

## **The complaint**

Mr A has complained about a secured (second charge) loan, secured on a buy to let property, he took out in 2018 with Tandem Home Loans Ltd (formerly known as Oplo HL Ltd and 1<sup>st</sup> Stop Home Loans).

For ease I'll simply refer to the lender as Tandem in this decision, but that should be taken to mean the former brand names where applicable.

Mr A has been supported in bringing this complaint by his father (and Attorney) who I'll refer to as Mr A1. Any reference to Mr A in this decision should be taken to mean Mr A1 acting in that capacity where appropriate.

## **What happened**

Mr A applied for this loan in October 2018 through an independent mortgage broker. The offer issued on 31 October 2018 shows Mr A was borrowing £12,000 (plus £2,195 fees) over a 15-year term on a repayment basis. The interest rate was fixed at 15.50% for five years, after which it would move to the lender's standard variable rate (which was also 15.50% at the time of the offer). That gave a monthly payment of £203.64.

The loan completed on 7 November 2018 and was secured on his buy to let ("BTL") property. As such, it was a regulated consumer buy to let (CBTL) loan.

Mr A1 complained to Tandem about the loan in November 2022. He said, in summary, that Mr A was vulnerable. He also said that the security property was rented out and Tandem didn't hold regulatory permissions to undertake consumer buy to let business. Finally, he said that Mr A had borrowed £12,000, made payments totalling around £9,600 and was told he still owed around £13,700. Mr A1 said this gives an interest rate of 194% over the four-year period. Mr A1 asked Tandem to cancel the loan in its entirety upon receipt of the payment due in December 2022, removing the charge from the property. He said, if Tandem did so, he wouldn't pursue matters through either the Financial Ombudsman Service or the courts.

Tandem issued a complaint response letter to Mr A1 on 25 November 2022. It said it is authorised to undertake consumer buy to let business, and the advice was given by an independent mortgage broker so any concerns Mr A1 had about the suitability of the loan would be the responsibility of the broker to deal with. Tandem said it carried out a full income and expenditure assessment including a stress test, and the loan was shown to be affordable. It said all the information about the loan, including the total amount repayable, was contained within the illustration document, and it was unaware of the vulnerabilities that Mr A1 had mentioned.

Mr A1 referred the complaint to the Financial Ombudsman Service where it was looked at by one of our Investigators. He said Tandem had carried out adequate affordability and creditworthiness checks and hadn't lent irresponsibly. He said Tandem wrote to Mr A at the address provided by the mortgage broker, and said it wouldn't have been aware of Mr A's vulnerabilities. He didn't uphold the complaint.

Mr A1 didn't agree and so it was passed to me to decide.

### **My provisional decision**

I issued a provisional decision in March 2024, the findings of which said:

'Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome. This service is impartial between, and independent from, consumers and businesses. So I've focussed on what I consider to be the relevant evidence necessary for me to reach a fair outcome.

Mr A1 has raised various reasons why he feels the loan agreement shouldn't be enforceable, but that isn't a matter for the Financial Ombudsman Service. If Mr A1 feels there are legal grounds for the loan to be deemed unenforceable then that is something he would need to test in court but, having read his submissions on these points, I would encourage him to get specialist independent legal advice first.

For instance, as far as I'm aware there's nothing in the relevant legislation that prevents Mr A's housemate from witnessing the mortgage deed for his BTL property. Whilst Mr A1 has said Tandem expressly stated the witness can't be an occupier of the property, Mr A's housemate wasn't an occupier of *the property* (that is, the property to be mortgaged) she lived with Mr A in a different property. And the money due after the debts had been repaid (the £652.89) could only ever be paid to Mr A after the seven-day reflection period had ended (or Mr A had chosen to proceed within that period) as until then the mortgage can't complete and so the funds can't be released. That is entirely normal with mortgage contracts, whether that be first charge or second charge lending.

In addition, Mr A1 has said:

*"I am not sure of your remit, as there are of course numerous legal matters here. I have had my notes reviewed by 2 KC's both confident of annulment of both the legal charge and the entire contract.*

[...]

*Remember if you look back at my synopsis OPLO ( now Tandem Bank) did not provide me with the legally required DSAR within the 30 day time limit prescribed by law.*

*They may , or may not, have sent this to you, and it may or may not, be the same information, but again on a point of law as I did not have it within the prescribed timeframe, any and all of the "evidence" in the DSAR is wholly inadmissable in law.*

*Accordingly OPLO cannot confirm or deny irresponsible lending or anything else for that matter."*

Mr A1 has also provided affidavits from Mr A, his sister and a friend.

