

The complaint

Mr G complains Harvey & Thompson Limited trading as (H&T) gave him loans when he had a significant amount of other debt as well as a high number of defaults on his credit file.

What happened

Mr G took two loans between December 2016 and July 2017. I've included some of the information we've received about these loans in the table below.

<i>loan number</i>	<i>loan amount</i>	<i>agreement date</i>	<i>repayment date</i>	<i>term (months)</i>	<i>monthly repayment</i>
1	£450.00	24/12/2016	06/07/2017	9	£78.86
2	£1,816.76	06/07/2017	outstanding	24	£142.09

The statement of account provided to the Financial Ombudsman Service from H&T shows that Mr G had problems repaying his final loan and an outstanding balance remains.

H&T considered Mr G's complaint and issued its final response letter on this matter in August 2021. H&T investigated the complaint and concluded it hadn't made an error when it approved these loans for Mr G.

It explained that it did a credit check which met its criteria to lend. H&T also says it took details of Mr G's income and expenditure and this information was verified either through a payslip or bank statements. H&T says that Mr G's applications passed its affordability assessment, so it wasn't wrong of it to lend.

Mr G didn't agree with the outcome reached by H&T and he referred the complaint to the Financial Ombudsman Service in August 2021.

The complaint was then considered by an adjudicator who didn't think it was wrong for H&T to have granted either of the loans to Mr G. He concluded H&T carried out proportionate checks for loan one which showed H&T the loan repayments were likely to be affordable.

For loan 2, he felt, given the term that Mr G was due to repay the loan over, that H&T needed to do further checks before approving this loan. But the adjudicator, in his view, didn't have enough information about Mr G's financial position at the time to say it was unfair of H&T to have advanced this loan.

H&T didn't respond to the adjudicator's assessment.

Mr G didn't agree with the adjudicator's assessment. In response he made a number of points including;

- He didn't have an issue with loan one.
- H&T tried to profiteer from Mr G's situation by giving him loan 2.
- His wider financial history needed to be taken into account.

- His declared income was made up of overtime which wasn't always guaranteed.
- The expenditure didn't include existing debt repayments.
- H&T's expenditure categories don't include sections for debt and / or child benefit.
- Mr G had two County Court Judgements (CCJs) recorded against him in 2016.
- Mr G says H&T was also aware of a recent default on his credit file and he was fully utilising a £2,000 overdraft.

Later on, in addition to the above, Mr G told us:

- The loan application was completed in store.
- He says H&T didn't forward all the necessary information before providing loan 2.
- Mr G had a high debt ratio as can be seen on his credit file.
- Mr G's credit file shows a history of defaults and he was a regular user of other high cost, short term loans.

Finally, Mr G provided a complaint reference for another one of his complaints against a bank, which Mr G says was a complaint about an overdraft which was provided just before the loan was approved.

I issued my provisional decision explaining the reasons why I was intending to partially uphold Mr G's complaint.

A copy of the background to the complaint and my provisional findings follow this in italics and a smaller font and forms part of this final decision. I asked both H&T and Mr G to provide any further information, comments or evidence for consideration by no later than 20 April 2022.

What I said in my provisional decision

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

We've set out our general approach to complaints about this sort of lending - including all the relevant rules, guidance and good industry practice - on our website.

H&T had to assess the lending to check if Mr G could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. H&T's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr G's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest H&T should have done more to establish that any lending was sustainable for Mr G. These factors include:

- *Mr G having a low income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- *The amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- *Mr G having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- *Mr G coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly

demonstrates that the lending was unsustainable for Mr G.

H&T was required to establish whether Mr G could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr G was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr G's complaint.

I won't make a finding about loan 1 because Mr G accepts that he doesn't have an issue with that loan. Instead, this decision will focus on the checks that H&T carried out before it granted loan 2 and whether these went far enough.

Loan 2

For this loan H&T has provided us a copy of the credit agreement, which outlines the term, amount borrowed and Mr G's monthly commitment. In addition, it has given us a record of the information that Mr G declared to it at the time the loan was approved.

Mr G's income is recorded as being £2,234.63 with outgoings of £1,023.56. This left Mr G with a disposable monthly income of £1,211.07. Based on these figures H&T may have believed the monthly repayment of £142.09 was affordable to Mr G.

