

complaint

Ms R has complained about lending Harvey & Thompson Limited (H&T) provided to her in February 2010.

background

I set out a detailed background to this complaint in my provisional decision which I've attached as an appendix to this final decision. I invited both parties to let me have further comments or evidence before I issued a final decision.

Ms R has responded accepting my provisional decision. H&T has also responded and offered to refund the interest Ms R paid on the lending from August 2010 as a gesture of goodwill. H&T went on say that it seemed the lending was assessed based on the Office of Fair Trading's guidance which came into force after it approved the lending for Ms R.

my findings

I've again reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've thought carefully about H&T's response to my provisional decision and having done so, my conclusions remain unchanged and I'll explain why.

Although H&T approved the loan facility prior to the OFT's irresponsible Lending Guidance coming into effect in March 2010, H&T had a duty to lend responsibly prior to the ILG. I explained in my provisional decision that:

"When H&T approved this facility for Ms R, it was during the period it held a standard licence from the Office of Fair Trading ("OFT"), which enabled it to carry out consumer credit activities. So while I think that businesses should always look to treat customers fairly, H&T also had an overarching responsibility to carry out a reasonable assessment as to whether Ms R was able to affordably repay her borrowing.

The Office of Fair Trading (OFT)'s Irresponsible Lending Guidance (ILG) came into effect in March 2010 and so this guidance was relevant to the lending relationship from March onwards. when it come into force, stated that "Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."

H&T made lending decisions each time Ms R requested funds and those lending decisions had to be made responsibly. The fact that it agreed the facility in February 2010 doesn't absolve it of its duty to lend responsibly, and as the relationship continued in March 2010 and beyond, the ILG had come into effect and it applied to H&T's continued lending relationship with Ms R.

And as I don't think H&T made reasonable assessments prior to lending the loan and it didn't carry out any further checks before approving subsequent drawdowns, I don't think it did enough before lending.

Had H&T's checks gone further, it's likely to have found that Ms R couldn't afford the facility. In the circumstances, I think it's fair for H&T to put things right as Ms R has lost out as a result.

putting things right – what H&T needs to do

- refund all interest and charges Ms R paid on all the drawdowns from February 2010;
- 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 adverse information about the entire lending from Ms R's credit file.

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

my final decision

I uphold Ms R's complaint and require Harvey & Thompson Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 24 June 2019.

Oyetola Oduola
ombudsman

extract from provisional decision

background

In February 2010, H&T approved a cheque guarantee credit facility for Ms R. Ms R could drawdown up to £600 at a time, this amount included the interest and capital. So she could take out a maximum capital of up to £522 and repay this with £78 of interest bringing the total to £600.

H&T has provided two documents to demonstrate Ms R's borrowing during the period. From what I've seen, Ms R was used the facility continuously between February 2010 and April 2012.

In April 2018, Ms R complained to H&T about the lending. However, H&T didn't look into her complaint as it believed Ms R had complained too late. Ms R referred her complaint to this service and H&T objected to us considering the complaint on the ground that it had been made too late. An adjudicator considered H&T's objection and thought we could look at Ms R's complaint. H&T initially disagreed but later agreed that we could consider the complaint further.

Once the issue of H&T's objection had been resolved, one of our adjudicators looked into Ms R's complaint about H&T lending to her. Our adjudicator thought Ms R's complaint should be upheld in part. H&T disagreed and so the complaint has come to me – an ombudsman for decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time.

When H&T approved this facility for Ms R, it was during the period it held a standard licence from the Office of Fair Trading ("OFT"), which enabled it to carry out consumer credit activities. So while I think that businesses should always look to treat customers fairly, H&T also had an overarching responsibility to carry out a reasonable assessment as to whether Ms R was able to affordably repay her borrowing.

The Office of Fair Trading (OFT)'s Irresponsible Lending Guidance (ILG) came into effect in March 2010 and so this guidance was relevant to the lending relationship from March onwards. When it came into force, it stated that *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

H&T has said it has limited information about what happened at the time. This isn't surprising as the lending occurred more than 10 years ago and it's not unusual for limited paperwork to be available from such a long time ago. However H&T is able to say, that at the time, Ms R would've attended one of its branches in person in order to borrow from it. And during that visit, Ms R would've been required to complete an application form and give details about her employment, age and identity.

