

The complaint

Mrs M complains that Tandem Motor Finance Limited (TMF) shouldn't have agreed to lend to her as she couldn't afford to sustain the repayments.

What happened

In August 2022 Mrs M acquired a car when she entered into a hire purchase agreement with TMF. The cash price of the car was £16,790, with added interest and charges the total amount repayable was £28,209.40 over 60 months in instalments of £469.99, with the final payment being £479.99. Mrs M said she struggled to make the repayments as she was unemployed. She said TMF hadn't checked she could afford the repayments when they agreed to the lending and have since taken back the car. Mrs M complained to TMF.

TMF said they'd checked Mrs M's income and found this to be around £1,900. They'd considered whether she'd any existing credit, household expenditure and day to day living costs. They'd checked Mrs M's credit file and while she'd had financial difficulties before these were over 12 months before she applied for the lending. On the information they gathered the loan was affordable as the repayment was less than 25% of Mrs M's income and she'd sufficient disposable income to maintain the repayments.

Mrs M wasn't happy with TMF's response as she said she'd been unemployed for around fours years prior to the lending. She referred her complaint to us.

Our investigator said TMF should have checked further into Mrs M's financial circumstances given the amount and length of Mrs M's indebtedness. But after considering Mrs M's income and expenditure she said the lending was affordable for her.

Mrs M didn't agree and asked for an ombudsman 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.

Mrs M has told us that she hadn't been completely truthful when she applied for the lending. And told TMF on her application that she was employed by the family business. But this wasn't the case and that she'd been unemployed since 2018. In reaching my decision I've considered whether TMF made a fair lending decision based on the information they had or could have had. Having done so I'm not upholding this complaint. I'll explain why.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did TMF complete reasonable and proportionate checks to satisfy themselves that Mrs M would be able to repay the credit in a sustainable way?

- a. if so, did TMF make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Mrs M could sustainably repay the borrowing?
2. Did TMF act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires TMF to carry out a reasonable assessment of whether Mrs M could afford to repay the loan in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks should be “borrower-focused”, meaning TMF need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mrs M. Basically it’s not enough for TMF to only think about the likelihood of Mrs M being able to pay them back (credit risk) they must also consider the impact of repayment on Mrs M herself (affordability risk).

Before granting the finance, TMF said they checked Mrs M’s income through a credit reference agency tool, and this showed her income to be around £1,900. They also carried out a credit check. They said this showed Mrs M didn’t have any existing credit commitments, and while she’d a default and county court judgement (CCJ) they’d been over 12 months prior to the lending. I’ve looked at the credit file and it confirms what TMF said they saw. I can also see the default balance was settled in May 2021.

While the information TMF saw didn’t cause them any concerns I can’t see that TMF asked Mrs M about her actual expenditure. As the amount of the lending was high and over a long period of time. And the credit checks wouldn’t show what Mrs M’s regular committed expenditure was. I don’t think TMF did enough to have a reasonable understanding of whether the agreement was affordable or not for her. So, I don’t think they’d completed proportionate checks.

I can’t be certain what Mrs M would have told TMF had they asked about her regular income and expenditure. And I don’t think TMF needed to request bank statements, but in the absence of anything else, I’ve placed significant weight on the information contained in Mrs M’s statements as an indication of what would most likely have been disclosed.

I’ve reviewed three months of bank statements prior to the application. As mentioned previously Mrs M implied she was doing administration work for the family business. And TMF’s CRA checks showed Mrs M had an income of around £1,900. From the bank statements I can see Mrs M received a benefit payable for someone either out of work or on a low income with £606.94 paid every fortnight. I can also see payments into the account from the family business that averaged around £1500 a month.

I note Mrs M’s comment about her income and employment status at the time but her statements show she was paid benefit fortnightly, and regular payments were received from what seems to be the family business. So based on Mrs M’s bank statements I think TMF would have considered the income they’d used in Mrs M’s credit assessment to have been fair.

In July 2022 there was a payment of over £3,000 paid into Mrs M’s account. But I can also see the same amount leaving the account in payment for a holiday. So, I’ve not treated this transaction as income.

I’ve also considered Mrs M’s non-discretionary expenditure which includes food, utilities,

petrol, transport costs, and school fees. It would seem to show that payments for two cars were being made from the account. And there were ad hoc payments in and out of the account to I think Mrs M's partner. But overall, the bank statements show that Mrs M's committed monthly expenditure was no more than around £900.

Taking these figures into account and factoring in the repayment amount of £469.99 it appears to show the agreement was affordable for Mrs M. So, I'm not persuaded that TMF acted unfairly in approving the finance. As I think if they'd seen Mrs M's bank statements, they would have made the same lending decision.

As Mrs M was struggling with her repayments, I can see TMF passed her to their Specialist Support Team, and they repeatedly tried to discuss options to help her with her situation. But Mrs M's responses were minimal. I can also see despite several requests that she didn't provide information to TMF in support of her difficulties not only financially but also with her wellbeing for them to be able to consider the best options for her. So unfortunately owing to the lack of engagement Mrs M's account was returned to TMF's collection team and the car was subsequently collected.

I can see from TMF's records that the car has been sold at auction leaving a balance outstanding on the account. TMF are allowed to try to recover their funds as long as they do so with forbearance and due consideration – I'm satisfied they tried to do this before the car was collected. As there remains an outstanding balance I'd expect both Mrs M and TMF to work together in the recovery of this with continued forbearance and consideration.

I know my decision will disappoint Mrs M. But I can't say TMF acted unfairly or unreasonably in agreeing to lend to her based on the evidence I've seen as she'd sufficient disposable income to sustain the repayments.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 April 2024.

Anne Scarr
Ombudsman