated property. The estate of Mr B's other complaints to this Service about his other previous purchases suggest that they would not want Fractional Membership 1 reinstated. Even if they did, I don't think it's clear, in turn, whether that can be achieved to the satisfaction of both parties to it. If the estate of Mr B does want Fractional Membership 1 reinstated, they can let me know in response to this provisional decision.

So, here's what I think needs to be done to compensate the estate of Mr B with that being the case – whether or not a court would award such compensation:

- (1) The Lender should refund Mr B's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.*

- (2) *In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under the Signature Collection and what Mr B's annual management charges would have been under Fractional Membership 1 had he not purchased the Signature Collection.*
- (3) *The Lender can deduct:*
- i. *The value of any promotional giveaways that Mr B used or took advantage of; and*
 - ii. *The market value of the holidays* Mr B took using the Signature Collection if his annual management charge for the year in which the holidays were taken was more than the annual management charge he would have paid as an ongoing Fractional Membership 1 member. However, the deduction should be a proportion equal to the difference between those annual management charges. And if any of Mr B's Fractional Membership 1 annual management charges would have been higher than his equivalent Signature Collection annual management charge, there shouldn't be a deduction for the market value of any holidays taken using Signature Collection points in the years in question as he could have taken those holidays as an ongoing Fractional Membership 1 member in return for the relevant annual management charge.*

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) *Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.*
- (5) *The Lender should remove any adverse information recorded on the late Mr B's credit file in connection with the Credit Agreement reported within six years of this decision.*
- (6) *If Mr B's Signature Collection membership is still in place at the time of this decision, as long as the estate of Mr B agrees to hold the benefit of the interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify the estate of Mr B against all ongoing liabilities as a result of his Signature Collection membership.*

**I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr B took using his Signature Collection points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.*

***HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.*

The PR, on behalf of the estate of Mr B, accepted my provisional decision and didn't add anything further.

The Lender disagreed with my provisional decision and provided some further comments and information they wanted me to consider.

Having now received the responses from both parties, I'm now finalising my decision.

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 considered everything afresh, I still uphold the estate of Mr B's complaint for the same reasons I gave in my PD as set out above. I will also address the matters the Lender raised in response.

In response to the provisional decision, the Lender provided some comments from the Supplier.

Firstly, they provided a series of screenshots of the income details the late Mr B had written on various loan application forms for various purchases from August 2015 through to January 2019 (the Time of Sale). Some of these purchases didn't end up completing, but the Supplier says that this information shows his employment and income were consistent throughout. The Supplier also highlighted that in December 2015, the late Mr B paid a non-refundable deposit of \$7,500 towards a freehold purchase.

I can see from the screenshots that the late Mr B did write on these application forms that he earned between £40,000-£48,000 and named the same job and employer throughout (albeit a different, but linked employer being mentioned in March 2016 which the Supplier suggests was due to a secondment).

I acknowledge that the further information now provided shows that the late Mr B did write on the application form at the Time of Sale that he was employed full time and earned £45,000.

But, as I mentioned in my provisional decision, I've been provided with evidence from the late Mr B's estate that he'd been off work due to an industrial accident since March 2016. This is in the form of a medical assessment letter and is dated 1 September 2017. The letter, amongst other things, states that Mr B is unfit for work and it's ultimately unclear whether it would be possible for him to return to work. And, I haven't seen anything to suggest that he did prior to the Time of Sale.

More importantly, this shows that while Mr B did clearly write at various points that he was employed with a salary of between £40,000-48,000 this was also clearly not accurate. It's unclear why this was written when it wasn't accurate and, since he's passed away, it's not possible to ask Mr B for his recollections now.

But in any event, even if the Lender was given inaccurate information about this at the Time of Sale, this doesn't mean this complaint shouldn't be upheld. And, it doesn't detract from the Lender's responsibilities to undertake reasonable and proportionate checks at the Time of Sale which I still don't think they did for the reasons I already explained in my provisional decision. As I explained in my provisional decision:

"As noted above, the Lender has said Mr B's stated income was £45,000, but it's unclear where this figure was obtained. And, in my view, their checks left unanswered questions about this which the Lender did not follow up on. The Lender may argue in response to this provisional decision that it wouldn't be fair to uphold this complaint if Mr B gave them inaccurate information about his income at the Time of Sale. But, the regulatory guidance in CONC anticipated that consumers may not always provide accurate information in lending applications. CONC 5.2A 36 [R] said:

"A firm must not accept an application for credit under a regulated credit agreement where the firm knows or has reasonable cause to suspect that the customer has not

been truthful in completing the application in relation to information relevant to the creditworthiness assessment.”.

And, CONC 5.2A 37 [G] said:

“An example of when a firm has reasonable cause to suspect that the customer has not been truthful may be where information supplied by the customer concerning income or employment status is clearly inconsistent with other information of which the firm is aware.”.

As outlined, there already appeared to be some inconsistency in what the ‘TAC check’ showed compared to the stated income the Lender had purportedly been given. But in any event, if the Lender had known more about Mr B’s circumstances before lending to him (as I think they ought to have done), I can’t see how it would have justified a decision to lend to him that would have been consistent with the regulatory rules and guidance it had to follow.