The non-provision of the DSAR within 30 days doesn't form part of this complaint – by that I mean it isn't a complaint point that was put to Tandem to investigate and respond to before the complaint was referred to our service. We can only consider complaints that a business had a chance to investigate and respond to first and so I can't consider anything relating to that here.

The extent of our powers, as set by the Financial Services and Markets Act 2000 (“FSMA”), is set out in the dispute resolution section of the regulator’s handbook of rules and guidelines. Part XVI of FSMA sets out the details of our scheme, and s.228 deals with how I determine complaints that come under our compulsory jurisdiction. That says a complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case. When considering what’s fair and reasonable in all the circumstances, I’m required to take into account relevant law and regulations; regulator’s rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Whilst I’m required to take into account relevant law, our service isn’t intended to be a replica of the courts. I don’t think it’s likely a court would find the evidence inadmissible merely because the DSAR was provided outside the time limits (if it was). In any case, our rules (specifically DISP 3.5.9) says that I can consider evidence I think relevant whether or not it would be admissible in court. I need to think what is fair and reasonable in all the circumstances, and having done so I don’t consider it would be fair or reasonable to ignore evidence Tandem holds if it’s relevant to the issues in this complaint.

That evidence is there, it has been submitted to our service, and therefore I will consider it just as I would consider any other evidence that is provided and which I consider relevant. We didn’t need Mr A1 to obtain the evidence under a DSAR as we simply request what we need from the parties at the time as we have done for this complaint. And whilst Mr A1 has provided statements from Mr A, his sister and a friend in the form of affidavits, those carry no more weight in my considerations than any other submissions provided in any other form merely because they are provided as affidavits.

In his letter to Tandem on 22 November 2022 Mr A1 said:

*“Further to 2 above, I note that in just one example of the lack of due diligence of OPLO PL LTD, you are sending annual statements to [Mr A] at [81W] an address that my client has never lived in. For the avoidance of doubt please correspond with me at the address above in all and every future communication.”*

But that’s not supported by submissions made by Mr A and his sister during this complaint who both said that Mr A was living at 81W – his sister’s address – at the time he took out this loan. And also an email Mr A sent to the broker as part of the application process, in which he said he’d been living at 81W for over three years:

*“My previous address was*

*[8H]*

*From 11/2012 - 4/2015*

*All credit at this address has been cleared*

*Now living at sisters house*

*From 4/2015 till present time*

*[81W]”*

Tandem had no reason to doubt what Mr A declared on his loan application form and in an email to the broker, and that was that he’d been living with his sister at 81W since 2015.

That leads me onto another point Mr A1 raised in that he says Mr A “...*categorically denies ever dealing with them.*” with “*them*” referring to the broker in question. And in response to our Investigator’s assessment:

*“As previously stated, [Mr A] did not make a loan application through a broker, [broker name] illegally passed on data picked up on the internet by [broker name] to Tandem who then completed the flawed I&E calculations.”*

And;

*“My client had no contact with [broker name], but [broker name] have been fined by ICO for illegal marketing and breaches of data protection laws and privacy, so by Tandem’s own admission they used this “referral “of an effective “mugs list of desperate creditors” to target my vulnerable client.”*

But we have emails between Mr A and the broker, which start with the broker saying it was nice to speak with Mr A that day and setting out what was discussed. And Mr A replying as above to clarify his address information.

There may be some confusion on Mr A1’s part as the email address of the broker was its trading name, rather than the registered company name Mr A1 has referred to but, based on the evidence held, I have no doubt that Mr A did have contact with this broker and it did make the application to Tandem for him on his instructions.

The responsibility for the suitability of this loan for Mr A’s individual needs sits with the broker, not Tandem. Whilst Tandem had to lend responsibly, it was the broker’s responsibility to give Mr A advice about such things as whether debt consolidation was the right thing for him.

Having looked at all the information and documentation that was provided, I can’t see any reason for Tandem to have known, or questioned, whether Mr A was vulnerable. I wouldn’t expect a lender to question a consumer for every loan application about their potential vulnerabilities, especially where that loan application has been submitted by a third-party independent mortgage broker, if there was no apparent reason to do so. If there was anything that ought reasonably to have alerted Tandem to a potential issue then I would expect it to look into that, but there was simply nothing on Mr A’s application to indicate he was vulnerable in such a way.

All I can consider in respect of a complaint about Tandem’s decision to lend is whether the lending was affordable and responsible.

