

## The complaint

With the help of a professional representative (PR) Miss D complains that Harvey & Thompson Limited trading as H & T Pawnbrokers (H&T) lent to her irresponsibly and created an unfair credit relationship by doing so. For ease, I'll refer mainly to the PR's actions as being those of Miss D.

## What happened

Miss D had the following unsecured cash loans with H&T:

	Date	Amount	Term	Repayment	Status
Loan 1	16 June 2017	£150	4 months	£50.54 monthly	Repaid 7 Oct 2017
Loan 2	9 Oct 2017	£750	47 weeks	£25.78	Repaid 18 Oct 2018
Loan 3	18 Oct 2018	£551.56	53 weeks	£14.91 weekly	In default

On 6 October 2023, Miss D complained to H&T saying that her relationship with it was unfair as described in Section 140 of the Consumer Credit Act 1974 (s.140). She said at the time of her applications, she had a high level of borrowing elsewhere with a history of missed payments. She said she'd been actively encouraged to take loans for the maximum available to her and was vulnerable. Miss D says H&T failed to carry out reasonable and proportionate checks before lending to her.

H&T looked into Miss D's complaint and issued a final response letter. It said it had carefully checked Miss D's income and expenditure with reference to her bank statements before agreeing to lend to her. It allowed her to choose repayment terms to suit her own budget. It was confident the loans had been affordable when they were agreed. H&T didn't uphold Miss D's complaint.

Miss D was unhappy with H&T's response, so she referred her complaint to our service. One of our investigators looked into it. H&T told us that it didn't consent to us looking at Loan 1 as it had been brought too late under the rules set by the Financial Conduct Authority (FCA). Our investigator disagreed with H&T on that point and assessed the whole complaint. But she didn't uphold it as she felt H&T had done enough to assess Miss D's applications and had reached fair decisions to lend.

Miss D didn't agree with our investigator, so as there was no agreement, the complaint has been passed to me to decide.

## 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 reached a different view of the complaint from that of our investigator. I issued a provisional decision saying:

*"There are time limits for referring a complaint to the Financial Ombudsman Service, and H&T thinks Miss D's complaint about Loan 1 was referred to us too late as the lending*

*decision was made more than six years before she raised her complaint. Our investigator explained that Miss D had complained that the loan had created an unfair relationship, and so the complaint had been brought in time. There is no dispute that we can look at Loans 2 and 3 as the complaint was raised within six years of them being drawn.*

*For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. Miss D has complained that the loans caused her financial difficulties and as a result created an unfair relationship. H&T hasn't responded to that aspect of our investigator's opinion, but as I don't think Miss D's complaint about Loan 1 should be upheld, I can continue without its response.*

*In deciding what is fair and reasonable I am required to take relevant law into account. Because Miss D's complaint is in part about the fairness of her relationship with H&T, relevant law in this case includes s.140A-C.*

*S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (H&T) and the debtor (Miss D), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:*

- any of the terms of the agreement;*
- the way in which the creditor has exercised or enforced any of his rights under the agreement;*
- any other thing done or not done by or on behalf of the creditor.*

*Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.*

*S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.*

*Given what Miss D has complained about, I need to consider whether H&T's decision to lend to her, or its later actions, created unfairness in the relationship between her and H&T such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.*

*Miss D's relationship with H&T is therefore likely to be unfair if it didn't carry out proportionate affordability checks and doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow.*

*I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:*

- Did H&T carry out reasonable and proportionate checks to satisfy itself that Miss D was in a position to sustainably repay the credit?
  - If not, what would reasonable and proportionate checks have shown at the time?**
- Did H&T make a fair lending decision?*
- Did H&T act unfairly or unreasonably towards Miss D in some other way?*

*H&T had to carry out reasonable and proportionate checks to satisfy itself that Miss D would be able to repay the credit sustainably. It's not about H&T assessing the likelihood of it being*

*repaid, but it had to consider the impact of the repayments on her.*

*There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.*

*Did H&T carry out reasonable and proportionate checks?*

*The nature of H&T's business is that it often lends to people who can't obtain finance elsewhere and its checks go further than many other businesses to reflect that. On each occasion, H&T took details from Miss D of her income and expenditure and verified that using bank statements she provided. It also carried out a check of her credit file to understand more about her financial circumstances. I think these checks can fairly be considered reasonable and proportionate and I've evidence that they were carried out on each loan.*

*Did H&T make a fair lending decision?*

*While I do think H&T carried out reasonable checks, I also need to consider whether it reached a fair decision to lend. I think it did for Loans 1 and 2, but I don't think it reached a fair decision to lend Loan 3. Let me explain.*

