DRN-5965346

The complaint

Mr D's complaint is, in essence, that Tandem Bank Limited[1] (the 'Lender') acted unfairly and unreasonably by (1) being party to an unfair credit relationship with him under Section 140A of the Consumer Credit Act 1974 (as amended) (the 'CCA') and (2) deciding against paying a claim under Section 75 of the CCA.

The loan in question was taken out in Mr D's sole name and as such, he is the only eligible complainant here. But, as the timeshare purchased using the loan was in the joint names of Mr and Mrs D, I'll refer to them both throughout where relevant.

What happened

Mr and Mrs D purchased membership of a timeshare from a timeshare provider (the 'Supplier') on 5 June 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy 6,000 'credits' at a cost of £17,100 (the 'Purchase Agreement').

Mr and Mrs D paid for their membership by taking finance of £17,100 from the Lender in Mr D's sole name (the 'Credit Agreement').

Mr D – using a professional representative (the 'PR') – wrote to the Lender on 29 July 2022 (the 'Letter of Complaint') to raise a number of different concerns. As those concerns haven't changed since they were first raised, and as both sides are familiar with them, it isn't necessary to repeat them in detail here beyond the summary above.

The Lender dealt with Mr D's concerns as a complaint and issued its final response letter on 5 October 2022, rejecting it on every ground.

The PR, on behalf of Mr D, referred the complaint to the Financial Ombudsman Service. It was assessed by an Investigator who, having considered the information on file, upheld the complaint on its merits. They did so as they thought Mr D 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 passed to me.

I considered the matter and issued a provisional decision (the 'PD') dated 29 October 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)

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[1] The loan in question was originally provided by Honeycomb Finance Limited but on 20 August 2022, the loan was assigned to Oplo which is a trading name of Tandem Bank Limited, who therefore have responsibility for the complaint. I'll refer to Tandem Bank Limited throughout as 'the Lender' for clarity.

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.

The legal and regulatory context that I think is relevant to this complaint is no different to that shared in several hundred ombudsman decisions on very similar complaints. And with that being the case, it is not necessary to set it out here. But if either side would like me to confirm what I think that context is, they can let me know in response to this provisional decision.

As is relevant to this specific case, I've also taken into account the Financial Conduct Authority's (FCA's) Consumer Credit Sourcebook (CONC) – in particular, CONC 5 – which sets out the rules and guidance that an authorised firm has to consider and follow when lending responsibly.

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 D 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 Mr D'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 claim under Section 75 of the CCA for misrepresentations. It also includes the allegation that the credit relationship between Mr D 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 Mr D in the same or a better position than he 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.

<u>The Lender's responsibilities</u>

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

At the Time of Sale, CONC 5.2.1[R] (1) said that the Lender had to assess Mr D's creditworthiness before entering into the Credit Agreement. When carrying out that assessment, CONC 5.1.1[R] (2) said they had to consider:

- *(a) The potential for commitments under the Credit Agreement to adversely impact Mr D's financial situation, taking into account the information it was aware of at the Time of Sale; and*
- *(b) Mr D's ability to make the repayments as they were going to fall due over the life of the Credit Agreement.*

CONC 5.2.1[R] (2)(a) also referred to paragraph 4.1 of the Office of Fair Trading's (OFT) Irresponsible Lending Guidance, which says amongst other things that:

> *"'Assessing affordability', in the context of this guidance, is a 'borrower-focused' test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences."*

The FCA sets out in CONC 5.3.1[G] (6) what it means by 'sustainable':

> *"For the purposes of CONC 'sustainable' means the repayments under the regulated credit agreement can be made by the customer:*
>
> *(a) Without undue difficulties, in particular:*
>
> *i. The customer should be able to make repayments on time, while meeting other reasonable commitments; and*
>
> *ii. Without having to borrow to meet the repayments*
>
> *(b) Over the life of the agreement […]*
>
> *(c) Out of income and savings without having to realise security or assets"*

CONC 5.2.3[G] said that the extent and scope of a creditworthiness assessment under 5.2.1[R] should be dependent on and proportionate to a number of different factors.

CONC 5.2.4[G] (2) went on to say:

> *"A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation."*

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 in CONC 5.2.4[G], 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 D 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 D was unlikely to have been able to repay the borrowing in a sustainable way?*
- *Did Mr D lose out as a result of the Lender's decision to lend to him?*

I've considered each of these questions in turn.

<u>Did the Lender carry out reasonable and proportionate checks?</u>

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.

The Lender has provided some information 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 D's income. They've also said they used standardised Office for National Statistics (ONS) data to calculate Mr D's household expenses.