In considering whether to lend, a lender must take into account whether the loan will be affordable and sustainable over the whole term of the loan. The obligation to assess the creditworthiness of the borrower for a CBTL mortgage is set out in schedule 2 of the Mortgage Credit Directive Order which can be seen at <https://www.legislation.gov.uk/ukxi/2015/910/schedule/2/part/chapter/3>

The loan taken out by Mr A was for £12,000 over a term of 15 years. Added to this were fees of £2,195. The loan was on a fixed rate of 15.50% at the time it was taken, and the monthly payment was £203.64.

Mr A’s property was valued at £290,000. The outstanding amount of the first charge mortgage on the property was £121,108 so along with the money borrowed for the loan (including fees) with Tandem, this meant a loan to value ratio of 47%.

The affordability assessment gives Mr A's income as £2,864.61 and his outgoings (including this loan) as £1,738.39. The assessment says Mr A's surplus money was £1,126.22 a month, and after the first charge mortgage was stress tested that surplus was reduced to £983.19 a month.

On the application form it was declared that Mr A was in receipt of an income of £2,600 a month and that he'd been with his employer for 13 years and 10 months. A reference was obtained from Mr A's employer that said he'd been employed since December 2004, and his payslips showed a net monthly income of £2,122.57 (September 2018), £2,079.89 (August 2018) and £2,056.25 (July 2018), giving an average net pay of £2,086.24. A figure of £2,037.61 was used in the affordability assessment, so lower than was evidenced by Mr A's payslips.

A figure of £827 was used for Mr A's rental income in the affordability assessment. To support the application, Mr A provided a copy of the tenancy agreement he'd entered into with his tenants in May 2018 which showed they'd be paying £995 a month rent to a letting agent who had been appointed by Mr A, and Mr A's bank statement showed a receipt of £899.48 from the letting agent. This was a transitional period for BTL landlords in terms of tax relief, but as Mr A – based on the figures at the time of this application - wouldn't become a higher rate taxpayer under the new arrangements these didn't impact the amount of income tax he would need to pay in respect of his BTL property. Tandem chose to use the same figure for his rental income as was deducted for his first charge mortgage that was secured against that property, in effect cancelling out the income and the outgoing. However, what Tandem didn't include, and what it needed to include under the creditworthiness assessment required for CBTL lending by the Mortgage Credit Directive Order was the impact of potential future periods of rent arrears or voids.

Having considered Mr A's income, I'm satisfied the figures used in the affordability assessment were reasonable.

I now turn to Mr A's outgoings. Mr A1 has said the council tax for the property was around £160 a month, but the council tax due for the property would normally be paid by the tenant, not the landlord (unless the property was vacant), and Mr A didn't declare that was an outgoing he had. He's also said Mr A's travel would have been around £3,600 a year, but again Tandem couldn't have known that the figure of £200 a month that was declared was wrong as that doesn't seem an unusually low amount such that it would warrant further investigation and questions. So for these points I don't think Tandem had any reason to doubt the information that was provided.

Tandem asked for clarification on a few points, such as the reason for some recent loans, and Mr A's responses on those seem plausible and reasonable. Mr A1 says some of the information isn't correct, but again Tandem had no reason to believe it wasn't being given correct information.

That said, I do think there are some points that should have alerted Tandem to some potential issues with this lending.

One of the comments in the 'Credit Worthiness' section of the overview form was *"Mr has been bombarded with maintenance issued on the property so used the loan to cover the constant demand to fix things in the flat."* Even if Mr A had already made capital expenditure on maintenance, Tandem should still have included a monthly contingency amount in Mr A's outgoings to allow for maintenance to the flat, and its fixtures and fittings, as this is one of the responsibilities of a landlord. It also doesn't seem that Tandem questioned the fact there was no inclusion for ground rent and/or service charges, and it would be unusual for a flat not to incur at least some costs for those.

The creditworthiness assessment required for CBTL lending by the Mortgage Credit Directive Order also requires a lender to take into account the impact of potential future periods of rent arrears or voids – where the tenant might not pay rent or the property is untenanted – as well as other costs associated with letting such as the costs of letting agents. This is usually done by requiring the rental income to exceed the total mortgage payments (in this case on the first charge as well as the Tandem loan) – a ratio of 125% or more is not uncommon. There was no allowance for this in the income and expenditure assessment. Tandem treated the first charge mortgage and the rental income as being equivalent. Even if it proceeded on the basis that the second charge loan was to be repaid from Mr A's employment income rather than his rental income, it should have made an allowance for periods when the rent wouldn't cover the first charge repayment and would have to be made up from Mr A's employment income.

