

The complaint

Miss C complains that Harvey & Thompson Limited was irresponsible to lend to her.

What happened

Miss C had six loans from Harvey & Thompson between December 2013 and February 2018 as follows:

<u>Loan</u>	<u>Date</u>	<u>Amount</u>	<u>Term</u>	<u>Max Monthly Repayment*</u>	<u>Due</u>	<u>Repaid</u>
1	16 Dec 2013	£800	12m	£84.16	30 Nov 2014	6 Mar 2014
2	21 Feb 2014	£2,000	24m	£201.01	28 Feb 2016	17 Nov 2014
3	17 Nov 2014	£2,000	24m	£116.85	31 Oct 2016	1 Feb 2016
4	1 Feb 2016	£2,000	24m	£116.69	31 Jan 2018	23 Nov 2016
5	23 Nov 2016	£2,000	24m	£117.38	30 Nov 2018	23 Feb 2018
6	23 Feb 2018	£2,000	24m	£113.57	28 Feb 2020	Outstanding

** Including overlapping loans*

Miss C says she should never have been given the loans as her credit file would have shown multiple debts that she was already struggling to repay. She says she was on a low income and it was spent within days of receiving it. Miss C adds that the lending has left her in severe financial difficulty.

Harvey & Thompson says it verified Miss C's income and employment details and reviewed her credit file and bank statements. It says the information provided, and Miss C's credit score, both met its lending criteria. However, it offered to uphold the complaint about loans 4 to 6.

Miss C did not accept this offer.

Our adjudicator did not recommend the complaint should be upheld. As Harvey & Thompson had agreed to uphold the complaint about loans 4 to 6, he did not consider those loans any further. For loans 1 to 3, she was satisfied Harvey & Thompson's checks went far enough and there was nothing in the available information that should have indicated to Harvey & Thompson that the repayments were unsustainable.

Miss C responded to say, in summary, that she failed each of the credit checks so should not have been given the loans. She says she had around £10,000 of debt and believes she was in an Individual Voluntary Arrangement (IVA) or a debt management plan around that time.

Harvey & Thompson subsequently clarified that one of the loan applications was initially declined, although not due to Miss C's credit score, but that it was then reviewed by an underwriter.

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.

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

Harvey & Thompson needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss C could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Harvey & Thompson should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Harvey & Thompson was required to establish whether Miss C could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it

ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss C's complaint.

Loan 1

When Miss C applied for this loan, she was working for Harvey & Thompson and therefore her income was known. Harvey & Thompson also received multiple bank statements from Miss C which showed her expenditure and also additional income, including from benefits. As this was Miss C's first loan and the repayment was just over 10% of her employment income, I'm satisfied Harvey & Thompson carried out enough checks. There was nothing to indicate Miss C had significant existing debts, nor that she was making payments to a debt management company, and the repayments appeared affordable to her.

So I don't find Harvey & Thompson was irresponsible to have approved loan 1.

Loan 2

Loan 2 was approved whilst loan 1 was still active, but Miss C used some of the money to repay it. As the loan term had increased to 24 months, I consider proportionate checks should have included obtaining a full understanding of Miss C's financial circumstances.

Although I can't see that Harvey & Thompson carried out a credit check for this loan, I can see that it had Miss C's bank statements. As before, these show additional income and an affordable level of regular expenditure. There appear to be two credit repayments on the statements, and large cash withdrawals, but I can't see any evidence that Miss C is struggling to manage her money, or that she is over-committed to debt repayments.

So, although I'm not satisfied Harvey & Thompson carried out proportionate checks for this loan, I haven't seen any evidence that leads me to conclude Harvey & Thompson was wrong to approve it.

Loan 3

Again, Miss C applied for £2,000 over 24 months and used some of the money to repay loan 2. She continued to work for Harvey & Thompson, earning £810 per month and also received around £1,000 per month in benefits, as shown in her bank statements.

I can't see that Harvey & Thompson carried out a credit check for this loan either, and so I'm not satisfied its checks went far enough. But the checks it did do showed the repayments were sustainable and the bank statements don't indicate Miss C was repaying multiple other debts at the same time. As Miss C also had a good repayment record, there is no evidence to show she was struggling to manage her money, and I don't find Harvey & Thompson was wrong to have approved loan 3.

Loans 4 to 6

Harvey & Thompson has already agreed to uphold these loans, however, on further analysis, I found the redress calculation was not in line with our standard approach. It has now confirmed it will offer appropriate redress and has recalculated its offer. This enhanced offer has been presented to Miss C, but she still feels she should not have been approved for any of the loans.

As I don't find Harvey & Thompson was irresponsible to have approved loans 1 to 3, I'm satisfied that its offer for loans 4 to 6 is now fair and I uphold Miss C's complaint about those loans.

Putting things right

In deciding what redress Harvey & Thompson should fairly pay in this case I've thought about what might have happened had it refused to lend to Miss C, 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 Miss C may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which she may not have had with others. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she 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 Miss C 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 Miss C would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Harvey & Thompson's liability in this case for what I'm satisfied it has done wrong and should put right.

My final decision

My decision is that I uphold this complaint in part. Harvey & Thompson Limited should:

- A. Refund all the interest and charges Miss C paid on loans 4 and 5;
- B. Pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;

- C. Remove any interest and charges still outstanding on loan 6 and treat all the payments Miss C made towards this loan as payments towards the capital;
- D. If reworking Miss C's loan 6 account as I've directed results in Miss C effectively having made payments above the original capital borrowed, then Harvey & Thompson should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement* along with the refund calculated (A+B) for loans 4 and 5;
- E. If reworking Miss C's loan 6 account leaves an amount of capital still to be paid, then Harvey & Thompson can use the total refund for loans 4 and 5 (after the deduction of tax) to offset this. Any surplus then needs to be refunded to Miss C. But if there is still an outstanding capital balance then I remind Harvey & Thompson that it should take a sympathetic view when seeking to agree an affordable repayment plan with Miss C;
- F. Remove loans 4 and 5 from Miss C's credit file and remove any adverse information about loan 6 up to the date the complaint is settled. Loan 6 should also be removed from Miss C's credit file once it has been repaid.

* HM Revenue & Customs requires Harvey & Thompson to take off tax from this interest. Harvey & Thompson must give Miss C a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 July 2022.

Amanda Williams
Ombudsman