

### The complaint

Mrs M complained that she's unhappy Harvey & Thompson Limited (H&T) provided her with a loan knowing she was in financial difficulty.

### What happened

H&T has sent to us an acknowledgement letter dated 11 July 2019 in which it refers to Mrs M's complaint received from her by email on 8 July 2019. The final response letter followed dated 5 August 2019 which related to a loan agreement which had been defaulted and showed negatively on her credit file.

Having had the complaint referred to this service, we wrote to H&T and summarised Mrs M's complaint as: Mrs M feels the loans have mis-sold to her and that they should've know she was in financial difficulty. And they didn't advise her that a default would be recorded on credit file, so it's been done unfairly.

H&T sent its file of documents for us to investigate. A brief loan table is set out here based on the statements of account we have received from H&T. Its clear that Loan 2 was used to repay a large proportion of Loan 1. And Loan 3 was used to repay a large amount of Loan 2.

Loan	Date approved	Approved amount – principal sum	Net amount received by Mrs M	Amount rolled to next loan (rounded figures)	Outstanding sum
1	4 November 2016	£600	£600	£623	£0
2.	7 April 2017	£750	£127	£744	£0
3.	24 August 2017	£1,244	£500	Last loan in the chain	Exact figure unknown

Mrs M signed a direct debit mandate on 4 November 2016.

The statements of account from H&T end at April 2020 and so we do not know the up-to-date position. Mrs M has been paying £10 a month since June 2018 and in a recent telephone call (17 December 2020) with one of our adjudicators – which I have listened to – Mrs M repeats that she has been paying the £10 each month.

The principal sums given to Mrs M appear to have been £600 + £127 + £500 which all add up to £1,227. I have excluded any pence as I am using rounded figures.

And our adjudicator's opinion was that H&T ought not to have approved the second and third loans (Loans 2 and 3 of the three she had) and set out in detail what she thought H&T should do including the corrections to her credit file.

H&T agreed to this and said this and included a brief table of its calculations:

*"Having emphasised the point above around previously acceptable processes versus currently acceptable processes we are however prepared to agree to the proposals set out in your 'how to put things right' paragraph, recognising Ms M's position*

*The relevant calculation is as follows:*

<b>Interest charged</b>	<b>£272.76</b>
<b>8% interest to date</b>	<b>£80.23</b>
<b>Charges</b>	<b>£0</b>
<b>Total payment</b>	<b>-£200.61</b>

*The above is the net figure after deducting the residual balance of Loan 3 from the redress payable for Loan 2. The residual balance of Loan 3 was calculated by deducting the payments made from the original Principal loan (£1244 - £706.45 = £537.55).*

*Tax already deducted is £16.05"*

This was sent to Mrs M and she did not agree to it as, although it was in line with our adjudicator's opinion and our usual approach, Mrs M has said she was expecting the principal sum outstanding to be written off.

The complaint remained unresolved and was 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.

Considering H&T's agreement to our adjudicator's opinion and having listened to the recorded call with Mrs M on 17 December 2020, then the outstanding issue was that Mrs M wishes the remaining capital balance to be written off. So that's the only point I have focussed on as the main point relating to the original loan approvals appear to be resolved. I do set out the redress section in full so that both parties are clear as to what has been agreed.

Turning to the credit file issues, Mrs M has not referred to that and our adjudicator's steps to achieving the resolution included steps to correct Mrs M's credit file. She said and H&T has agreed to do this: 'You should remove any adverse information recorded on [Mrs M's] credit file in relation to loans two and three.' So, it seems to me that this has been resolved as well.

Turning to Mrs M's request that the principal balance is written off, then I do not consider that is a decision I can come to. Mrs M has given no reason for it and it is contrary to our usual approach. Mrs M will have had the benefit of the principal cash sums she has received from H&T. The result of the agreed resolution relating to the loan approvals will mean that – effectively – Mrs M will get Loans 2 and 3 interest free. It's only right that the money Mrs M received from H&T ought to be repaid to her.

Having said that, I think that the figures put forward by H&T are confusing, unclear and difficult to understand. They will need to be updated since H&T accepted and did the calculations on 8 December 2020.

So, I set out in this final decision the resolution steps to come to the correct redress for Mrs M and they are in the same terms as that set out by our adjudicator in her original opinion letter and now agreed to by H&T. But in addition, I direct that H&T explains each step giving clear calculations with reference to the statements of account so that Mrs M can see exactly how H&T has come to the figures it has come to and why it is Mrs M may have a balance to repay.

My understanding is that the current repayment plan is £10 each four weeks. Mrs M and H&T can keep that in place if both parties agree to it.

### **Putting things right**

In deciding what redress H&T should fairly pay in this case I've thought about what might have happened had it stopped lending to Mrs M from Loan 2, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct.

From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mrs M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce H&T's liability in this case for what I'm satisfied it has done wrong and should put right.

### **What H&T needs to do**

H&T shouldn't have given Mrs M loans two and three.

If H&T has sold the outstanding debts, it should buy these back if able to do so and then take the following steps. If it is not able to buy the debts back, then it should liaise with the new debt owner to achieve the results outlined below.

I direct that H&T explains each step giving clear calculations with reference to the statements of account so that Mrs M can see exactly how H&T has come to the figures it has come to and why it is Mrs M may have a balance to repay.

- A) H&T should add together the total of the repayments made by Mrs M towards interest, fees and charges on all upheld loans without an outstanding balance – here Loan 2- not including anything H&T has already refunded.
- B) H&T should calculate 8% simple interest\* on the individual payments made by Mrs M which were considered as part of “A”, calculated from the date she originally made the payments, to the date the complaint is settled.
- C) H&T should remove all interest, fees and charges from the balance on any upheld outstanding loans – here Loan 3 - and treat any repayments made by Mrs M as though they had been repayments of the principal on all outstanding loans.

If this results in Mrs M having made overpayments then H&T should refund these overpayments with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. H&T should then refund the amounts calculated in “A” and “B” and move to step “E”.

- D) If there is still an outstanding balance then the amounts calculated in “A” and “B” should be used to repay any balance remaining on outstanding loans: set-off is allowed.

If this results in a surplus, then the surplus should be paid to Mrs M. However, if there is still an outstanding balance then H&T should try to agree an affordable repayment plan with Mrs M or keep the £10 each four weeks in place. H&T shouldn't pursue outstanding balances made up of principal you have already written-off.

- E) H&T should remove any adverse information recorded on Mrs M's credit file in relation to loans two and three.

\*HM Revenue & Customs requires H&T to deduct tax from this interest. It should give Mrs M a certificate showing how much tax deducted, if one is requested. The tax ought to be deducted before any set-off is done.

### **My final decision**

My final decision is that I uphold Mrs M's complaint in part as already agreed by Harvey & Thompson Limited and it should do as I have directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 January 2021.

Rachael Williams  
**Ombudsman**