In addition, Tandem was aware Mr A held a second bank account yet it didn't ask for a statement for that account despite seeing transfers between the accounts and the other account being in its overdraft (which Tandem was consolidating). As Tandem checked the transactions on one bank account it should also have checked the other as it didn't need the bank statement to verify Mr A's income as it had payslips for that, so I can only assume it used it (and I can see reference to that in the affordability and credit worthiness checks) to obtain information about Mr A's expenditure. To that extent the information it relied on was incomplete.

At the time this loan was taken out the Financial Policy Committee recommendation on appropriate interest-rate stress tests was to use an interest rate 3 percentage points higher than the reversion rate.

It isn't clear what rate Tandem used for the stress test but based on the figures provided I think it was lower than the 3 percentage points that was the standard recommendation at the time. MCOB 11.6.18 says lenders should take account of the Financial Policy Committee recommendation. I can't see any reasonable basis here for Tandem to decide to use a lower percentage stress test than the FPC-recommended 3 percentage points. Whilst this was a CBTL loan, and so MCOB 11.6.18 doesn't apply, para 12(1)(c) of Schedule 2 of the Mortgage Credit Directive Order requires a CBTL lender to account for the impact of future interest rate rises in its creditworthiness assessment. I think following the FPC recommendation would be good practice in this respect, and if Tandem decided not to follow it I'd expect to see a detailed and robust reason for that decision.

Had the stress test been carried out using the recommended 3 percentage point increase then I believe the result would have been significantly higher and that higher amount should have been used when carrying out the affordability assessment.

To test what difference there would have been to the affordability assessment if Tandem had stress tested at 3% and just included all the outgoings that were evidenced on the bank statement I've, in effect, recreated the outgoings section.

Even just reviewing the one bank account I can see that Mr A's outgoings on shopping (including food) and socialising was far in excess of the amounts declared on the affordability assessment. In the one month period from 23 September until 22 October I've seen shopping and socialising transactions totalling around £870. There are additional cash withdrawals of £445 which I can't see have been accounted for in the affordability assessment to show what that money was spent on.

I've just taken the expenditure evidenced on Mr A's bank statement that Tandem held, so in effect I've removed the £25 insurance and £50 mobile phone as neither of those show on the bank statement and changed £200 travel expenses to £146 as that is all that is

evidenced on there. Having done so the information held by Tandem shows this loan was unaffordable if the data from the bank statement was used:

• Mortgage	£827
• Rent	£220
• Bank charges	£12.75
• Shopping/socialising	£870
• Cash withdrawals	£445
• Travel expenses	£146
• New Tandem loan	£203.64
Total	£2,724.39

Mr A's income was recorded as £2,864.61, and even the existing stress test would have taken Mr A's outgoings to £2,867.42 and, as I've said, I don't think the full additional 3% recommended stress test rate was used.

This shows, even without an amended stress test at 3% and the missing items I've detailed (such as ground rent/service charge, and a monthly contingency for maintenance, as well as contingency for rental arrears and voids), just based on the information Tandem held in Mr A's one bank statement and removing outgoings that had been declared and that didn't show on that statement, then he should have failed the affordability assessment. And due to the size of the overdraft on the other bank account, the transfers between the accounts and the fact some declared outgoings were missing from this bank account I think Tandem ought to have requested the statement for Mr A's other account as I think it had reason to doubt the information provided.

In light of all the above, I don't think the expenditure information accurately reflects Mr A's true outgoings at the time as it significantly underestimates his expenditure as shown on his bank statements, and takes no account of the contingencies required when assessing creditworthiness for a CBTL mortgage.

Whilst the loan reduced Mr A's monthly expenditure by consolidating his debts, it increased his overall indebtedness by around £2,850. This was due to the additional amount of £652 paid to Mr A on top of the consolidation, along with the fees of £2,195. It also meant that the debt was secured against Mr A's property over 15 years which would add a significant amount of interest to the amount he borrowed and meant that his property could be repossessed if he was unable to maintain the repayments. So while the loan might have reduced his outgoings, if that still didn't make his situation sustainable it wouldn't in my view be responsible to exchange unsecured for secured debt.

For all the reasons given, I'm satisfied that this loan was irresponsible and unaffordable, and should never have been lent.'

