

The complaint

Miss B complains Provident Personal Credit Limited (trading as Provident) lent to her irresponsibly.

What happened

Our adjudicator thought the complaint should be upheld in part. Miss B disagreed with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Miss B's complaint should be upheld in part with an additional four loans being upheld. A copy of the background to the complaint and my provisional findings follow this and form part of this final decision:

What I said in my provisional decision:

Miss B took 7 loans with Provident between August 2009 and November 2017. I've included some of the information we've received about these loans in the table below (loan 1 and loans 6 to 11).

Loans 2 – 5 were provided by a different entity within the Provident group.

<i>Loan Number</i>	<i>Loan Amount</i>	<i>Date of loan</i>	<i>Actual Repayment Date</i>
<i>1</i>	<i>£150</i>	<i>15/08/2009</i>	<i>Written off</i>
<i>2</i>	<i>£200</i>	<i>24/05/2012</i>	<i>26/09/2012</i>
<i>3</i>	<i>£300</i>	<i>24/09/2012</i>	<i>19/12/2012</i>
<i>4</i>	<i>£400</i>	<i>26/11/2012</i>	<i>Written off</i>
<i>5</i>	<i>£500</i>	<i>14/12/2012</i>	<i>Written off</i>
<i>6</i>	<i>£200</i>	<i>22/09/2016</i>	<i>21/12/2016</i>
<i>7</i>	<i>£400</i>	<i>15/12/2016</i>	<i>07/06/2017</i>
<i>8</i>	<i>£100</i>	<i>07/06/2017</i>	<i>11/08/2017</i>
<i>9</i>	<i>£1,500</i>	<i>07/08/2017</i>	<i>outstanding</i>
<i>10</i>	<i>£500</i>	<i>01/09/2017</i>	<i>outstanding</i>
<i>11</i>	<i>£2,000</i>	<i>15/11/2017</i>	<i>outstanding</i>

Miss B also took out four loans with Provident Personal Credit (trading as Greenwood Personal Credit Limited) - loans 2 to 5 in the above table. Because Provident was part of the same group as Greenwood, we think that Provident should've been aware of any Greenwood loans that Miss B had taken. These loans will be only referenced in this decision when speaking about the lending history. I want to be clear that I make no finding, in this decision, as to whether Greenwood was right or wrong to have provided these loans.

When Miss B complained to this Service there was still an outstanding balance that needed to be repaid for loans 9, 10 and 11. It appears the outstanding debt for these loans has been sold to a third party to collect.

Provident has also confirmed to this Service that the principal and interest for loan 1 has

been written off - so I understand this loan is not outstanding.

One of our adjudicators looked at Miss B's complaint. He didn't think there were any concerns about the Provident lending until 15 November 2017 - when loan 11 was lent. The adjudicator didn't think Provident should've lent this loan as he considered the weekly repayments were a significant proportion of Miss B's income and likely to be unsustainable.

Provident agreed with the assessment. In line with the adjudicator's recommendation, I understand it has already removed all interest, fees and charges from the loan's balance and treated the repayments made by Miss B as though they had been repayments of principal. From what Provident has told us, there is still an outstanding capital balance to repay after the refund was applied. In addition, Provident has agreed to remove any adverse information about this loan from Miss B's credit file.

However, Miss B didn't agree with the adjudicator's assessment. She made a number of points including:

- *further loans were provided after loan 1, even though the loan was still outstanding;*
- *Provident has agreed that loan 1 shouldn't have been lent and has taken it back from the third party;*
- *Miss B didn't have enough disposable income to be able to afford any of the loans.*

As no agreement has been reached, the case has been passed to me for a final decision.

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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website. Having thought about all of this, I'm intending to uphold more loans than the adjudicator recommended.

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 in order to figure out whether Miss B 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 Miss B'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.

So Provident was required to establish whether Miss B could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis might be an indication Miss B could sustainably make her repayments. But it doesn't automatically follow that this is the case.

When loans 6 to 11 were lent, The Financial Conduct Authority's (the industry regulatory) had set out in the Consumer Credit Sourcebook ("CONC") that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Miss B's complaint.

loan 1

Miss B didn't make any payments of principal or interest for this loan. And these amounts have now been written off by Provident. So, there no longer an outstanding debt to repay. This was quite a modest loan (£150) and with no previous lending history I wouldn't expect Provident to have checked more than Miss B's income and expenditure. It's unclear what information Provident did obtain for this loan or what proportionate checks would've revealed. But Provident has now written off all the debt and as I've indicated above, this is more than we'd expect a lender to do if we'd decided an error had been made. So, there is nothing further I can ask Provident to do for this loan.

loans 6 to 11

Being part of the same group, Provident ought reasonably to have been aware of the four loans sold by Greenwood Personal Credit Limited between May and December 2012. What this means is that it should've known that Miss B had experienced significant repayment problems with the last two Greenwood loans. Indeed, from what I've seen Miss B had repaid less than half the principal for each loan and therefore over £1,200 was sold to a third party in July 2013.