From the information I've seen, at the time of the first drawdown in February 2010, Ms R was receiving benefits of around £1,500¹ per month. From the information H&T says it would've gathered at the time of the application, I've had to conclude that it was aware Ms R was receiving benefits. But the fact it likely knew Ms R was in receipt of benefits doesn't mean that H&T shouldn't have lent to Ms R solely for that reason. But this was a factor that it had to take account of when approving these loans.

H&T didn't carry out any credit checks, this means it wouldn't have been aware that Ms R had county court judgements (CCJs) recorded against her. But H&T wasn't required to carry out a credit check, let alone one to a specific standard. So the fact that a credit search wasn't carried out doesn't mean that I'd be in a position to conclude that H&T did anything wrong or that Ms R's complaint should be automatically upheld.

H&T has said: *"When using the Cheque Guarantee Card H&T were able to establish that Ms R's bank had effectively provided a pre-existing line of credit as CGCs were issued to customers that banks considered to be creditworthy and would guarantee each cheque in a cheque book to the value of the guarantee on the card. As banks had near perfect information to make this judgement, given their knowledge of the long-term history of a customer's current account and their management of day to day finances, this was taken into consideration. H&T's experience was that a CGC was a strong determinant of creditworthiness."*

I don't agree that the cheque guarantee card absolves H&T of its own responsibility to lend responsibly and relying so heavily on the cheque guarantee card in the way that it did wasn't reasonable. Cheque guarantee cards are usually issued as part of the process when a qualifying account is opened but that doesn't mean that it reflects the consumer's creditworthiness throughout the time they have the card. As H&T would be aware, financial circumstances change from time to time. So while Ms R may have been credit worthy at the time the card was issued it doesn't necessarily follow that she had that same status when it lent to her.

Given what H&T knew about Ms R's circumstances, I think it failed to carry out enough checks before agreeing to lend. It was agreeing a limit of £600, forty percent of Ms R's income. I consider this to be a significant amount. H&T was aware Ms R was on benefits, it would've been prudent in those circumstances to at least have an understanding of her living costs to assess whether she could afford to repay had she taken out the maximum limit it was approving the facility for that limit.

As stated above, the information from H&T is very limited so I don't know if it was aware that at the time it was lending Ms R was a single mother with three children, one of whom was disabled. I say this because had H&T known this, it would've been clear from her circumstances that she was likely to struggle to repay.

Also, I've considered how Ms R used the credit facility it seems Ms R was regularly using the facility and what I understand from the information provided, it seems Ms R didn't fully repay a drawdown before borrowing more. And from December 2010, she was drawing down up to the maximum on a number of occasions. H&T said Ms R would've been expected to repay each drawdown within a month like a payday loan. With that in mind, the account statement suggests that Ms R was rolling over her borrowing regularly. This pattern of rolling over repayments continued throughout the borrowing.

As part of its duty under the ILG, H&T had a duty to *"monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty"*. Ms R rolling over repayments regularly suggests that she was in financial difficulties and H&T should've acted and I can't see that it did that.

I think this pattern of rolling over bore out because Ms R was unable to afford the loan from the start. I've reviewed Ms R's bank statement to understand her financial circumstances at the time. Of course I accept this isn't perfect as different checks show different things. And just because something shows up in the information Ms R has provided it doesn't mean it would've shown up in any extra checks H&T might've carried out. But what Ms R has provided is the best indication I have of her financial circumstances at the time. And without anything else I think it's reasonable to rely on the bank statements.

¹ rounded down

Ms R's bank statements show that from February 2010 to April 2012, her account was constantly overdrawn. Having reviewed the bank statement, I can't see that there was a time during the lending that Ms R was in credit with her bank. Taking into account the significant limit she was lent and the fact that she was responsible for paying household bills as a single mother of three children at the time, all this together make it reasonable to conclude that she couldn't afford to repay this borrowing from the outset. It follows that she was unable to afford subsequent drawdowns.

I think that H&T lent to Ms R in the way that it did *because* it had concerns over her ability to make the repayments and wanted to protect its own position by guaranteeing it would receive what it lent.

After all purely from an administrative point, why else would it collect on a number of separate cheques each for the maximum amount backed by the consumer's bank instead of a single cheque for a higher amount that wouldn't be backed? This method more or less guaranteed that H&T would receive its repayment even if Ms R's account contained insufficient funds. In these circumstances, any shortfall would become an unauthorised debt to her bank, thereby increasing Ms R's level of indebtedness – which is what happened here.

For the reasons I've stated above, H&T didn't lend responsibly to Ms R and she's lost out as a result. It needs to put things right.