

The complaint

Mrs M complains through a representative that Harvey & Thompson Limited trading as H & T Pawnbrokers ("H&T") gave her loans without carrying out appropriate affordability checks.

What happened

A summary of Mrs M's borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£300.00	20/04/2017	20/12/2017	24	£33.93
2	£819.72	20/12/2017	29/12/2017	18	£144.38

For loan 1, Mrs M applied through a credit broker.

Following the complaint, H&T issued its final response letter saying it had lent responsibly, because the loan repayments looked affordable after it had carried out proportionate checks. However, H&T did offer, in full and final settlement of the complaint to pay Mrs M £299.71.

Unhappy with the response, Mrs M's representative referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator who didn't uphold it. She said that H&T had acted reasonably by providing the loans and it didn't reach the point where H&T needed to verify the information Mrs M had provided.

Mrs M's representatives didn't agree saying at the time both loans were approved she had taken out a number of payday loans, she was over her credit card limits and had a significant amount of outstanding debt.

As no agreement could be reached, the case was passed to me for a decision, and I then proceeded to issue a provisional decision where I explained why I was intending to uphold Mrs M's complaint. Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 19 January 2024.

Mrs M's representative let us know it had nothing further to add.

H&T let us know that the redress and findings in the provisional decision were the same as those that it reached in the final response letter to Mrs M. But no further comments have been provided.

A copy of the provisional findings follows this in a smaller font and forms part of this final decision.

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.

The checks had to be "borrower" focused – so H&T had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mrs M. In practice this meant that H&T had to ensure that making the payments to the loan wouldn't cause Mrs M undue difficulty or significant adverse consequences.

In other words, it wasn't enough for H&T to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mrs M. Checks also had to be "proportionate" to the specific circumstances of the loan application.

H&T had to assess the lending to check if Mrs M could afford to pay back the amount she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. H&T's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mrs M'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 Mrs M. These factors include:

- Mrs M 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);*
- Mrs M 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);*
- Mrs M 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 Mrs M. The investigator didn't think this applied to Mrs M's complaint because 2 loans were advanced, and I agree.

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

Mrs M declared as part of her application that she worked full time and received a monthly income of £1,860 when loan 1 was advanced and £1,890 when loan 2 was provided.

For loan 1, Mrs M declared monthly outgoings of £274. However, looking at the information provided by H&T, it felt that this figure was too low – and so for its affordability assessment it used a monthly outgoings figure of £683.90. A similar process was undertaken for loan 2. Mrs M declared outgoings of £760 but H&T increased this to over £1,100 per month. For both loans, H&T believed she had sufficient disposable income to afford the loan repayments.

Before these loans were approved H&T also carried out credit searches and it has provided the Financial Ombudsman with the results it received from the credit reference agency. And so, I've reviewed the results it received to see whether there were indicators of financial difficulties or any other information that H&T needed to take account of, before advancing the loans.

Having looked at the credit results, there was in my view indicators that perhaps Mrs M was having problems managing her existing credit commitments. For loan 1, it knew that over the course of the last 60 months Mrs M had used 94 different credit facilities of which 75 had been settled. In addition, Mrs M had opened 18 new credit facilities within the last 6 months.

I don't know from H&T's results what sort of credit facilities these were. But the fact that Mrs M was needing to open, on average, 3 new accounts per month, would suggest underlying difficulties. This is further supported by the fact that there had been 21 credit searches within the last three months.

Indeed, given how frequent accounts were being opened, I don't think it's unreasonable to suggest that some or all of these were likely to be high-cost borrowing – perhaps payday loans.

A similar situation can also be seen in the credit checks results provided by H&T for loan 2. This time, Mrs M had made use of 128 credit facilities within the last 60 months, with 105 being settled. Mrs M had also opened 21 accounts within the last six months. Taking account of the information H&T received at loan 1, within the last year Mrs M had opened 39 new credit accounts. Given the sheer number of accounts, the only reasonable conclusion to draw is that these were likely high-cost credit.

