

complaint

Mr S complains that Harvey & Thompson Limited (H&T) lent irresponsibly to him.

background

Mr S took out two loans with H&T. His borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Monthly repayment
1	19/07/2017	03/10/2017	8	£500.00	£90.51
2	25/10/2017	outstanding	21	£750.00	£79.72

Our adjudicator thought the complaint should be upheld in respect of loan 2. Mr S agreed with our adjudicator's view. H&T didn't provide a substantive response and so the matter has been passed to me to make a final decision.

I can see that Mr S has been corresponding with our adjudicator in respect of a separate complaint about another business. Just to be clear that the complaint I'm looking at in this decision is about H&T only.

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 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 Mr S 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. Having said that, I'd also expect H&T to take full account of the information it obtained as part of the application process.

I think that it is important for me to make clear that H&T was required to establish whether Mr S could sustainably repay the loan – 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 relevant regulations define 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 S's complaint. Having done so, I agree with our adjudicator and I think the complaint should be upheld in respect of loan 2.

Mr S agreed with what our adjudicator said about loan 1. So I haven't looked at further at whether H&T irresponsibly agreed to that loan. But I have had regard to Mr S's circumstances with regard to loan 1 insofar as they are relevant to my consideration of loan 2.

I can see that when Mr S applied for loan 1, he said his monthly income was around £1,800 per month and his monthly expenditure was £650. At that time, H&T also undertook a credit check. That check showed Mr S had four active credit accounts, two of which had been opened in the previous two months. He had settled one account.

However, by the time Mr S applied for loan 2 around three months later, the picture was very different. He reported his income to be roughly the same and his expenditure had decreased a little. But the credit check now showed that Mr S now had 22 credit accounts – 13 of those were active and nine had been settled in the previous six months.

So, since July 2017, Mr S had settled a further eight credit accounts. The speed at which those accounts appeared to have been opened and closed suggests that Mr S may have taken out a number of payday or high-cost short-term loans. The number of active accounts had also increased by nine in that short three-month period.

Opening such a significant number of accounts in a short space of time can indicate that a person is struggling financially. And I think this would have been cause itself to alert H&T that Mr S may have been struggling financially. At that point, H&T should have undertaken more checks and in my view, it would have been proportionate to undertake a full review of Mr S's financial circumstances.

Had that review been undertaken, I think that H&T would have seen that in a four-day period alone between September and October 2017, Mr S had made short-term lending *repayments* of over £1,500. He had also taken out a loan of £11,000 at the beginning of that October. Shortly after taking out that loan, Mr S obtained more payday loans. I can also see that Mr S spent very significant sums on online gambling transactions. It is abundantly clear that the repayments for loan 2 were not sustainably affordable.

Put simply, for loan 2, a proportionate check should have amounted to a full review of Mr S's financial circumstances. Had those checks been undertaken, H&T would have realised Mr S could not sustainably repay loan 2. H&T will now need to take action to put things right.

putting things right – what H&T needs to do

H&T shouldn't have given Mr S loan 2.

As I said above, it appears there is an outstanding balance in respect of this loan. If that is the case and H&T sold the outstanding debt to a third party, it should buy it back if it can and then follow the steps set out below. If it cannot buy the debt back, it must liaise with the new debt owner to achieve the results outlined below.

- a) H&T must remove all interest, fees and charges from the balance of loan 2, and treat any repayments made by Mr S as though they had been repayments of the principal on this loan. If this results in Mr S having made overpayments then H&T must refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- b) However, if there is still an outstanding balance then H&T should try to agree an affordable repayment plan with Mr S. It must not pursue outstanding balances made up of principal it has already written-off.
- c) H&T must remove any adverse information recorded on Mr S's credit file in relation to loan 2.

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

If H&T and Mr S do agree a repayment plan, I'd remind H&T of its obligation to treat Mr S fairly.

my final decision

For the reasons given above, I'm partly upholding Mr S's complaint. Harvey & Thompson Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 April 2020.

Nicola Bowes
ombudsman