Provident would also have been aware that no repayments at all had been made towards loan 1.

So despite the break in lending between loans 5 and 6, I think the history of significant repayment issues meant that it wasn't reasonable of Provident to have relied on what Miss B told it. After all, she'd been unable to repay a modest loan over a number of years and also had two other (higher value) loans that she'd been unable to repay. It seems that Miss B's circumstances hadn't improved since loan 1. So instead, I think Provident needed to gain a full understanding of Miss B's actual financial position to ensure loan 6 was affordable and she would be able to sustainably repay it.

Provident could've gone about this several ways, such as asking for evidence of outgoings, asking Miss B about short-term loans she had outstanding, or looking at Miss B's bank statements. This might've helped verify information provided and revealed whether there was any other information that Provident might've needed to consider about her general financial position.

From what I can see when loan 6 was lent Miss B had at least one other short-term loan outstanding, indicating that she still appeared to be relying on high cost credit. Taken together with the significant problems Miss B had in repaying previous loans (indeed, many of those loans still had outstanding principal due), in my view Miss B was unlikely to be able to repay loan 6 – or any of the subsequent loans - in an affordable and sustainable way. Indeed, Miss B then had further repayment problems towards the end of this chain of borrowing, which supports what I've said above about these loans. I'm therefore intending to uphold Miss B's complaint about loans 6 to 11. And I've set out what Provident should do to put things right as detailed below.

I understand that following the adjudicator's assessment Provident has already reduced Miss B's outstanding principal balance by the payments that she has made towards loan 11. But it'd be helpful in response to this provisional decision if it could confirm whether or not this has been done.

It may help if I explain our approach to putting things right for a consumer. If a business has made an error – either because it accepts one has been made or we decide something has gone wrong – the starting point, for this service, is that a consumer should be put back into the position they would've been in had the error not been made. However, that is not always possible especially in cases that involve lending money.

In cases of irresponsible lending, such as this, this service has to acknowledge that the consumer has received a sum of money and has had the benefit of it. So normally, we'd expect the consumer to have to repay at least this sum. This is why, in such cases, we ask the lender to refund any extra that has been repaid by a consumer, for example interest and charges. We also direct an additional interest payment to the consumer to reflect the loss of use of the funds. The consequences of what we do is that it effectively provides the consumer with an interest free loan. And in this case, I haven't seen anything to make me think we need to depart from our normal approach.

It appears that Miss B has paid significantly less than the principal for loans 9 to 11 so it's likely she will still have an outstanding balance to pay after Provident has carried out my proposed redress. But as I've explained above, because Miss B has had the benefit of the sums lent, it's fair that at least this is repaid for loans 9 to 11. But I would remind Provident to treat Miss B fairly when discussing a way forward where an outstanding balance remains. I think it would also be fair for any adverse information about loans 6 to 10 to be removed from Miss B's credit file.

For loan 11, I think Provident should remove the entire loan entry from Miss B's credit file - this is because the period of time Miss B owed money means that any information still recorded about this loan is adverse. Loans 6 to 10 had the effect of unfairly prolonging Miss B's debt indebtedness by allowing her to take expensive credit over an extended period of time. And the sheer number of loans 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. Provident though doesn't have to remove the entry until the loan is repaid, although any adverse information should be removed.

So, I'm intending to uphold Miss B's complaint about loans 6 to 11. And I've set out what Provident should do to put things right as detailed below.

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.

Both Provident and Miss B didn't raise any new points after receiving my provisional decision. So, I see no reason to depart from the findings that I reached in the provisional decision. I therefore still think Provident was wrong to have provided loans 6 to 11 and I've outlined below what it needs to do to put things right.

Putting things right

If Provident has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If it isn't able to buy the debts back, then it should liaise with the new debt owner to achieve the same results:

- refund all interest and charges Miss B paid on loans 6 to 8;
- pay interest of 8% simple a year on any refunded interest and charges for loans 6 to 8 from the date they were paid to the date of settlement*;
- for loans 9 to 11, the payments made by Miss B for these loans should be treated towards the principal balance (for loan 11 where this may have already taken place); If the repayments Miss B has already paid (to both Provident and the third party) exceed the principal for these loans, then any overpayment should be refunded to Miss B. To this overpayment 8% simple interest a year should be added from the date of the overpayment to the date of settlement*
- If there is an outstanding balance still due for loans 9 – 11 then the refund for loans 6 to 8 can be used to offset the balance. If an outstanding balance still remains then I would remind Provident that it should treat Miss B fairly and try and come to a mutually agreeable repayment plan;
- remove any negative information from Miss B's credit file about loans 6 to 10;
- any information recorded about loan 11 is adverse because of the period over which Miss B owed money. So, all the entry about loan 11 should be removed. But Provident doesn't have to do this until loan 11 is repaid. Any adverse information though should be removed.

*HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Miss B a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained above and in my provisional decision, I partly uphold Miss B's complaint.

Provident Personal 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 Miss B to accept or reject my decision before 21 October 2020.

Robert Walker
Ombudsman