

The complaint

Mr M has complained about the behaviour of Harvey & Thompson Limited trading as H&T Pawnbrokers in relation to a loan he took out with it.

What happened

Mr M wanted to borrow £2,500 from H&T. He pledged a watch as security and entered into a fixed sum loan agreement with it on 22 March 2022. The total amount repayable under the agreement was £3,858.65 and it was due to be repaid within 6 months.

At the beginning of April 2022, H&T said Mr M came in to discuss taking out additional money against the watch. H&T said Mr M explained at that point he'd only received £1,500. H&T said it paid £2,500 and it referred to the agreement that had been signed. It also said there was no cash difference that day. H&T said that the CCTV was broken and so as a gesture of goodwill, it would waive the interest on the agreement.

Mr M didn't pay off the agreement within six months. H&T wrote to him in December 2022 to say the watch would be sold at auction on 19 January 2023, and the asking price would be £4,737.35. But Mr M would have until 18 January 2023 to stop the sale.

H&T wrote to Mr M on 25 January 2023 to say the watch realised £4,737.35, and the net sale proceeds were £4,712.35 after taking off the postage costs.

Mr M contacted the Financial Ombudsman to complain. He said he was expecting some money back given H&T had sold the watch for nearly £5,000. To resolve the complaint, Mr M requested the difference in the sale price compared to what he borrowed. He couldn't understand why he wasn't due something if H&T had waived the interest. Mr M explained he was given conflicting information from H&T about whether the watch had sold at auction.

H&T explained that the watch was sent to auction with a reserve price of the loan amount plus interest. This was the figure of £4,737.35 it referred to. H&T explained that if an item doesn't sell at auction, H&T would repay the loan plus interest, so the item is effectively sold to H&T. And this is what happened in Mr M's case. H&T did, however, offer Mr M £1,358.65 in full and final settlement. It said this equates to the interest that would have accrued on the loan to the end of its six-month period.

Mr M wasn't happy with the offer. He said he wouldn't accept less than around the £2,200 because this is the amount H&T said the watch was sold for (over and above the loan amount).

Our investigator looked into things and explained he was only going to consider the complaint about the sale of the watch. He could understand why Mr M questioned the 'sale' price given the watch didn't sell at the auction. But he thought that H&T had broadly treated Mr M fairly and that H&T should honour the offer it made of £1,358.65.

Mr M and the investigator continued to correspond about the offer. Mr M accepted the offer in April 2023. But as he didn't receive the payment within a few days he asked for the case

to be decided by an ombudsman. He received the payment, and I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr M and H&T that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr M entered into a regulated credit agreement with H&T and our service is able to consider complaints relating to these sorts of agreements.

Our investigator focussed on the issues relating to the sale of the watch and explained the complaint about the alleged money not received wasn't within our jurisdiction. I can see H&T wrote to Mr M about that issue in April 2022. But I can't see Mr M was given referral rights to the Financial Ombudsman. Given I think the application of interest is relevant to consider in this complaint, I think it would make sense to look at this issue as well, as part of this complaint.

From what I've seen, Mr M took a few days to return to H&T and it said he asked if he could borrow more against the watch. It looks like he also said he'd only received £1,500. While I'll never know for sure what happened, I think the agreement is clear in setting out he borrowed £2,500. I would have expected him to raise the issue near enough straight away if it was £1,000 short. H&T said there was no cash discrepancy for that day. And taking everything into account, I don't find I have the grounds to say the most likely thing to have happened is that it gave him £1,500.

H&T took the decision to waive the interest because CCTV wasn't available. I don't have the grounds to direct it to do more than this. But I think the decision to waive interest is relevant when considering what happened next.

Mr M didn't redeem the item and H&T contacted him in December 2022 to let him know it was planning to sell the watch at auction in January 2023 with an asking price of £4,737.35. And it gave Mr M another chance to prevent the sale of the watch. I think this was fair in the circumstances given the terms Mr M has supplied say that when the property becomes realisable H&T could sell it by public auction or by private treaty.