I'd firstly note that Mr D 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.

Our Service hasn't been provided with a copy of the results of the credit search at the Time of Sale, but from the Lender's comments along with copies of Mr D's credit card and bank statements, it appears he already had the following existing credit commitments (visible to the Lender from the search it undertook):

- *Four credit cards with different lenders, two of which had an outstanding balance of over £1,000 and one which had an outstanding balance of over £4,000. Mr D was very close to his limit on these cards and over his limit on the card with the outstanding balance of over £4,000, having also missed the most recent monthly payment towards it.*
- *Three other credit agreements, with outstanding balances totaling just over £630.*
- *Three loans, one of which had an outstanding balance of just over £6,300.*
- *Mr D was also in his current account overdraft from at least October 2017 onwards.*

I think the above 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 and expenditure at the Time of Sale. 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 – just over £17,000 and was for a lengthy period of fifteen years. And, the interest rate was just over 9%. 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 D'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 D.

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

<u>What would reasonable and proportionate checks have demonstrated?</u>

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 D 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 D. It's also now approximately seven years since the Time of Sale. 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, Mr D has provided a variety of information, including comments about his circumstances at the Time of Sale, supported by various documentation from around that time, including credit card statements from other lenders in relation to other debt Mr D had at the time and bank statements from his main bank account. I've also considered the Lender's comments.

I can see that Mr D's stated income at the Time of Sale was £36,000. And, from reviewing his bank statements from the six months leading up to the decision to lend, I can see that his monthly income (net of tax) is consistent with that. So, there isn't any dispute here in relation to, for example, the amount Mr D was actually earning at the Time of Sale.

Turning to his expenditure, I can see the Lender calculated that Mr D's existing credit commitments cost him around £840 per month. And, adding that to his monthly expenditure which they calculated from Office for National Statistics (ONS) data, as well as the monthly loan repayment for the Credit Agreement (£174.56) this gave a monthly expenditure of £2,238.68. They say this left Mr D with a monthly disposable income figure of £82.32.

The Lender says this included a £100 monthly 'buffer' and that although they halved the relevant monthly expenditure for food and bills, to reflect the fact that Mr D was married and living with his wife at the time, they did not do so for the monthly rental payment. So, overall, they say the lending was affordable.

But, from looking at the bank statements provided for the three months prior to the lending, I don't think this is exactly accurate. I've looked at Mr D's actual income and expenditure and taking an average over those three months, his disposable income was approximately £121.94 (having added in the monthly loan repayment for the Credit Agreement). It's important to note that unlike the Lender's calculation above, this figure is based on Mr and Mrs D splitting the monthly bills and rent etc. between them as I think that's fair to assume and is accurately reflected in payments Mrs D was transferring to Mr D each month.

So, overall, I agree that Mr D appears to have had a very small amount of disposable income at the time of lending and therefore purely on a pounds and pence basis, the additional borrowing wouldn't mean he would be spending more than he was earning.

But, there are other aspects to consider here. I also think an important consideration was Mr D's other credit commitments at the Time of Sale and his current financial position in relation to these.

I acknowledge that Mr D appears to have been maintaining his payments towards most of his various existing credit agreements (and indeed towards the loan being complained about).

But, as I've explained above, Mr D had a significant number of existing agreements and importantly he was almost at his limit in relation to his credit cards and in fact over his limit in relation to the one with the largest balance. He'd also recently missed the monthly payment in relation to that card and by May 2018 (one month prior to the time of lending), he was in nearly £400 of arrears in relation to that credit card alone. From what I can see, he was also only making the minimum payment each month towards his various credit cards.

I acknowledge that the Lender has said that the data for May 2018 hadn't yet been reported to the credit reference agencies at the time of lending. But, if they'd more closely considered Mr D's overall financial position, considering the whole picture, as I think they ought to have done, I think they'd have realised Mr D had a significant level of existing debt, with signs he was potentially struggling with this, and that ought to have given them cause for concern.

As I've explained, the Lender had a responsibility to consider whether Mr D could sustainably repay the loan over the life of the credit agreement. As I've outlined, I think it's fair to say that Mr D was already (or very close to) being overextended financially due to his existing borrowing. And, he had only a very small amount of disposable income left each month. Any change to Mr D's circumstances which might reasonably occur over the next 15 years, such as a rent increase, would mean Mr D would very easily and quickly reach the point of not being able to meet his existing commitments with the amount of income he had.

