

The complaint

Mr W, who is represented by a third party, complains that Tandem Motor Finance Limited (“Tandem”), irresponsibly granted him a hire purchase agreement he couldn’t afford to repay.

What happened

In January 2018, Mr W acquired a used car financed by a hire purchase agreement from Tandem. The cash price of the car was £5,499. Mr W was required to make 59 monthly repayments of £170.23, followed by a final payment of £345.03. The total repayable under the agreement was £10,388.60

I understand the agreement was settled in full in January 2023.

Mr W says that Tandem didn’t complete adequate affordability checks. He says if it had, it would have seen the agreement wasn’t affordable, given his existing debt and the fact that his partner wasn’t working. As a result, his financial situation got worse. Tandem didn’t agree. It said that it carried out a thorough assessment at the time.

Our investigator recommended the complaint be upheld. He thought Tandem ought to have realised the agreement wasn’t going to be affordable to Mr W.

Tandem said it didn’t agree with our investigator’s findings and requested an ombudsman’s decision. But it didn’t provide its reasons for not agreeing.

The case has therefore been passed to me for a 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 done so, I’m upholding this complaint for broadly the same reasons as our investigator. I will explain why.

Tandem will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don’t consider it necessary to set all of this out in this decision.

Tandem says it carried out a manual check before agreeing to the finance. This was because Mr W’s application raised concerns against its usual lending criteria. This check involved validating Mr W’s income by asking him to provide a pay slip. This confirmed Mr W’s net monthly income as being just under £1,500. As such, Tandem said the finance came within its lending criteria. Tandem also considered Mr W’s credit file. This showed he owed total credit elsewhere of around £1,380 and one active credit agreement on which he owed around £300. There were no recent adverse markings on his credit file. There were records of account defaults in 2013 and 2017 that appear to relate to mobile phone contracts

and were for low amounts. Tandem treated these as being historical and therefore not something that needed to be considered as part of the application.

I can't see that Tandem asked Mr W about his regular monthly expenditure. Tandem's credit checks didn't give information about what Mr W's expenditure was each month for his household costs, including rent, food and utility payments. Without knowing more about Mr W's regular and committed expenditure, Tandem wouldn't have got a reasonable understanding of whether the agreement was affordable or not. So I don't think I can say it completed proportionate checks. I think it would have been proportionate for Tandem to have taken steps to verify Mr W's financial circumstances at the time in order to better understand his living costs. I can't be sure exactly what Tandem would have found out if it had asked. In the absence of anything else, I think it would be reasonable to place significant weight on the information contained in Mr W's bank statements as to what would most likely have been disclosed.

I've reviewed three months of bank statements leading up to the lending decision. The statements show details about Mr W's spending and committed expenditure at the time and as such I consider they give a fair indication of what Tandem would have found had it carried out a more reasonable and proportionate credit search. Mr W has confirmed to us that he paid towards the household rent by way of making cash withdrawals which were then paid in at the post office by his partner. He says that typically he also split other household expenses with them. But at that time he says they were not working and so he had a heavier burden of household bills to pay.

Our investigator allowed £335 by way of Mr W's share of rent contributions. Looking at the level of monthly spending, our investigator allowed the total of £1,280, which I broadly agree with. This covered rent and household expenses such as food and insurance as well as Mr W's existing debt commitments. There was also some evidence of gambling transactions, averaging out at around £100 per month. I necessarily wouldn't consider these transactions to be excessive at this level. But in relation to Mr W's ability to repay the new agreement sustainably I think it was an issue of concern, considering his modest monthly income and his existing level of credit debt. So it was something that might have given Tandem pause when looking into Mr W's ability to be able to maintain his monthly payments over the whole duration of the loan.

It follows that on balance I agree with our investigator that based on what can be seen in the bank statements, Mr W was having to commit around £1,280 each month from his income to help cover his daily living costs and credit owed elsewhere. That leaves him with around £200 in disposable income, which would be less than £30 after allowing for the payments under the new agreement.

I think all this demonstrates that as things stood with his financial situation, Mr W didn't have enough disposable income to afford the additional £171 he'd have to pay each month under the new agreement with Tandem. So I think there was a real risk that Mr W's financial situation would worsen significantly by taking on the cost of paying for the agreement with the result that he'd have little choice other than to borrow further. I think appropriate and proportionate checks would have revealed this to Tandem. I therefore don't consider it acted fairly by approving the finance.

I've considered whether the relationship between Mr W and Tandem might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below should be carried out for Mr W results in fair compensation for him in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right – what Tandem needs to do

As I don't think Tandem ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement. Mr W should therefore only have to pay the original cash price of the car, being £5,499. Anything Mr W has paid in excess of that amount should be refunded as an overpayment.

To settle Mr W's complaint Tandem should do the following:

- End the agreement with nothing further to pay, if it hasn't already.
- Refund any payments Mr W has made in excess of £5,499, representing the original cash price of the car. It should add 8% simple interest per year* from the date of each overpayment to the date of settlement.
- Remove any adverse information recorded on Mr W's credit file regarding the agreement.

*HM Revenue & Customs requires Tandem to take off tax from this interest. Tandem must give Mr W a certificate showing how much tax it's taken off if Mr W asks for one.

My final decision

I uphold this complaint and direct Tandem Motor Finance Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 August 2024.

Michael Goldberg
Ombudsman