To put things right, I said:

'To put matters right, Tandem should bring the loan agreement to an end and remove any adverse entries associated with this loan from Mr A's credit file. It should remove the £2,195 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 Mr A has made as payments reducing the capital balance.

If this results in a balance outstanding, Tandem should reach a sustainable arrangement with Mr A for the repayment of the remaining outstanding capital balance, without applying future interest, and can retain the charge over the property in the meantime.

If, however, this means that Mr A has already repaid more than the capital he borrowed, the excess should be refunded to him, 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 Mr A what it has deducted so he can reclaim the tax if he is entitled to do so. In this case, it should also remove the charge from the property.

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. Mr A received the capital and used it to pay off other debts, so it's fair and reasonable that he pays back what he 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's possible Mr A would have come to some arrangement with his unsecured creditors had this loan not existed. So it's not possible to be sure exactly what capital or interest Mr A 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 Mr A compared to the amount he would have had to pay towards the consolidated debts had they not been consolidated. But it's also possible he would have entered an arrangement such as an IVA or bankruptcy which would have led to him 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 Mr A distress and inconvenience, with the added worry that it was secured over his property, I don't propose to compensate Mr A separately for the distress and inconvenience this lending and the associated financial difficulties caused him. I think the saving made in writing off the interest on this loan, compared to what he would likely have had to pay had the debts not been consolidated, represents fair compensation for that.

We have the power to make awards for costs of a professional adviser in bringing, or researching, a complaint. But our rules make clear professional representation is not necessary and such awards are therefore rare. In this case, I don't think that applies anyway because it seems that Mr A1 has asked me to make an award for his own time – he is an attorney under a power of attorney and family member, not a professional representative, and there's no evidence that Mr A is liable to pay Mr A1 for his time or representation. I've seen no evidence that Mr A or Mr A1 has incurred costs owed to a legal or other professional representative. In any case the legal arguments that have been raised have had no bearing on the outcome of this complaint. For that reason I make no order or award for *“Reasonable legal fees for 180 hours of case research and document preparation”*.



## What I've decided – and why

Both sides responded to my provisional decision mainly reiterating points I'd already considered when reaching those provisional findings. I won't be answering all the points the parties made for that reason, but I'll pick up on a few points below.

Tandem has said that it understands my provisional decision to be based on three points:

- The stress test.
- The interest rate cover.
- The expenditure calculated from the bank statement.

But I also gave other reasons in my provisional decision for finding this loan wasn't lent responsibly, such as expenditure that wasn't included in the affordability assessment (and also didn't show on the bank statement in question).

Tandem has said that a 3% stress test was used and has provided the information it said it used for that, which was a mortgage balance of £121,108, a term of 18 years and an interest rate of 3.75% (stressed to 6.75%).

But something in that information must be incorrect as at 3.75% that gives a monthly payment of £771.89, whereas we know Mr A paid £827.64 in September 2018 and £843.75 in October 2018. It may be Mr A was overpaying his first charge mortgage, albeit that seems unlikely bearing in mind Mr A's financial situation when he took out this loan, such as his unsecured debts. But either way Tandem didn't ask about the discrepancy between what it knew Mr A was paying (as it showed on the short mortgage statement he provided) and what the monthly payment would have been based on the other information provided that wasn't proven (the term and the interest rate). As such the stress test can't be viewed as a reliable figure as it seems likely that it was based on at least one erroneous factor.

Tandem has said that the use of an interest coverage ratio ("ICR") of 125% includes the provision for ongoing maintenance to the property. But Tandem didn't calculate the affordability based on an ICR, it carried out a full income and expenditure affordability assessment and it didn't include, in that, a monthly budgeted amount for ongoing maintenance to the property. That is the assessment I'm looking at and the basis upon which I'm deciding this complaint. That assessment didn't take into account the fact Mr A would have had ongoing maintenance costs, as well as potentially rental arrears and voids, and ground rent and service charges.

I agree with Tandem that expenditure will fluctuate from month to month, but it needed to base this lending decision on the information that it held. If Tandem felt one month in isolation didn't give a true picture of Mr A's regular expenditure, then it needed to ask for more bank statements at the time. As it chose not to do that I can only decide this case based on the information it did hold and that shows expenditure in excess of the information it had recorded on the affordability assessment.

I also agree with Tandem that it is allowed, in theory, to use statistical data for expenditure, but again that shouldn't be used if it holds evidence showing the individual customer spends more than that, which is the case here.