I think it's also important to note here that Mr D was using the loan to purchase a timeshare membership, which the Lender knew at the Time of Sale. Such a membership would require additional expenses to be paid, including maintenance fees (often expensive and likely to increase over the membership term) and the actual costs of going on holiday not covered by the membership itself (such as flights). I can't see that Mr D's disposable income meant he would actually have been able to afford this and actually use the membership for which the loan was taken out.

Taking all of this into account, I don't think it was responsible for the Lender to have lent to Mr D considering the existing amounts he already owed and his financial circumstances as a whole, including his disposable income at the Time of Sale.

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

<u>*Did Mr D lose out financially?*</u>

While I acknowledge Mr D made the relevant payments towards the loan itself, from the information available, this did mean he struggled financially relatively soon after the Time of Sale.

For example, Mr D has confirmed that following the Time of Sale, he fell into arrears with one of his credit card accounts in September 2018, after which the account was then passed to a debt collection agency in October 2018.

So, I think it's clear that Mr D 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 D's application had been rejected (as I think it ought to have been),having considered everything, 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 D could have funded his purchase had his application for finance been turned down. Given his circumstances, I don't think it's likely Mr D would have been approved for finance by another Lender, undertaking reasonable and proportionate checks at the Time of Sale. And, 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 D 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."

So, in conclusion, I thought the Lender wrongfully entered into the Credit Agreement contrary to CONC. And I said I thought that had a significant effect on Mr D. 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 thought Mr D would have been protected from the financial burdens of both the Credit Agreement and the associated Purchase Agreement. I then set out how I thought the Lender should compensate Mr D.

Mr D responded to the PD and didn't provide any further comments. The Lender also responded and provided some further comments from the Supplier they wanted me to consider.

Having received 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 Mr D's complaint for broadly the same reasons I gave in my PD as set out above. I will also address the matters the Lender raised in response.

Again, my role as an Ombudsman is not to address every single point that has been made in response. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, while I've read the Supplier's further submissions in full, I will confine my findings to what I find are the key points.

Regarding the checks carried out at the Time of Sale, the Supplier has again pointed to the TAC check the Lender undertook. They say this is generally considered reliable within the lending industry and say this is evidenced in this case by the fact that the bank statements we've received from Mr D validate that his income was above the minimum threshold they felt was required.

But I already agreed in my PD that standardised tools and data sources like the TAC check may well suffice or be a good starting point for lenders in assessing affordability in some cases. But, I also explained that is subject to proportionality and considerations such as, for example, the size and term of the loan and what a lender knows of the applicant. And, I haven't seen anything which changes my view on that.

As I said in my PD, the loan being applied for here was for a significant amount – just over £17,000 and was for a lengthy period of fifteen years. And, the interest rate was just over 9%. So, as outlined in the regulatory guidance I've already referred to, I'd expect more detailed and robust checks to have been carried out accordingly, which in turn would have revealed more information about Mr D's financial circumstances at the Time of Sale.

So, I'm still not persuaded that the Lender undertook reasonable and proportionate checks before agreeing to lend to Mr D, *in this particular case*.

Regarding Mr D's actual income and expenditure, the Supplier says that under the relevant regulatory requirements the Lender wasn't required to have a detailed view of every element of Mr D's expenditure, using bank statements.

I agree with this, but I already explained in my PD:

> "*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 D. It's also now approximately seven years since the Time of Sale. 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.*"

But in any event, I ultimately agreed in my PD that Mr D appeared to have had a very small amount of disposable income at the time of lending and therefore purely on a pounds and pence basis, the additional borrowing wouldn't mean he would be spending more than he was earning. But I also explained that this wasn't the only aspect of his financial circumstances to consider – his other credit commitments at the Time of Sale and current financial position in relation to these was also relevant.

On this point, the Supplier has said that a credit card being at its limit would not be viewed by many lenders as a reason not to lend. And, they say this could simply have been 'an oversight' as in their view, there was disposable income available to service these other commitments.

But I think the Supplier's comments here rather downplay the reality of the other credit commitments Mr D had and the current status of these at the time of lending. Mr D wasn't simply at his limit on one credit card. As I explained in my PD, Mr D was almost at his limit on more than one card and was in fact *over* his limit in relation to the card with the largest outstanding balance (over £4,000). He was in nearly £400 of arrears in relation to that card alone and had recently missed the monthly payment towards it. He was also only generally making the minimum payment each month towards his various credit cards. And, as I've already said, if the Lender had more closely considered Mr D's overall financial position (as I think they ought to have done), I think they'd have realised he had a significant level of existing debt and that there were signs he was potentially struggling with this, which ought to have given them cause for concern.