In H&T's final response letter to Mr G it says it would've asked for evidence of his income either through a payslip or bank statement. But H&T hasn't provided the Financial Ombudsman with the information it gathered (if it did) to verify the income before this loan was approved.

I can see Mr G has some concerns about his income because he has explained that the amount given to H&T was made up of overtime that wasn't always guaranteed. But, for the reasons I'll explain below, I don't think the income figure which H&T recorded, is in this case going to make a difference.

H&T also said that a credit check would've been carried out, but again those results haven't been provided. So, I don't know what information it received from the credit reference agencies when it says it carried out this check.

This would've been useful to know because a credit check doesn't always show the lender all the information that is visible on a customer's full credit report. H&T may have for example only asked for information about current outstanding balances.

But, again, the fact this information hasn't been provided hasn't had a bearing on the outcome of this complaint, because for the reasons I'll explain below, and for the same reasons as the adjudicator I don't think H&T's checks went far enough for loan two.

Mr G returned for loan two and given the value that was advanced it's likely some of the capital for this loan went towards repaying loan 1. But even if that didn't happen in this case, it wouldn't change my view on this loan given the term and value of the loan Mr G was advanced.

I do think by this point H&T needed to do more. Mr G had been indebted to H&T for around seven months and was coming back for further borrowing and extending his indebtedness by at least another two years.

These factors ought to have led H&T to have carried out further checks before loan two was granted. It could've done this a number of ways, it could've asked to see a copy of his full credit report and it could've checked his expenditure either through asking for bank statements or perhaps asking to see copies of the bills that he had declared.

I accept that H&T says it may have done this but as it hasn't provided the Financial Ombudsman Service with the evidence of these checks I can only conclude, at the moment that its checks didn't go far enough.

Mr G has provided the Financial Ombudsman with a copy of his full credit report. I accept, that this report was generated in February 2017, with is five months before the loan was approved. But it does show information that would've been visible to H&T at the time had it asked to see the credit report.

I can consider it reasonable to rely on the information within the report because it provides an overview of Mr G's wider financial situation in the time just before the loan was approved. The full credit report shows two CCJs recorded against Mr G, one in August 2016 (so less than a year before loan 2 was advanced) and one in May 2016.

These two CCJS are in my view close enough to the advancing of this loan to show that Mr G must have been having current financial difficulties and had problems repaying his outstanding debts.

In addition to this, Mr G's credit file shows at least 15 defaults recorded since 2011. These defaults are spread throughout the period of time which the credit file covers. But what it does show is that Mr G was having consistent problems repaying and managing his credit repayments.

Of the 15 defaults that I can see, around five of those had been recorded within a year of this loan being approved. Importantly, these defaults are from several different types of credit providers including, a mobile phone provider, a mail order provider and a current account. Which reinforces the view that Mr G had and was still having sustained financial problems.

Finally, I've reviewed another complaint that Mr G has had with the Financial Ombudsman Service. In this complaint, bank statements have been provided for the period leading up to loan two being advanced.

From these bank statements, I can see that Mr G was regularly moving quite significant funds between this and another account – but I don't have the statements for the second account. I can see only minimal living costs on this account – so these statements that I have don't really shed any light on what Mr G was spending his money on each month in terms of bills and utilities.

However, the bank statements do show, that Mr G was at or near his overdraft limit almost the entire month. In addition to this, when Mr G was paid, his account balance barely goes into credit. This, I think is a further sign that Mr G may have been struggling, after all using the full overdraft almost for the entire month is likely to be a sign of wider financial difficulties.

Overall, for loan two, Mr G's credit file shows a sustainable period of financial difficulties with a deterioration from the end of 2016 onwards which H&T would've likely been aware of had it carried out a proportionate check. So, I'm intending to uphold his complaint about this loan because I don't think the repayments were sustainable and so this loan ought to not have been advanced.

Response to the provisional decision

Mr G received the provisional decision and responded with the following summary;

- Mr G was unhappy H&T had been an additional two weeks to respond.

- Mr G wanted to reiterate that he didn't accept the income figures that H&T recorded for his income as this included his overtime.
- The outgoings also didn't include the payments that Mr G had to make towards his other debts.

H&T responded to the provisional decision and said that the intended uphold has used present day lending standards and in effect retrospectively applied them to a historic loan.

It also went on to explain, that typically its customer base are people who can't obtain credit from 'mainstream' lenders and so credit files and general 'financial health' reflect this.

