The complaint

Ms C says that a secured (second charge) loan she took out in 2021 with Tandem Home Loans Ltd trading as Oplo was unaffordable and irresponsibly lent.

What happened

Ms C applied for this loan in January 2021 through an independent mortgage broker. The offer issued on 29 January 2021 shows Ms C was borrowing £35,000 (plus £3,745 fees) over a 15-year term on a repayment basis. The interest rate was fixed at 10.50% for the first five years. That gave a monthly payment of £428.33.

The loan completed on 3 February 2021.

The September 2021 direct debit was returned as unpaid, as were those in May 2023, April 2024, July 2024 and September 2024. Each time the payment was made a few days later, so the account was brought back up to date.

Ms C complained to Tandem about the loan in June 2024. Tandem issued a complaint response letter to Ms C on 14 June 2024. It said responsibility for the suitability of the advice and ensuring Ms C understood the product sat with the broker. It said it had evidenced Ms C's income by way of payslips, and that once her declared expenditure was taken into account there was a monthly surplus of £438.74, so it said the loan was affordable. It said Ms C's credit report showed a stable financial position, indicating the loan was affordable and sustainable.

Ms C referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. He said Tandem hadn't carried out adequate affordability and creditworthiness checks and had lent irresponsibly. He upheld the complaint.

Tandem didn't agree and so it was passed to me to decide.

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.

Ms C's credit file showed 13 active accounts, 3 of which had been taken out in the 6 months running up to this loan application. It also showed Ms C had a balance to limit ratio of 85%, owing £5,327 against her total credit limits of £6,300.

Since August 2020 Ms C had taken out:

- In August 2020 a credit card with a £4,500 credit limit that had an outstanding balance of around £4,630 (so was over its limit).
- In November 2020 a loan with an outstanding balance of around £16,980 and monthly payments of £292.
- In December 2020 a payday loan with an outstanding balance of around £1,010 and monthly payments of £289.

The loan taken out in November 2020 was also with Tandem and the funds for that had been used to consolidate the debt outstanding on the August 2020 credit card. The credit file indicates the balance on the credit card was around £1,000 in credit at the start of December 2020, but by 31 December 2020 (which is the latest update on the credit file) the balance was back to around £4,630 owing. So over £5,000 had been spent on that card in less than two months.

I've not been provided with anything to show Tandem asked why Ms C had taken on so much unsecured debt in the five months running up to this application (outside of it accepting her explanation that the £1,000 payday loan was taken to ensure her children had a good Christmas) - something that can be indicative of a person seeking debt options, which could mean they were in financial difficulties and/or a spiral of debt.

I've not seen anything to show Tandem asked Ms C about the fact the credit card it had consolidated for her in November 2020 was already back over its limit so soon after. I also note that before this loan was taken out Ms C owed over £34,000 across various unsecured debt accounts, against a net monthly income of around £2,750. Putting everything together I think the bigger picture shows a consumer that wasn't managing her finances well at the time.

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 Ms C's expenditure and credit worthiness 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 Ms C's wider circumstances that she was struggling to manage her finances at the time of the application. In those circumstances, I think – acting responsibly – Tandem ought to have satisfied itself that this lending was affordable and sustainable by making more detailed enquiries into Ms C's expenditure rather than taking what it was told at face value.

I think there were grounds for doubting whether Ms C was really living within her means – or whether, as her 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 her 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 and irresponsible.

The bank statements show spending way in excess of that which was declared with substantial gambling transactions, payments being returned as unpaid, and payments not disclosed on the affordability assessment (such as additional payments for TV and entertainment subscriptions, and a union subscription, for example). The £1,000 payday loan was funded on 30 December 2020, and Ms C's bank statements show she had spent over £1,200 on gambling transactions that day and the day before.

Whilst some of the additional spending 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 the level of gambling transactions, over £1,000 a month, it doesn't seem Ms C was in a position – at that time – to reduce her spending to a level where this loan would have been affordable and sustainable. The bank statements we hold show that these transactions are not out of character – they reflect other transactions in the months before and after the loan application.

I don't think it's enough for Tandem to say it relied on what Ms C told it about her expenditure, and that she didn't declare any reasons why the loan might be problematic. It's not enough to rely on what the applicant says alone when, as here, there were clear grounds, on a common-sense view, for doubting it.

For all the reasons given, I think the information Tandem used to assess Ms C's affordability significantly underestimated her 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 and sustainable for Ms C, 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 Ms 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 Ms C's credit file. It should remove the £3,745 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 Ms C has made as payments reducing the capital balance. If this results in a balance outstanding, Tandem should reach a sustainable arrangement with Ms C for the repayment of the remaining outstanding capital balance, without applying future interest.

If, however, this means that Ms C has already repaid more than the capital she borrowed, the excess should be refunded to her, 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 Ms C what it has deducted so she can reclaim the tax if she 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. Ms C received the capital and used it to pay off other debts, so it’s fair and reasonable that she pays back what she 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 Ms C would have come to some arrangement with her unsecured creditors had this loan not existed. So it’s not possible to be sure exactly what capital or interest Ms 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 Ms C compared to the amount she would have had to pay towards the consolidated debts had they not been consolidated. But it’s also possible she would have entered an arrangement such as an IVA or bankruptcy which would have led to her 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 Ms C distress and inconvenience, with the added worry that it was secured over her 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.

Going forward, if a debt remains once the above work is completed, Ms C needs to speak to Tandem about her situation either directly or with the help of someone trained to give her free debt advice - such as StepChange or Citizens Advice - and have an open and honest conversation about her circumstances and worries for both now and the future. They’ll need to work together and that means Ms C will need to be frank about her situation. And Tandem will need to listen to what she has to say and, fairly and sympathetically, see if there’s a way to work with her to agree a way forward. If a suitable way forward can’t be agreed then that would be a new complaint Ms C could make at the time, if she 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 Ms C to accept or reject my decision before 7 May 2025.
Julia Meadows
Ombudsman