H&T wrote to Mr M after the auction to say it had realised £4,737.35 on the sale. But that Mr M wasn't due a refund.

H&T has let us know the asking price was calculated by adding the loan amount to the interest that was due. If H&T had applied the interest, and the sale proceeds only covered that (and the loan amount) Mr M wouldn't have been due any reimbursement. In this case, however, Mr M wasn't charged any interest. So it complicates things. I can understand why, upon first reading the letter, Mr M may have thought he'd be due a surplus. The Consumer Credit Act 1974 sets out that any surplus shall be paid by the pawnee to the pawnor. But was there a surplus?

H&T has said it 'sold' the watch to itself. It referred to terms and conditions, but it's not explained specifically how that works in practice. I don't know if it's simply done something internally with its records or if it's sold the watch to a different part of the business (or separate entity) so that it can be sold on through a store. As per the terms of the agreement that Mr M supplied, if the watch wasn't sold at auction, H&T was able to sell it through private treaty, but I think the explanation of how this works in Mr M's case could have been

much clearer – particularly given the special arrangement for interest he had due to the initial complaint he raised. The terms Mr M supplied us don't mention H&T would sell the watch to itself if it wasn't sold at auction. The terms say H&T is entitled to accept any reasonable offer. But how does that work if it's making the offer itself? I can't see H&T has explained that.

Putting all that to one side, Mr M accepted H&T's offer of £1,358.65. This means that he's had the £2,500 funds from the loan, plus this separate payment. And he's not been asked to pay any interest. As I explained above, I'm required to resolve complaints quickly and with minimum formality. By accepting the offer, it indicates Mr M was happy with it. He hasn't alleged the gross amount he's received is unfair. Seeing as though he's accepted this offer, in all the circumstances, it seems like a fair way to resolve the complaint. I'm not minded to direct H&T to take any further action.

I can't see we've received a response from H&T. Mr M responded to say, in summary:

- He didn't see the terms and conditions and wasn't told the watch was sold internally. He wants to see this is common practice within the industry and if it was approved by the regulator.
- When he accepted the amount offered, he said he wasn't happy with the outcome.
- If H&T sold the watch internally why wasn't this communicated to him.
- Why wasn't he offered the chance to buy the watch back.
- It was confusing how it worked with regards to the interest being applied.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I want to thank Mr M for his response.

Mr M supplied the copy of the terms and conditions I've referred to, so I'm satisfied he had a copy of them. I appreciate Mr M wants to know more about H&T's practices. He says the process is confusing and he wants to know why H&T didn't communicate with him more clearly. I've set out I agree H&T hasn't clearly explained how the process works in practice. And this case is slightly unusual in that there was a previous arrangement not to charge any interest. But I must base my decision on what I think is fair and reasonable having reviewed what I've been supplied by the parties.

As I said in my provisional decision, I'm required to resolve complaints quickly and with minimum formality. Ultimately Mr M did explain he accepted the offer. The complaint was referred for decision because he wasn't reimbursed straight away. But this happened within a few days. Mr M hasn't alleged the gross amount he received for the watch was unfair. I'm mindful he's not had to pay any interest or fees. And I can't see he mentioned, until now, that he's unhappy he wasn't given the opportunity to buy the watch back. So this isn't something H&T considered, and it didn't form part of the complaint. Mr M may wish to contact H&T to see if the watch is still available to purchase if he's looking to do that.

Taking everything into account, Mr M pledged a watch as security and entered into a fixed sum loan agreement with H&T. He was unable to pay back what was owed within the relevant timescale. H&T warned him the watch would be put to auction if the agreement wasn't paid. This didn't happen. And while H&T hasn't clearly explained how the mechanics of the sale worked, and I think it ought to have communicated more clearly, Mr M accepted an offer to resolve things. In the round, I'm satisfied that this draws a line under things for all the parties. I'm not going to make any further directions.

My final decision

My final decision is that Harvey & Thompson Limited trading as H&T Pawnbrokers has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 December 2023.

Simon Wingfield
Ombudsman