

## The complaint

Ms S complains that Harvey & Thompson Limited, trading as H & T Pawnbrokers, did not offer her fair compensation for the loss of her pawned jewellery in a burglary.

## What happened

In August 2022 Ms S pawned several items of 18 carat gold jewellery, with a total weight of 951.54 grams. She borrowed £30,000, which she was to repay in six months, with about £8,161 interest. She says the jewellery was worth much more than that, and she has provided receipts showing that she owned jewellery worth about £83,000 in total (although I note that the total weight of the jewellery in those receipts is 964.43g; the difference has not been explained).

In November the relevant branch of H&T was broken into and some pawned goods were stolen, including all of Ms S's jewellery. Ms S had not insured it. H&T's own insurance policy only covered the value of the loan.

H&T therefore cancelled the loan agreement with nothing for Ms S to pay. It also offered her two options to choose from. The first option was that H&T would replace her stolen jewellery, but it later told her that this had proved to be impossible. The second option, which still remains open, was to pay her the market value of 951.45g of 18ct gold, which on the date of H&T's offer was £35,866. When combined with the waived loan balance, this offer comes to a total of £74,026.

Ms S did not accept that offer. She said that she should get the full value of the lost jewellery, because the value of the gold alone would not be enough to cover the cost of having the jewellery replaced, which would include the cost of design and workmanship. Also, some of the jewellery had contained stones, the cost of which was not included in H&T's offer. Ms S said that the jewellery had had sentimental value, and so she should be compensated for her distress at losing it. She said the waived interest should not be counted towards her compensation total. She referred this complaint to our service.

H&T argued that its offer was fair. It said that under its terms and conditions, the onus was on its customers to insure their goods. It said its only obligation was to write off the loan, and that its offer went far above and beyond that. (H&T also pointed out that in her complaint form Ms S had told us that she would be willing to accept £60,000 in settlement of her complaint, but I think she meant in addition to the loan being written off.)

One of our investigators considered this complaint. She did not uphold it. She did not agree with everything H&T had said, and pointed out that H&T's terms and conditions said that if pawned goods were permanently lost then its liability would be limited to their market value. But she said there was no recent or clear evidence of what the jewellery's market value really was. She decided that H&T's offer was fair, and that the true cause of Ms S's misfortune was the burglar.

In response, Ms S provided new valuations of the jewellery from the original suppliers, dated October 2023. These showed that the total value had not changed much. But the

investigator did not find this new evidence to be persuasive, and so she did not change her mind. She referred this case for an ombudsman's decision.

I wrote a provisional decision which read as follows.

### **What I've provisionally 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.

Having done so, I do not uphold it. But because my reasons are different to my colleague's, I have written a provisional decision so that Ms S has an opportunity to comment on them.

I have taken into account what the law says about this unfortunate situation. I referred to *Chitty on Contracts* (35th edition), in which paragraph 36-129 says:

“The pledgee, since he has possession of the thing pledged, is liable for failure to take reasonable care of it; if it is stolen from him he will be discharged from liability if he can show that he took ordinary care of it.”

A footnote to that paragraph refers to a trader's obligations under section 49 of the Consumer Rights Act 2015, which requires a trader to provide a service to a consumer “with reasonable care and skill.”

H&T's terms and conditions appear to have been drafted with this rule in mind. In paragraph 2(a), it says:

“...the Pawnbroker will take reasonable care of the Property. The Pawnbroker is not under an obligation to take any special care of the Property...”

This means that a pawnbroker will only be liable for the theft of pawned goods if the theft occurred because of its negligence. In the absence of clear evidence of what happened to lost or missing goods, negligence may be presumed unless the pawnbroker proves that it took reasonable care of them,<sup>1</sup> but in this case there is no dispute that the branch was broken into and burgled. So I'm satisfied that there is no evidence that H&T was negligent.

I therefore find that H&T's offer goes further than its legal obligations require it to do. On that basis, I think that its offer is fair.

I am currently not minded to uphold this complaint.

### **Responses to my provisional decision**

Ms S reluctantly accepted my provisional decision, and said she wanted to accept H&T's offer. I have therefore not waited for H&T's reply. There is no reason for me to depart from my provisional findings, and I confirm them here.

### **My final decision**

My decision is that I do not uphold this complaint.

I leave it to Ms S and Harvey & Thompson Limited to arrange the settlement of H&T's offer between them.

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<sup>1</sup> *Houghland v. R. R. Low (Luxury Coaches) Ltd* [1962] 1 QB 694.

(Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 December 2023.)

Richard Wood  
**Ombudsman**