

The complaint

Ms L complains Harvey & Thompson Limited (“H&T”) gave her a loan without carrying out appropriate checks. Had better checks been made H&T would’ve likely discovered missed payment markers on her credit file. At the time Ms L also says her monthly outgoings exceeded her income.

What happened

Ms L took one loan of £1,400 from H&T on 2 December 2017. Ms L was required to make 36 monthly repayments of £60.69. Ms L has had some problems repaying the loan and H&T says it is being repaid through a debt management plan.

After Ms L complained, H&T issued its final response letter saying it had lent responsibly, because the loan repayments looked affordable after it carried out checks which included reviewing Ms L’s bank statements and carrying out a credit search. Unhappy with the response, Ms L referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who didn’t uphold it. She said that H&T had verified her income through her bank statements – which was more than Ms L had declared to it as part of her application. She also said there wasn’t anything of concern in the credit check results.

Ms L didn’t agree saying that she nearly lost her home at the time the loan was approved. Later she explained she had to borrow money from friends and family to make the repayment and her income has since fluctuated. As no agreement could be reached, the case has been passed to me for a decision.

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.

Taking into account the relevant rules, guidance, and good industry practice, what I need to consider in deciding what’s fair and reasonable in the circumstances of this complaint are whether H&T completed reasonable and proportionate checks to satisfy itself that Ms L would be able to repay the loan in a sustainable way? And, if not, would those checks have shown that Ms L would’ve been able to do so?

If I determine that H&T did not act fairly and reasonably in its dealings with Ms L and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required H&T to carry out a reasonable and proportionate assessment of Ms L’s ability to make the repayments under this agreement. This assessment is sometimes referred to as an “affordability assessment” or “affordability check”.

The checks had to be “borrower” focused – so H&T had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Ms L. In practice this meant that H&T had to ensure that making the payments to the loan wouldn’t cause Ms L undue difficulty or significant adverse consequences.

In other words, it wasn’t enough for H&T to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Ms L. Checks also had to be “proportionate” to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon several factors including – but not limited to – the circumstances of the Ms L (e.g. her financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the smaller Ms L’s income was (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a smaller 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 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).

I’ve carefully considered all the arguments, evidence and information provided in this context and what this all means for Ms L’s complaint.

Ms L was required to make repayments to H&T over quite a long period of time – three years, so I do think, before this loan was granted it needed to gain a thorough understanding of Ms L’s financial position. And from the checks that it carried out, I think it did that.

Ms L declared as part of her application that she worked for this company, part time and received £766 per month in salary. H&T also knew she lived in rented accommodation and had two dependants.

Ms L also declared outgoings of £605 per month across several different categories such as travel, housekeeping, phone, rent and utilities. However, as part of Ms L’s application H&T reviewed her bank statements – which I do consider reasonable given the term that Ms L was due to repay this loan over. After reviewing her bank statements, Ms L’s monthly outgoings were more likely to be around £799 per month.

Now, that would’ve caused H&T some concern given that as part of her application Ms L declared a part time monthly income of £766 – and so H&T may have believed her outgoings were more than just her salary. However, H&T has said that at the time, Ms L had underreported her income because she was in receipt of certain additional in work and child benefits – which were visible from her bank statements.

These could have been taken into account when assessing her affordability for the loan. And these benefits added an additional £533 per month to her income – taking it to around £1,299. Therefore, a monthly repayment due to H&T of around £61 would’ve looked affordable.

In addition, I've reviewed the bank statements to see whether there were any other signs of either financial difficulties or whether the loan repayments may have been unsustainable for Ms L. Having done so, I don't think there was anything else that ought to have led H&T to carry out further enquires with Ms L or to have declined the loan.

There were occasionally declined transactions, but this seems to have been as a result of Ms L not having an overdraft on her account but even thinking about that, I don't think that on its own would've been enough for H&T to believe that this loan would be unaffordable or unsustainable for Ms L.

Before the loan was approved H&T also carried out a credit search and it has provided the Financial Ombudsman with the results it received from the credit reference agency. And so, like the bank statements, I've reviewed them to see whether there were indicators of financial difficulties or any other information that H&T needed to take account of, before advancing the loan.

Having looked at the credit results, there wasn't anything in my view, that would've led H&T to have carried out further checks – Ms L had six active accounts with a total outstanding balance due of £2,256. She also hadn't opened any other accounts within the last six months and hadn't any delinquent payment markers recorded on her credit file within the year proceeding the loan and she hadn't defaulted on an account within the last three years.

Overall, there were no signs, from the credit check results which indicated Ms L was in financial difficulties, was having problems managing her existing credit commitments or had unsustainable levels of debt.

I'm sorry to hear that at the time, Ms L nearly lost her home, but that information wasn't reflected in what she declared to H&T, what was visible in her bank statements or in her credit report results. So, I can't fairly say that H&T ought to have known about the problems Ms L was having.

Given this was the first loan – I think it was reasonable for H&T to have relied on the information Ms L provided to it – which included her bank statements which showed she had sufficient disposable income to afford the repayments. The information also didn't suggest Ms L was having financial difficulties or that the loan repayments would be unsustainable for her for some other reason.

I'm therefore not upholding Ms L's complaint about this loan and because an outstanding balance appears to remain and I would remind H&T of its obligation to treat Ms L fairly and with forbearance – if necessary.

My final decision

For the reasons I've explained above, I'm not upholding Ms L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 14 September 2023.

Robert Walker
Ombudsman