

## complaint

Miss T says Harvey & Thompson Limited (H&T) irresponsibly lent to her.

## background

This complaint is about an instalment loan H&T provided to Miss T on 16th July 2017. The loan was for £350 and was due to be repaid in 18 monthly instalments of £44.50.

Our adjudicator upheld Miss T's complaint and thought the loan shouldn't have been given. H&T didn't agree. So as the parties still do not agree, the complaint has been passed to me, an ombudsman, to make a decision.

## my findings

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.

H&T 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 T 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 H&T 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 H&T was required to establish whether Miss T 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 of the arguments, evidence and information provided in this context and what this all means for Miss T's complaint.

H&T asked Miss T for information about her income and expenditure and also carried out a credit check. It has provided basic details about this check including that Miss T had opened 24 new accounts within the 6 months previous to her asking for this loan. The check also brought up that she had defaulted on an account. I think, considering the length of the loan that she had asked for, the information that it got back from its search should have prompted it to carry out further checks. I think H&T should have had concerns about whether it knew enough about Miss T's true financial situation.

I think that it would've been proportionate to fully review Miss T's financial situation before approving the loan. And I think that H&T needed to verify the information it found out where possible. This is to make sure Miss T was in position to make the repayments sustainably over the length of the loan. I don't think H&T did this. So I need to think about what it would've seen if it had carried out proportionate checks.

Miss T has provided some information about her financial circumstances which includes some bank statements and a recent credit report. I accept that this isn't exactly what H&T would've seen at the time. But I think it would've found out similar information if it had made proportionate checks, so I think it's reasonable to rely on it.

This shows that Miss T was having problems managing her money. H&T would've found out that Miss T was paying a significant amount to other creditors. And she'd also been repaying a significant amount to five short term lenders at the time she applied for the loan.

I think that H&T would've found out this information if it had made proportionate checks. And I think it would've seen Miss T wouldn't have been able repay the loan in a sustainable way over the length of the loan. So I think that H&T shouldn't have given the loan to Miss T. So I think she has lost out as a result of this. So I'm upholding Miss T's complaint.

#### **putting things right – what H&T needs to do**

- refund all interest and charges Miss T paid on the loan;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†;
- remove any negative information about the loan from Miss T's credit file

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

**my final decision**

For the reasons given above, I'm upholding Miss T's complaint. Harvey & Thompson Limited should pay Miss T compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 31 January 2020.

Mark Richardson  
**ombudsman**