

The complaint

Mr D complains that Provident Personal Credit Limited trading as Satsuma lent to him irresponsibly.

What happened

Using the information we have from Mr D and Satsuma here is a brief loan table. It shows that there was a gap in lending between loans 2 and 3.

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Combined Repayment
1	12/08/2017	21/04/2018	12	£1,000.00	£166.00
2	22/09/2017	20/04/2018	9	£100.00	£188.20
break in lending of around 14 months					
3	28/06/2019	outstanding	12	£1,500.00	£249.00

One of our adjudicators looked at the complaint and thought that Loan 2 ought not to have been lent to Mr D as it came so soon after the first loan. Provident agreed and has said it will put things right in the way that our adjudicator had outlined.

Mr D disagrees and maintains that the third loan ought not to have been lent to him as he had trouble repaying Loans 1 and 2 and he says Provident ought to have known this.

The complaint remained unresolved and was 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.

We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

[Satsuma needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr D could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. 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 Satsuma should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors

include: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been given loans need to be looked at: repeated refinancing could 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. But I do not think that this applies to Mr D's circumstances: he was approved for two loans and then there was a gap before loan 3. Satsuma was required to establish whether Mr D could sustainably repay his 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 a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr D's complaint.

As Satsuma has accepted the outcome in relation to Loan 2, I do not need to review it as it is part of the complaint which has been resolved. The 'Putting things right' part of the decision reflects this.

As for Loan 1, I think that looking at all the evidence I have from both parties, and that Mr D was a new customer to Satsuma when he applied for Loan 1, then Satsuma carried out the checks I would have considered to have been proportionate for that Loan and I do not uphold Mr D's complaint in relation to it. It would have been disproportionate for Satsuma to be reviewing Mr D's bank statements. It used Mr D's declared income and expenditure, and I have seen evidence in the records before approving Loan 1 that it carried out a credit check and factored into its affordability assessment the additional (undeclared) debt Mr D had to repay around that time.

Mr D feels very strongly about Loan 3. He's of the view that his difficulty to repay Loans 1 and 2 ought to have led Satsuma to decline his application for Loan 3. And I understand that his redundancy payments were used to repay them around April 2018. The bank statements I have for Mr D do not cover 2018 but the Satsuma repayment records shows that they were repaid 21 April 2018.

Looking at all that I have and the fact that there was a 14 month gap between the lending, then its checks for Loan 3 were proportionate. It was reasonable to treat Loan 3 as the first loan in a new chain. I note that Mr D was declined a loan in July 2018 but still there was a significant gap between it and the application for loan 3 for Satsuma to think that Mr D's finances may have altered and improved. It carried out credit searches and those did not lead it to think that his situation was such that the Loan 3 ought not to be approved. As I said earlier, for a first loan in a new loan chain it would be disproportionate for Satsuma to do more than it did. I do not think Satsuma needed to do more.

Putting things right

In deciding what redress Satsuma should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr D for Loan 2, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr D may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct.

From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr D in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr D would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Satsuma's liability in this case for what I'm satisfied it has done wrong and should put right.

My understanding is that Loan 2 has been paid off. Satsuma ought to do as follows:

A) Satsuma should add together the total of the repayments made by Mr D towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Satsuma has already refunded; and

B) Satsuma should calculate 8% simple interest* on the individual payments made by Mr D which were considered as part of "A", calculated from the date Mr D originally made the payments, to the date the complaint is settled; and

C) Satsuma should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr D as though they had been repayments of the principal on all outstanding loans. If this results in Mr D having made overpayments then Satsuma 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. Satsuma 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 Mr D .

E) Satsuma should remove any adverse information recorded on Mr D's credit file in relation to loan 2.

* HM Revenue & Customs requires Satsuma to take off tax from this interest. It must give Mr D a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr D's complaint in part and Provident Personal Credit Limited trading as Satsuma should do as it has agreed to do and as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 April 2021.

Rachael Williams
Ombudsman