I do therefore think it's arguable, given the contents of the reports H&T provided were perhaps sufficient for it to realise that Mrs M would unlikely be able to make her repayments without having to borrow again. But even, if H&T didn't conclude this, I still think the sheer volume of new credit accounts being opened ought to have prompted it to consider whether it knew enough about Mrs M's actual financial position, for it to be satisfied that the borrowing was sustainable.

H&T could've gone about reviewing and verifying the information Mrs M had provided a number of ways. It could've asked to see evidence of her income, her outgoings, bills, bank statements or asked to see a full copy of her credit report. This would've enabled H&T to have probed further, as to why Mrs M appeared to have a constant need for credit. H&T didn't do this and so I'm satisfied, in the circumstances it hasn't carried out a proportionate check.

Mrs M's representative has provided a copy of her credit file. Although it was generated in 2022, it covers the last six years, and so will provide details of her credit balances and details of other credit accounts that were active at the time these two loans were approved.

Had H&T made better checks at loan 1, it would've likely discovered Mrs M had at least three credit cards owing nearly £7,000. She had two high-cost revolving credit accounts – although both were, according to the credit file, reporting zero for the balances I can see from the balance history, these accounts were regularly used – and so would've likely incurred some costs in servicing them.

I can also see Mrs M had 4 outstanding payday loans that needed servicing as well as 3 loans from high street banks. The total cost to service the outstanding credit that Mrs M had at the time was around £1,400 per month - which was a significant portion of her declared income. And on top of this, she had general living costs as well, which needed to be considered.

Overall, given the existing commitments that Mrs M had to other creditors, the number of outstanding payday loans and the term in which this loan was to be repaid over, has led me to conclude that Mrs M didn't have sufficient funds to be able to afford to take on any further credit.

Mrs M's situation appeared to have worsened by the time loan 2 was granted. Had H&T made better checks, it would've likely discovered she had at least 6 outstanding payday loans and 3 bank loans. I can see the total cost to service all of these loans (as well as other credit commitments such as credit cards) came to over £2,000 per month, which is more than her declared income, before any other living costs were considered. Had H&T made better checks, it would've likely discovered Mrs M couldn't afford this loan either.

I am therefore intending to uphold the complaint about both loans 1 and 2 and I've set out below what H&T needs to do in order to put things right for Mrs M.

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.

H&T didn't say, in the final response letter on what ground the refund was being made for beyond it being in full and final settlement. The final response letter also didn't say which loan(s) the refund was for nor was there any offer to amend Mrs M's credit file. Indeed, the final response letter made it clear the complaint wasn't being upheld.

So, while I acknowledge that H&T made the offer, as I did in the provisional decision, it wasn't clear from the final response letter exactly what the refund amount related too.

I've not been provided any further evidence, so I see no reason to depart from the findings I made in the provisional decision. I still think, further checks were needed before the loans were approved, and had further checks been conducted, H&T would've likely discovered a number of outstanding payday and bank loans. And so, these loans weren't affordable for her.

I've outlined below what H&T needs to do in order to put things right for Mrs M.

Putting things right

H&T shouldn't have given Mrs M any of her loans. So, to put things right, H&T should:

- A. Add together the total of the repayments made by Mrs M towards interest, fees and charges on her loans.
- B. Calculate 8% simple annual interest less tax* on the individual payments made by Mrs M which were considered as part of "A", calculated from the date Mrs M originally made the payments, to the date the complaint is settled.
- C. Pay Mrs M the total of "A" plus "B".
- D. Remove any adverse information H&T has recorded on Mrs M's credit file in relation to the loans.

*HM Revenue & Customs requires H&T to deduct tax from this interest. H&T should give Mrs M a certificate showing how much tax it's deducted, if she asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs M's complaint.

Harvey & Thompson Limited trading as H & T Pawnbrokers should put things right for Mrs M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 February 2024.

Robert Walker
Ombudsman