*Loan 1*

*To be clear, I've been able to consider a complaint about this loan because Miss D raised her complaint within six years of the credit relationship ending. That is, the loan closed on 7 October 2017, and she complained about it on 6 October 2023. The effect of s.140 and our jurisdiction rules means she has complained about the unfairness of the relationship in time.*

*Miss D appears to have been a new customer of H&T when she applied for a loan of £150 to be repaid over four months. She declared herself to be unemployed with a monthly income of £1,993 with essential expenses of £454.*

*H&T checked her bank statements and saw benefit payments totalling the income figure Miss D declared. Its own information expected her expenditure to be higher than she'd declared at £725, and its review of her bank statements found her expenditure to actually be £820. It used the figure from her bank statements to calculate that Miss D had a monthly disposable income of £1,173.69.*

*Miss D's credit file showed she had 2 active accounts which were up to date. There were no defaults or County Court Judgements (CCJ's). There had been no searches against her credit file in the previous three months and one in the last twelve.*

*All things considered, I think H&T reached a fair decision to lend to Miss D on this occasion. It seemed clear that Miss D ought to be able to repay the loan. For context ahead of my decision on Loan 2, Miss D did repay the loan on time on 7 October 2017 with no apparent problems. I've seen no evidence that H&T treated her unfairly in agreeing the loan or in any other way.*

*Loan 2*

*Miss D applied for a new loan on 9 October 2017, having already repaid Loan 1. She declared she remained unemployed, but she was now paid £447 per week with a monthly total of £1,940. She declared her essential expenses to be £623 a month.*

*H&T estimated her expenditure as £725 but calculated £956 from her bank statements. It calculated she had a weekly disposable income of £227. It recorded a maximum weekly instalment of £26. It appears Miss D may have initially applied for £1,500 but it seems that wasn't agreed. I say this because Loan 2 was opened at £750 with weekly repayments of £25.78 – in line with the weekly instalment H&T had calculated.*

*Miss D's credit file showed she now had 4 active accounts, 2 of which had been opened in the last three months (one is likely to have been Loan 1). There had been 8 searches of her credit file in the last three months.*

*So there were signs that Miss D had taken credit elsewhere. I say this because her expenses had increased, new accounts were showing on her credit file and there had been a number of searches recorded against her.*

*But it appeared from the checks carried out that Miss D had sufficient disposable income to afford this new loan, and she'd proven her ability to repay a smaller loan already. So all things considered, I think H&T reached a fair decision to lend Loan 2 to Miss D.*

### *Loan 3*

*Miss D applied for Loan 3 on 18 October 2018. That was more than a year after Loan 2 had been drawn. Loan 2 had been due to run for 47 weeks, so ought to have been repaid by then, but there was still a balance outstanding.*

*The account statement for Loan 2 shows, Miss D had missed a payment on 28 December 2017 when her Direct Debit was unpaid. She missed another on 18 April 2018 and her Direct Debit was cancelled. The payment due 19 September 2018 was made late three days later. Miss D then made no further payments leaving a balance of around £75 outstanding. There was a cash payment of £25.78 and £49.76 was transferred to Loan 3 to bring the account to a close.*

*When Miss D applied for Loan 3, she declared a weekly income of £262 – a monthly figure of £1,135 – and declared expenses of £623. H&T estimated her expenditure as £765 but calculated £996 from her bank statements. It calculated that this left a weekly disposable income of £32.19 and recorded a maximum instalment of £15.*

*Miss D's credit file now showed she had 8 accounts and one of those had defaulted in the last twelve months.*

*So we can see that Miss D had struggled with Loan 2 and failed to repay it on time. She had taken finance elsewhere and had defaulted on one of those. Her income had dropped significantly – around £800 per month – effectively wiping out her disposable income.*

*I appreciate this new loan repaid the arrears on Loan 2 and reduced the payments in monetary terms from £25 or so a week, to £15. But as a percentage of her weekly disposable income, the new monthly repayment was almost half, whereas the payment to Loan 2 (that she struggled with) was less than 12%.*

*I've looked at Miss D's bank statement from August to October 2018. I can see she received a benefit payment of £319.80 on 28 August 2018 but then did not get paid again in the following six weeks. I think this reflects, at least in part, the drop in Miss D's income and also the difficulty she had completing loan 2. This would have been evident to H&T when it checked her bank statements.*

*Taking everything into account, I think H&T ought to have realised that Miss D was likely to*

