

complaint

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

background

This complaint is about two loans H&L provided to Miss H between January 2017 and June 2017. Miss H's borrowing history is as follows:

Loan	Date Taken Out	Instalments	Date Repaid	Loan amount	Highest Instalment
1	14/01/2017	12	21/06/2017	£300.00	£48.05
2	29/06/2017	18	outstanding	£500.00	£59.62

Our adjudicator originally upheld Miss H's complaint about both these loans, but H&L disagreed. So, one of our other adjudicator took another look at the case and felt that only loan 2 should be upheld. Neither parties have responded to the most recent correspondence, so the complaint was passed to me to make a final 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&L 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 H 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&L should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer'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&L was required to establish whether Miss H 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 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 Miss H's complaint.

H&L says it completed an income and expenditure check before providing Miss H with any of the loans. I've looked at the details of Miss H's loan and I think this level of check was proportionate for the first loan. I say this because the monthly repayments under the agreement represented a very small percentage of Miss H's income and H&L had no prior relationship with Miss H which would've suggested she was in any financial difficulty. I have seen that H&L's checks for loan 1 did show that she had defaulted on a credit agreement repayment within the last 12 months, but I don't think this in itself was enough to warrant further checks on a loan with such low repayments relative to Miss H's income.

As our adjudicator explained, and I agree, by loan 2 H&L should've conducted a more thorough check of Miss H's circumstances. I agree that a more thorough check would've been proportionate because at this point Miss H was returning for her second loan just days after repaying her first. And the amount requested for loan 2 was significantly more than loan 1. At this point H&L had been in a lending relationship with Miss H for five months, and the new agreement was proposed for another 18 months. In addition, the basic checks that H&L carried out at that time indicated that Miss H had taken out 14 loans with other providers in the last six months. This information ought to have prompted H&L to conduct a more thorough check of Miss H's financial situation for loan 2.

A proportionate check for loan 2 would most likely have shown that Miss H had regularly been gambling significant sums of money, and in my view, it would not be unreasonable to consider that many hundreds of pounds being spent on gambling regularly would be a current financial situation to take into account. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed by, gambling, then a properly carried out affordability assessment was likely to lead to a responsible lender to conclude that the loan – or any subsequent ones – was not affordable for an applicant in that situation. And this coupled with the fact that it looks like Miss H had taken out a large number of short-term loans with other providers, ought to have led to H&L to realise that it shouldn't have lent Miss H any further loans. So, I'm upholding Miss H's complaint about loan 2 on this basis.

putting things right – what H&L needs to do

H&L shouldn't have given Miss H loan 2. If H&L have sold the outstanding debts H&L should buy these back if H&L are able to do so and then take the following steps. If H&L are not able to buy the debts back then H&L should liaise with the new debt owner to achieve the results outlined below.

- A. H&L should add together the total of the repayments made by Miss H towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything H&L have already refunded.
- B. H&L should calculate 8% simple interest* on the individual payments made by Miss H which were considered as part of "A", calculated from the date Miss H originally made the payments, to the date the complaint is settled.
- C. H&L should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss H as though they had been repayments of the principal on all outstanding loans. If this results in Miss H having made overpayments then H&L should 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. H&L should then refund the amounts calculated in "A" and "B" and move to step "E".
- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Miss H. However, if there is still an outstanding balance then H&L should try to agree an affordable repayment plan with Miss H. H&L shouldn't pursue outstanding balances made up of principal H&L have already written-off.
- E. H&L should remove any adverse information recorded on Miss H's credit file in relation to loan 2.

*HM Revenue & Customs requires H&L to deduct tax from this interest. H&L should give Miss H a certificate showing how much tax it has deducted, if she asks for one.

my final decision

For the reasons given above, I'm partially upholding Miss H's complaint. Harvey & Thompson Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 4 April 2020.

Sienna Mahboobani
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