Finally, Tandem has said that shopping, socialising and cash withdrawals are over and above basic essential expenditure and basic quality of living, but we don't know what the individual breakdowns were for those as Tandem didn't question it at the time. Either some

or all of the cash withdrawals could have been spent on essential expenditure, and either some or all of the shopping could have been essential or to maintain a basic quality of living. For amounts to be excluded in the way Tandem is now saying they should have been, it needed to interrogate the bank statements at the time and query the expenditure with Mr A to find out what the spending was. And, as I said in my provisional findings, Mr A held another bank account that likely showed more expenditure but for which a statement wasn't requested.

Mr A1 has said that he believes it is manifestly unfair that a charge is retained over the property as I'd said that any adverse entries associated with the loan should be removed from Mr A's credit file, and he says a second charge on the property is an integral and adverse entry on Mr A's credit file. But that's not the case. The charge is registered with the Land Registry and doesn't show on the credit file in itself, so the removal – or not – of the charge would have no impact on Mr A's credit file. It also won't have any impact on the sale of the property (other than as you'd normally expect when any mortgaged property is sold), so the fact Mr A is planning to sell the property isn't a reason for me to order Tandem to do anything different.

Mr A1 has said that the ongoing arrangement should be agreed with him, rather than Mr A being involved due to Mr A's vulnerability. How the ongoing arrangement is put in place in terms of contact with Mr A is something Mr A1 can discuss with Tandem to find a suitable way forward, and if the matter can't be resolved between the parties then that would be a new complaint that can be made at the time (as it relates to something that hasn't yet happened). That said, Mr A will need to have some involvement as the agreement will be based on his income and expenditure, so information (and evidence) of that will likely need to be provided.

Mr A1 has said that there is an erroneous entry on the title deed for a company that had been dissolved eight months before the charge was registered. This seems to be a confusion on Mr A1's part between two separate companies. The company that was dissolved was 1<sup>st</sup> Stop Loans Limited (company number 08361366) but the lender for this loan was 1<sup>st</sup> Stop Home Loans Limited (company number 05667257) which is a completely separate company.

Mr A1 can see the details of the correct company on Companies House, and that shows the company is now registered as Tandem Home Loans Limited, and was previously known as Oplo HL Ltd (from 3 August 2020 until 10 January 2023) and as 1<sup>st</sup> Stop Home Loans Limited (from 18 February 2011 until 3 August 2020).

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered the full file afresh, including both sides' responses to my provisional decision, I see no reason to depart from my provisional findings for all the reasons given.

### **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 Mr A's credit file. It should remove the £2,195 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 Mr A has made as payments reducing the capital balance.

If this results in a balance outstanding, Tandem should reach a sustainable arrangement

with Mr A for the repayment of the remaining outstanding capital balance, without applying future interest, and can retain the charge over the property in the meantime.

If, however, this means that Mr A has already repaid more than the capital he borrowed, the excess should be refunded to him, 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 Mr A what it has deducted so he can reclaim the tax if he is entitled to do so. In this case, it should also remove the charge from the property.

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. Mr A received the capital and used it to pay off other debts, so it's fair and reasonable that he pays back what he 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's possible Mr A would have come to some arrangement with his unsecured creditors had this loan not existed. So it's not possible to be sure exactly what capital or interest Mr A 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 Mr A compared to the amount he would have had to pay towards the consolidated debts had they not been consolidated. But it's also possible he would have entered an arrangement such as an IVA or bankruptcy which would have led to him 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 Mr A distress and inconvenience, with the added worry that it was secured over his property, I don't propose to compensate Mr A separately for the distress and inconvenience this lending and the associated financial difficulties caused him. I think the saving made in writing off the interest on this loan, compared to what he would likely have had to pay had the debts not been consolidated, represents fair compensation for that.

We have the power to make awards for costs of a professional adviser in bringing, or researching, a complaint. But our rules make clear professional representation is not necessary and such awards are therefore rare. In this case, I don't think that applies anyway because it seems that Mr A1 has asked me to make an award for his own time – he is an attorney under a power of attorney and family member, not a professional representative, and there's no evidence that Mr A is liable to pay Mr A1 for his time or representation. I've seen no evidence that Mr A or Mr A1 has incurred costs owed to a legal or other professional representative. In any case the legal arguments that have been raised have had no bearing on the outcome of this complaint. For that reason I make no order or award for *“Reasonable legal fees for 180 hours of case research and document preparation”*.

### **My final decision**

For the reasons I've given, I uphold this complaint and direct Tandem Home Loans Ltd to put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 June 2024.

Julia Meadows  
**Ombudsman**