I don't think this can reasonably be described as a simple 'oversight' as the Supplier has said and their comment here appears to suggest they feel it's appropriate to place some blame on Mr D for not, in their view, managing his finances correctly. I don't think this is fair and even if this were the case, it does not detract from the Lender's duty to lend responsibly.

Further, as I've already explained, the Lender had a responsibility to consider whether Mr D could sustainably repay the loan over the life of the credit agreement. As I've outlined, I think it's fair to say that Mr D was already (or very close to) being overextended financially due to his existing borrowing. And, he had only a very small amount of disposable income left each month. Any change to Mr D's circumstances which might reasonably occur over the next 15 years, such as a rent increase, would mean Mr D would very easily and quickly reach the point of not being able to meet his existing commitments with the amount of income he had.

The Supplier has said that Mr D did make use of the membership to holiday and so therefore clearly had the means to pay for travel, which 'in these days of low cost airlines is not expensive'. But what is 'expensive' is relative to each individual and their respective financial circumstances. I acknowledge what the Supplier has said but it's not surprising Mr D did try and make use of the membership and it's unclear what other expenditure he might have gone without in order to do so. As I've explained in my PD and above, Mr D had a significant level of existing credit commitments, so I still think it's fair to say that he was already (or very close to) being overextended financially.

On this point, the Supplier said adult customers are, and should be, capable of making their own decisions. And, that it's helpful when lenders ask customers to confirm a loan is affordable. But again, I think the Supplier here is suggesting some blame should be placed on Mr D for choosing to take out a loan which was unaffordable for him. But the rules and guidance in CONC were and are there to protect consumers. As I've said above, the Lender still had a responsibility under CONC to lend responsibly.

And, as I've already said in my PD, while I acknowledge that the purchase Mr D made was ultimately a discretionary one, I can't see that there was any other way he could have funded his purchase had his application for finance been turned down, or that he would have pressed on with his purchase regardless.

Lastly, the Supplier has made some brief comments about the method of compensation I proposed in my PD.

They've highlighted that Mr D did make use of the membership to holiday. But the compensation I proposed did recognise and make provision for that as I said the Lender could make a deduction for the market value of the holidays Mr (and Mrs) D took using their membership credits.

The Supplier suggests that since the complaint is being upheld for irresponsible lending only, the compensation should amount to a refund of interest only. But ultimately here, I'm concluding that Mr D should never have been given the loan in question at all. So, a simple refund of interest wouldn't fairly compensate him as it wouldn't include, for example, a refund of the payments he'd made towards the loan. Further, in this case, Mr D's loan funded the purchase of his membership from the Supplier. And as I've already explained, I'm not persuaded Mr D would have pressed ahead with that purchase had his application for finance been turned down. So, I still think it's fair and reasonable to put Mr D in the position he would be in now had he not been given the loan and therefore not entered into either the Credit agreement or the Purchase Agreement.

So, overall, I think the Lender wrongfully entered into the Credit agreement contrary to CONC. And, had the Lender carried out its affordability assessment in line with CONC, I think Mr D would have been protected from the financial burdens of both the Credit agreement and the associated Purchase Agreement.

For the avoidance of doubt, here is what the Lender needs to do to put things right:

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 D is unlikely to have entered into the Credit Agreement or the Purchase Agreement. So, I think it's fair and reasonable to put him in the position he would be in now had he not entered into either agreement at the Time of Sale.

Here's what the Lender needs to do to compensate Mr D with that being the case:

(1) The Lender should refund Mr D's repayments made to it under the Credit Agreement. If there is an outstanding balance, the Lender should cancel it.

(2) In addition to (1), the Lender should also refund the annual management charges Mr and Mrs D paid as a result of their membership.

(3) The Lender can deduct

   i. The value of any promotional giveaways that Mr and Mrs D used or took advantage of; and
   ii. The market value of the holidays* Mr and Mrs D took using their membership credits.

   (the 'Net Repayments')

   *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 and Mrs D took using their membership credits, 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 their usage.

(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 Mr D's credit file in connection with the Credit Agreement.

(6) Arrange for the cancellation of Mr and Mrs D's timeshare membership so that there are no ongoing liabilities. But if that isn't possible, the Lender should indemnify Mr and Mrs D against any ongoing liabilities arising from the timeshare membership on the basis that Mr and Mrs D assign any rights they have under the agreement to the Lender.

   **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 Bank Limited to compensate Mr D in line with what I've set out above under the heading "Fair Compensation".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 December 2025.

Fiona Mallinson
Ombudsman