As I also explained in my provisional decision, I also had concerns about the results of the credit search the Lender completed at the Time of Sale. In their response, the Lender provided some comments from the Supplier who said that in relation to one of the loans with another lender the late Mr B had at the Time of Sale, the ‘adverse comments’ wouldn’t have appeared on his ‘credit rating’ because payments towards it were consistently made until December 2018 (one month prior to the Time of Sale), which they say also would have increased his rating. I’m unclear how the Supplier would be aware of this since they weren’t making the lending decision at the Time of Sale, and I can’t therefore see that they would have had access to the credit search and what it showed.

But as I’ve said, I’ve reviewed the results of the credit search the Lender completed at the Time of Sale. Again, I’m unable to see which account/lending is which, so it’s unclear whether what the Supplier has said is actually the case. But, I note that the Supplier has said that the adverse comments in relation to one of the other loans would have been visible.

So, I don’t think these further comments detract from what the results of the Lender’s check here actually showed to them before they decided to lend. As my provisional decision said:

“The copy of the credit search results the Lender has provided shows that in December 2018, Mr B owed just under £21,000 to a particular lender and payments were at that time up to 5 months late. It also shows that for a number of years the account either had an arrangement to pay in force or was in sustained arrears (switching back and forth between the two for the majority of the life of the lending so far). The Lender has said in relation to this account that the balance was at that time at its lowest point since the account had been opened. But, I fail to see the relevance of this when the amount of money Mr B still owed remained significant. The Lender has also said the account was, at the time, given a ‘U’ status and there must have been a reason this account had not yet been defaulted. But, this only denotes that the account has an unknown or unspecified update and I don’t think this detracts from the other points of concern about how the account was being managed.

Mr B also had an account which was in default and had been since January 2017 after a period of being in arrears. The Lender has acknowledged this but said Mr B had been making payments towards it which they factored into their lending decision (although they haven’t said how exactly). I acknowledge what the Lender has said here, but I think it’s important to note that by November 2018 (shortly before the Time of Sale), Mr B still owed over £2,000 in relation to that account.

There was one other account not settled at the Time of Sale which didn't seem to have any payment issues. But, Mr B did still owe nearly £4,000 on that account at that time.

Taking all of this into account, I don't think it was responsible for the Lender to have lent to Mr B considering the existing amounts he already owed and the clear signs of difficulty he had in managing that lending. As outlined, I also think that with further appropriate checks of Mr B's income, this would have shown that he could not afford to sustainably repay the loan over its term."

So, I still think that what was shown here should have raised some concerns about Mr B's ability to sustainably repay the new borrowing. Or, at least should have prompted the Lender to take a closer look at his financial position.

For all of the above reasons, I therefore still think it's fair and reasonable that I uphold this complaint. So, for the avoidance of doubt, upon receipt of notification from this Service of the estate of Mr B's acceptance of my final decision, and on the proviso that the estate of Mr B agrees to assign to the Lender the Signature Collection Points or hold them on trust for the Lender if that can be achieved, the Lender should:

- (1) Refund Mr B's repayments to it under the Credit Agreement, including any sums paid to settle the debt, and cancel any outstanding balance if there is one.
- (2) In addition to (1), the Lender should also refund the difference between the annual management charges paid after the Time of Sale under the Signature Collection and what Mr B's annual management charges would have been under Fractional Membership ¹² had he not purchased the Signature Collection.
- (3) The Lender can deduct:
 - iii. The value of any promotional giveaways that Mr B used or took advantage of; and
 - iv. The market value of the holidays* Mr B took using the Signature Collection if his annual management charge for the year in which the holidays were taken was more than the annual management charge he would have paid as an ongoing Fractional Membership 1 member. However, the deduction should be a proportion equal to the difference between those annual management charges. And if any of Mr B's Fractional Membership 1 annual management charges would have been higher than his equivalent Signature Collection annual management charge, there shouldn't be a deduction for the market value of any holidays taken using Signature Collection points in the years in question as he could have taken those holidays as an ongoing Fractional Membership 1 member in return for the relevant annual management charge.

(I'll refer to the output of steps 1 to 3 as the 'Net Repayments' hereafter)

- (4) Simple interest** at 8% per annum should be added to each of the Net Repayments from the date each one was made until the date the Lender settles this complaint.
- (5) The Lender should remove any adverse information recorded on the late Mr B's credit file in connection with the Credit Agreement reported within six years of this decision.
- (6) If Mr B's Signature Collection membership is still in place at the time of this decision,

² The late Mr B's previous membership, as explained in my provisional decision quoted above.

as long as the estate of Mr B agrees to hold the benefit of the interest in the Allocated Property for the Lender (or assign it to the Lender if that can be achieved), the Lender must indemnify the estate of Mr B against all ongoing liabilities as a result of his Signature Collection membership.

*I recognise that it can be difficult to reasonably and reliably determine the market value of holidays when they were taken a long time ago and might not have been available on the open market. So, if it isn't practical or possible to determine the market value of the holidays Mr B took using his Signature Collection points, deducting the relevant annual management charges (that correspond to the year(s) in which one or more holidays were taken) payable under the Purchase Agreement seems to me to be a practical and proportionate alternative in order to reasonably reflect his usage.

**HM Revenue & Customs may require the Lender to take off tax from this interest. If that's the case, the Lender must give the consumer a certificate showing how much tax it's taken off if they ask for one.

My final decision

I uphold this complaint and direct Tandem Personal Loans Ltd to compensate the estate of Mr B as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr B to accept or reject my decision before 31 March 2025.

Fiona Mallinson
Ombudsman