*struggle to adapt to her new income level – there were signs that she'd been finding things difficult anyway. I don't think H&T reached a fair decision to lend Loan 3 to Miss D because I think there was enough information to indicate the loan was likely to be unsustainable for her over the period.*

### *Summary*

*For the reasons I've explained, I don't uphold Miss D's complaint about Loans 1 and 2, but I do uphold Loan 3. I don't think H&T ought to have provided Loan 3 to Miss D. I have considered Miss D's complaint about the unfairness in the credit relationship between her and H&T. But I've not seen anything which suggests H&T treated her unfairly in any way other than agreeing Loan 3 for her. To be clear this complaint has been upheld because of H&T's failings which took place within six years of Miss D raising her complaint. I haven't seen anything to persuade me that any unfairness – or an unfair relationship between the parties under s.140 – existed before Loan 3 was drawn. So, I'm satisfied s.140 doesn't materially impact the outcome of this case."*

Miss D hasn't replied to my provisional decision, but H&T has. In summary, it said:

- I was mistaken to say Miss D's benefit payment of £319.80 per month had stopped.
- Loan 2 hadn't been repaid by Loan 3. The payment of £49.86 was an interest adjustment due to the missed payment on 28 December 2017. It said that payment had been missed due to H&T "*moving dates around Christmas*", so it had refunded the amount.
- It had recalculated Miss D's income and expenditure for Loan 3. It found she had an income of £1,659 or £383 per week. Her expenses totalled £1,331 per month leaving a monthly disposable income of £327.82. It said Loan 3 was affordable on that basis.

### *Benefit payments*

I've had another look at Miss D's bank statement and can see that as H&T has said, the monthly payment of £319.18 did in fact continue. I apologise for my error.

### *Interest adjustment for missed payment*

I accept H&T's statement that the £49.78 'adjustment' to the Loan 2 was in fact extra interest as a result of the payment which was due at the end of December 2017. While I accept its explanation, I do think there was a payment due at that time as the credit agreement says payments were due weekly. There doesn't appear to be any clause in the credit agreement allowing Miss D to miss a payment over the Christmas period. A payment was made successfully on 20 December 2017. Another was called for under the direct debit on 27 December 2017 as expected, but that shows as unpaid the following day. The next payment was made on 3 January 2018.

So while I accept what H&T says about the payment, it seems clear one was due but wasn't made for whatever reason.

H&T hasn't mentioned my comments that Miss D also missed a payment on 18 April 2018, her direct debit was cancelled, and her payment due 19 September 2018 was made late. I assume therefore it accepts those points.

### *Recalculated income and expenditure*

I note H&T's comments that Miss D's income and expenditure were both higher than was stated on the application. It hasn't explained why the correct figures weren't included in the

application at the time given it had copies of Miss D's bank statements as part of its process. That said, I've thought carefully about whether the revised figures make a difference to the outcome of this complaint, and I don't think they do. Let me explain.

The underlying reason behind my provisional decision was that I felt there were signs that Miss D was struggling financially such that ought to have made H&T refuse to lend to her. Despite the increase in her disposable income *on paper* I think those signs remain pertinent.

Miss D's current account shows that she was relying on an overdraft to fund her day to day living expenses. Miss D only returned to credit on her current account for a couple of days around her largest benefit payment before returning to an overdrawn position. She hadn't relied on an overdraft prior to Loans 1 and 2.

Miss D's credit file had worsened significantly, between Loan 1 and her application for Loan 3. As mentioned above, by Loan 3, she had several accounts elsewhere and had defaulted on one.

Putting her credit file and her bank statements together, I think this shows Miss D was struggling to maintain her expenditure and a further loan increasing her indebtedness was unlikely to be sustainable for her. For this reason, I remain of the view that H&T should have refused to lend Loan 3 to Miss D.

### **Putting things right**

As I don't think H&T ought to have agreed Loan 3, I don't think it's fair for it to be able to benefit from any interest or charges under the credit agreement. But I think Miss D should pay back the amount she borrowed. Therefore, H&T should:

Add up the total repayments Miss D made and deduct these from the total amount of money she received.

a) If this results in Miss D having paid more than she received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). † H&T should also remove all adverse information regarding this account from Miss D's credit file.

b) If any capital balance remains outstanding, then H&T should arrange an affordable and suitable payment plan with Miss D. Once Miss D has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

† HM Revenue & Customs requires H&T to take off tax from this interest. H&T must give Miss D a certificate showing how much tax it's taken off if she asks for one.

### **My final decision**

My final decision is that I uphold this complaint. Harvey & Thompson Limited trading as H & T Pawnbrokers should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 17 April 2025.

Richard Hale  
**Ombudsman**