In addition to this, H&T also said;

- At the time the loan was approved, it only took account of CCJs recorded within six months of the loan start date.
- H&T points out that 2011 (a date mentioned in the provisional decision) was five years before the first loan and six before the second.
- The application wasn't considered through open banking and therefore H&T didn't have access to Mr G's bank statements.
- A customer is entitled to fully utilise their overdraft.

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.

I've considered what H&T provided in response to the provisional decision and overall, what it says hasn't changed my mind about this complaint.

The test I've applied to the case, is well established and in my view, consistent with the rules and regulations that can be found in the Consumer Credit Sourcebook (CONC) section 5 and which was applicable at the time the second loan was approved.

At the time, as I explained in the provisional decision H&T had an obligation to carry out a proportionate check before granting the loan. It also had to make sure, that the loan was to be sustainable for Mr G and I'm satisfied that I've applied the correct test given what CONC said at the time.

In terms of the credit file, when reviewing the content of a credit file, I did take account of what H&T says is the profile of its customers. However, in this case, I could see that Mr G had been having long term financial difficulties or at least long term difficulties in managing his credit commitments. This was visible throughout the credit file that I've seen.

There were a significant number of defaults – over the six year period, with at least five being recorded within a year of the loan being advanced so these were recorded in 2016, which was before the loans were approved and not after, as H&T has suggested.

So while I accept that people that use these sorts of loans tend to have less than perfect credit files or scores. The amount of information contained within Mr G's ought to have given H&T cause for concern.

The credit report Mr G provided was dated February 2017, which is five months before loan two was advanced and for the reasons I've explained in the provisional decision, I consider it

entirely reasonable to use this credit report to gain an understanding of what Mr G's financial position was likely to be shortly before loan 2 was advanced.

I accept that the defaults in 2011 would've little bearing on H&T decision to lend, but the fact that Mr G's credit file shows that defaults were regularly being applied does to me show that he was having problems repaying creditors over a number of years and that these problems would likely continue.

In addition to this, there were two recently recorded CCJs. I appreciate H&T says that it only considers CCJs recorded within six months of when a loan is advanced. But it was required to carry out a proportionate check, and in my view, the overall status of the credit file needed to be considered before this loan was advanced. In my view, this approach is consistent with the rules and regulations that were applicable at the time at the time.

As I explained in the provisional decision, I thought before loan two was granted further checks needed to be carried out, and one route to do further checks could've been to view bank statements. But I accept these weren't checked as part of Mr G's application.

While, the use of an overdraft isn't on its own sufficient, in most cases to uphold a loan. In this case, given everything else on the credit file I think it further reinforces that Mr G was having wider problems. After all, the overdraft is credit that is owed to another lender, which could be asked to be repaid, in full at any time.

Taking all of this into account, along with what H&T may have seen in the bank statements would've, in my view, led it to conclude that this loan shouldn't have been granted.

I appreciate Mr G's frustration that H&T was afforded another two weeks to respond. However, given the outcome I was intending to reach differed to the one that had been reached by the adjudicator it was only fair to give both parties to the complaint an opportunity to review what was said.

While I can understand Mr G being unhappy with the income figure H&T used, this didn't have too much of a bearing on the outcome of the complaint, for the reasons I explained in the provisional decision I think H&T needed to do more before it granted the second loan.

Had H&T carried out further checks, then, in my view it would've likely discovered Mr G wasn't in a position to sustainably repay what he owed. So, I'm still intending to uphold Mr G's complaint about this loan and I've outlined below what H&T needs to do in order to put things right below.

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 not provided loan two, 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 Mr G 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 Mr G 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 Mr G 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.

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

- A. H&T should remove all interest, fees and charges from the balance of loan 2, and treat any repayments made by Mr G as though they had been repayments towards the principal. If this results in Mr G 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.
- B. If there is still an outstanding balance then H&T should try to agree an affordable repayment plan with Mr G. H&T shouldn't pursue outstanding balances made up of principal it has already written-off.
- C. H&T should remove any adverse information recorded on Mr G's credit file in relation to loan 2.

*HM Revenue & Customs requires H&T to deduct tax from this interest. H&T should give Mr G a certificate showing how much tax it deducted if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr G's complaint in part.

Harvey & Thompson Limited should put things right for Mr G as direct above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 May 2022.

Robert Walker
Ombudsman