

The complaint

Ms L complains about Harvey & Thompson Limited trading as H & T Pawnbrokers ('HT') selling items she had pawned.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

On 18 July 2022 Ms L was loaned money by HT under a fixed sum loan agreement for around £1000 secured by several items of jewellery (the 'pledge'). The agreement was for 6 months with a total amount payable of almost £1,600.

Ms L was not able to pay the amount she owed HT under the loan so it sent her pledge to an auction house at the end of July 2023 where it was sold. HT says it has a right to do this under the agreement it had with Ms L, and that it gave her a reasonable opportunity to pay before it did this.

Ms L is unhappy that HT sold her pledge, she thinks it should have held onto it for longer, and says she made partial payments under the impression it was sufficient to stop her items going to auction.

Our investigator looked into this case and didn't uphold it. However, Ms L wants things looked at by an ombudsman. So the matter has now come to me.

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.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

May I firstly say that I fully understand why Ms L is upset her pledge was sold due to the significant sentimental value it holds for her. I recognise this – and regardless of the outcome of her complaint I am sorry about the distress the loss of the pledge has caused.

My starting point when determining if HT is at fault here is the contractual agreement. I note that under the terms of the fixed sum loan agreement Ms L signed with it HT are able to sell her pledge if she doesn't repay the loan within 6 months of taking it out (in this case the loan ended on 18/01/23) as long as it gives her 14 days' notice of its intention to sell.

HT has set out the circumstances in which it is able to sell the pledge in its loan agreement – and this procedure is reinforced by the Consumer Credit Act 1974 which explains that if a pledge is not redeemed within 6 months it is '*realisable*' and can effectively be sold if the required notice is given.

Here I note that HT gave Ms L notice of its intention to send the pledge to auction in a letter to her dated 15 June 2023. In this letter it explained that Ms L had to renew or redeem her agreement by 12 July 2023 to prevent this sale.

From the information I have been provided it is clear that Ms L did not pay the full amount she owed HT before the 12 July 2023 – so I am satisfied that she didn't redeem the agreement and on the face of it HT were not acting unfairly in sending the items to auction.

In considering alternatives to redeeming the loan in full I have thought about the interactions Ms L said she had with the HT retail store and the fact that she made two partial payments after the expiry of her loan to prevent her items being sold. I understand she paid it £150 in May 2023 and then a further £300 at the start of July 2023. However HT said that this wasn't sufficient to stop the items going to auction. Ms L has indicated she was led to believe it was.

I have some telephone notes with the store which show that Ms L called in to say she was going to be coming in to make partial payments. However, it isn't really clear to me what was said at the retail store when Ms L went there in person. Where things are unclear I decide matters on balance, and in respect of what is fair and reasonable overall.

It appears the store offered Ms L some forbearance to stall the sale of the items in return for partial payments. However, it seems unlikely it would have told her £450 was enough to prevent the sale considering the total cost of redeeming the loan and interest and noting that even renewal would require paying the interest amount of almost £600. I also note that the telephone notes show the store appeared to be warning Ms L that her items would shortly be processed for auction.

I have considered the possibility that in the store the HT staff had not been clear that Ms L hadn't paid enough to prevent the sale. However, I don't think that changes things here. I say that because:

- Ms L has not provided persuasive evidence that she would have been able to afford to pay more at the time in any event; and
- by this point HT had already allowed Ms L around an additional six months to redeem the loan in full – effectively treating her as if she had renewed it– so it was now fairly in a position to require full repayment of the outstanding redemption amount or sell the pledge.

I know Ms L says the money is not important to her and just wants HT to admit is has acted 'dishonestly'. However, I am unable to fairly say that HT acted in such a way that it needs to do more to put things right here.

I am also aware that Ms L has indicated that HT sold stones that should have been returned to her – and that it should only have sold the gold in the pledge. However, from the loan agreement it appears the jewellery was included in the pledge as a whole. I don't see any agreement that certain parts would be returned if the loan wasn't redeemed. So I am unable to fairly say that HT has acted unreasonably in that respect either.

HT has said that under the terms of the pawnbroking agreement it has with Ms L it owes her £450 as an excess from the sale which she is able to arrange to collect. Ms L can organise this with HT – but it doesn't form part of my direction here.

I am sorry to disappoint Ms L here. However, my role is to resolve disputes informally. Ms L does not have to accept my decision and might wish to pursue her case by other means, such as court, seeking appropriate advice before doing so.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 8 August 2024.

Mark Lancod
Ombudsman