

## The complaint

Ms E says Provident Personal Credit Limited lent to her irresponsibly. She says she was advised by Provident to keep relending and this eventually meant that she couldn't really afford to live. She says that the lending has negatively affected her credit history over a long period of time.

## What happened

This complaint is about ten home collected loans Provident provided to Ms E between January 2006 and July 2007.

loan number	date taken	amount borrowed	term (weeks)	date repaid
1	28/01/2006	£284	45	16/12/2006
2	18/03/2006	£1,000	80	17/03/2007
3	08/07/2006	£350	55	18/11/2006
4	19/08/2006	£100	55	20/01/2007
5	18/11/2006	£900	105	outstanding
6	20/01/2007	£300	45	17/03/2007
7	20/01/2007	£550	55	outstanding
8	17/03/2007	£2,000	105	outstanding
9	12/05/2007	£400	55	outstanding
10	28/07/2007	£250	55	outstanding

Our adjudicator said that loans 1 to 8 were not within the Financial Ombudsman Services jurisdiction. This is because the lending was approved before the time home collected loans were a regulated product.

Our adjudicator upheld the remainder of the lending. They thought that Provident should've realised, from the pattern of lending, that Ms E's indebtedness was increasing unsustainably by loan 9 and so it wouldn't be right to continue to lend to her.

Ms E disagreed with the adjudicator's opinion. She thought that all of the loans should be considered. Provident didn't fully respond.

So as no agreement has been reached the complaint has been passed 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.

We've set out our general approach to irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Provident 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 Ms E 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 Provident should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer'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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator defines 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 Ms E's complaint. I've decided to uphold Ms E's complaint in part and have explained why below.

### **Why I can't consider loans 1 to 8**

In order to consider a complaint it needs to be within this service's jurisdiction. That is, it has to be about a product or issue that the rules I operate under say I am allowed to make decision about. I can't look at every complaint that is brought to the Financial Ombudsman Service.

To look at a complaint about this type of credit I need to be satisfied that at the time of the sale it was a product that was, at the time, regulated. But this type of credit wasn't regulated until April 2007. So, this means I can't consider any of this lending before this date because in terms of the rules, it wasn't a regulated product that this service can investigate. And from the table above, loans 1 to 8 were approved before April 2007. So, I don't have the power to make a finding as to whether loans 1 – 8 were suitable (or not) because they issued at a time when this service didn't have jurisdiction to consider such complaints.

So to be clear, I can't consider whether Provident did something wrong about loans 1 – 8. But I can consider what happened when loans 9 and 10 were granted, because these were provided after April 2007.

### **My decision about loans 9 and 10**

However, I've gone on to consider the pattern of lending over all of these loans. Whilst I can't issue a decision about loans 1 to 8 they were part of the borrowing relationship Ms E had with Provident. So, the loans are something I can take into account when considering the other loans she was granted.

By loan 9 Ms E had already been indebted to Provident for around a year and a half. Whilst the loan amounts varied there was no evidence to suggest that Ms E would be able to stop using this type of credit in the near future. So I think the lending history, and pattern of lending itself, clearly demonstrates that further lending was likely to be unsustainable.

I think that Ms E lost out because Provident continued to provide borrowing from loan 9 onwards because these loans had the effect of unfairly prolonging Ms E's indebtedness by allowing her to take expensive credit over an extended period of time. And the length of time over which Ms E borrowed was likely to have had negative implications on her ability to access mainstream credit and so kept her in the market for these high-cost loans.

I think Provident was irresponsible to continue lending after this point. So I'm upholding the complaint about loans 9 and 10 and Provident should put things right.

### **Putting things right**

Provident shouldn't have given Ms E loans 9 and 10.

If Provident has sold the outstanding debts it should buy these back if Provident are able to do so and then take the following steps. If Provident are not able to buy the debts back then Provident should liaise with the new debt owner to achieve the results outlined below.

A) Provident should add together the total of the repayments made by Ms E towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Provident has already refunded.

B) Provident should calculate 8% simple interest\* on the individual payments made by Ms E which were considered as part of "A", calculated from the date Ms E originally made the payments, to the date the complaint is settled.

C) Provident should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Ms E as though they had been repayments of the principal on all outstanding loans. If this results in Ms E having made overpayments then Provident 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. Provident 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 Ms E. However if there is still an outstanding balance then Provident should try to agree an affordable repayment plan with Ms E. Provident shouldn't pursue outstanding balances made up of principal Provident has already written-off.

E) The overall pattern of Ms E's borrowing for loans 9 and 10 means any information recorded about them is adverse, so Provident should remove these loans entirely from Ms E's credit file. Provident do not have to remove loans 9 and 10 from Ms E's credit file until these have been repaid, but Provident should still remove any adverse information recorded about these loans.

\*HM Revenue & Customs requires Provident to deduct tax from this interest. Provident should give Ms E a certificate showing how much tax Provident has deducted, if she asks for one.

### **My final decision**

For the reasons I've explained, I partly uphold Ms E's complaint.

Provident Personal Credit Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 12 October 2020.

Andy Burlinson  
**Ombudsman**