

complaint

Mr B complains that Harvey & Thompson Limited (H&T) wrongly lent him money he couldn't afford to pay back.

background

Mr B said that the business didn't carry out proper affordability checks and allowed him to continue to borrow when he was in financial difficulty.

Mr B took out 3 instalment loans between November 2016 and August 2017. In November 2016 Mr B borrowed £300 which was repayable in 30 instalments of £17.97. This loan was effectively re-financed on 8 April 2017 when Mr B borrowed £364 repayable in 23 instalments of £25.55. On the 22 August 2017 Mr B re-financed again and borrowed £1267.69 repayable in 63 instalments of £41.90. Mr B wasn't able to make the repayments on the final loan which has now been passed to a third party collection company. Mr B has made an arrangement to repay the debt.

H&T said that Mr B's income was above the lower limit and the loans were affordable on its criteria. H&T said it asked about Mr B's financial position and looked at his bank statements. Mr B didn't say that he was in difficulty or couldn't afford to repay. It lent him the money on the basis of reasonable and proportionate checks taking into account what Mr B said and his borrowing history. It said it made a lending decision on the information given which showed Mr B could afford the repayments.

Our adjudicator recommended that the complaint should be upheld. She thought that H&T didn't properly take account of the information it had. Although H&T asked Mr B about his outgoings and reviewed his bank statements she said that the business failed to engage with the information that Mr B was reliant on benefits and his bank balance was low and he was not properly managing his money. Mr B repeatedly re-financed the loans which suggested that he was in difficulty making the repayments. She thought that Mr B's declared financial position, his bank statements and his pattern of borrowing should have alerted H&T that Mr B was in difficulty and couldn't afford to repay what he had borrowed. H&T replied to say in summary that based on the information it had, Mr B had enough disposable income to meet the repayments and the loans were properly underwritten and responsibly provided.

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 was required to lend responsibly. It needed to make checks to see whether Mr B could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr B was borrowing, the length of the agreements and his borrowing history. But there was no set list of checks H&T had to do.

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 Mr B 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 Mr B could sustainably repay his 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 Mr B's complaint.

Mr B started borrowing from H&T in November 2016. He told H&T that his monthly income was £1460 and this was made up of state benefits. Mr B provided his bank statements which showed his income and outgoings. H&T recorded his outgoings as £301. This would give him a disposable income of £1159 each month. Looking at Mr B's bank statements the outgoings did not match the figures that Mr B had given and showed that he had other credit commitments and had a very low balance which was not consistent with the level of disposable income he had declared.

On the 8 April 2017 before Mr B had repaid all of the instalments due, he asked to essentially re-finance his loan and borrow £364. This would suggest that Mr B was struggling to make the repayments without borrowing further and was not making any inroads into his debt. This pattern does not match the disposable income figure and suggested that Mr B couldn't afford the repayments.

Mr B did make the repayments and in August 2017 applied to borrow £1267.69. This was a significant increase and although the instalments were repayable over a longer a period they were the highest to date. This borrowing pattern and the bank statements provided in support are inconsistent with Mr B having the level of disposable income he had declared.

Mr B had 2 children and was in receipt of carers allowance. His bank statements show debt repayments and other outgoings that H&T did not record. Mr B was eventually unable to repay the instalments and requested a return of all the direct debit repayments he had made. This would suggest to me that Mr B couldn't comfortably afford to repay the loans and by borrowing further he was entering into a dependency.

Had H&T asked reasonable questions based on the information in the bank statements I think that it would've seen that Mr B was in difficulty. H&T should have been able to see that Mr B was relying on short term lending to supplement his day to day living expenses.

Although Mr B took out the loans and was able to make some repayments I don't think that this is enough for me to say H&T acted responsibly. Mr B wanted and needed the loans because of the debt he was in. H&T should've taken better steps to see whether he could afford his loans and shouldn't have continued to lend given his borrowing pattern.

Mr B has had the benefit of the money so I think it is only fair that he pays it back so I won't ask H&T to write off the outstanding balance but I agree with the adjudicator that all interest or charges incurred on all the loans should be refunded and all information recorded on Mr B's credit file about these loans should be removed.

H&T should pay interest on the amounts paid by Mr B towards the interest and charges. It can use the refund to reduce the outstanding balance.

my final decision

My final decision is that I uphold this complaint. In full and final settlement of it Harvey & Thompson Limited should do the following:

1. refund any interest and/or charges applied to each loan
2. add 8% simple interest per year from the time that the interest and charges were paid to the time Mr B gets it back. †
3. remove all adverse information recorded n Mr B's credit file about these loans.

† HM Revenue & Customs requires Harvey & Thompson Limited to take off tax from this interest. Harvey & Thompson Limited must give Mr B a certificate showing how much tax it's taken off if he asks for one.

Mr B has an outstanding balance on his final loan. This debt has now been sold to a third party debt collection company. I don't know whether Mr B has repaid any of this debt to the debt collection company.

I haven't seen anything to make me think Mr B shouldn't repay the principal he borrowed from the lender. So it seems reasonable that if Mr B still owes some of the capital he borrowed that the refund due to him should be used to reduce that debt. But to do so Harvey & Thomson Limited must first take the debt back into its own books and reduce it to reflect

just the capital that Mr B borrowed. If Harvey & Thompson Limited is unable, or unwilling, to do this it must ensure that its interest and charges, and any other interest and charges added by the debt collection company, are refunded to Mr B so he can choose whether to use the compensation to settle his debt directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 June 2019.

Emma Boothroyd
ombudsman