

The complaint

Mr M has complained that Provident Personal Credit Limited (“Provident”) gave him unaffordable loans.

What happened

Mr M took 10 home credit loans from Provident between December 2005 and November 2014. A summary of his borrowing, based on the information provided to us from Provident, can be found below:

Loan	Date Taken	Date Repaid	No. of Weekly Instalments	Amount Borrowed
1	10/12/2005	sold	105	£1,500.00
2	08/04/2006	sold	55	£500.00
3	02/09/2006	sold	105	£1,600.00
4	17/12/2013	09/04/2014	32	£200.00
5	08/04/2014	23/09/2014	52	£650.00
6	17/06/2014	25/11/2014	52	£300.00
7	29/07/2014	outstanding	63	£400.00
8	02/09/2014	outstanding	84	£1,000.00
9	23/09/2014	outstanding	63	£1,000.00
10	25/11/2014	outstanding	110	£700.00

It appears that Mr M ran into difficulties repaying his loans. Loans 1-3 were sold to a third-party in September 2008. Whilst we have limited information about the status of loans 7-10, it appears, according to Provident records, that an outstanding balance remains on each of these loans.

One of our adjudicators looked at Mr M’s complaint. She explained that our service was unable to consider Mr M’s first three loans as they were taken out prior to 6 April 2007 - the date when this type of credit was regulated and therefore falls within this service’s jurisdiction. So, the adjudicator was only able to consider whether loans 4-10 ought to have been approved.

The adjudicator didn’t think Provident were wrong to lend loans 4-7, based on the information she had seen from both parties. But when Mr M applied for loan 8, he already had three outstanding home credit loans with Provident and he was applying for his fourth loan. So, the adjudicator thought that Provident shouldn’t have approved loan 8 and any subsequent loans as it was unlikely he would be able to sustain the repayments.

Provident agreed with our adjudicator’s opinion and offered to settle in-line with the adjudicator’s recommendations.

Mr M disagreed with the offer Provident was making to settle the complaint and that was in line with what the adjudicator recommended. In response, he made a number of points including;

- Provident didn't carry out any income checks.
- Mr M says he was in arrears with his mortgage and he had other debts.
- Provident must have known there was a problem as he had a number of loans running at the same time.
- Mr M says he hasn't received a breakdown and doesn't understand why there is an outstanding balance.

As no agreement could be reached the complaint has been passed to me for a final 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.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the time these loans were provided.

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 Mr M could repay these 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 consumer'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.

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

Firstly, I would like to start by saying that this type of credit wasn't regulated until 6 April 2007. This means I cannot consider any lending before this date because in terms of the rules which govern the ombudsman service - it wasn't a regulated product that this service can investigate. Loans 1-3 were approved before 6 April 2007. So, I don't have the power to make a finding on them.

Provident has offered to settle loans 8-10 in-line with our adjudicator's opinion. And this settlement is the same as I would award if I were to decide that it had done something wrong when these loans were provided. I don't think there is any ongoing disagreement about loans 8-10. And I've included these loans in the putting things right section at the end of this decision.

So, to be clear, I will only be considering loans 4-7 and whether Provident were right to approve these loans.

Loans 4-7

Firstly, I would like to start by saying I'm satisfied there are two lending chains - loans 1-3 and loans 4-10. I say this because Mr M took out loan 4 more than five years after loans 1-3 were sold to a third party. So, I think this amount of time was enough for Provident to have reasonably assumed that Mr M had overcome whatever financial motive he had for taking out his earlier loans.

When Mr M applied for loan 4, Provident asked him to declare his weekly income and expenditure. Mr M declared that he had a weekly income of £450 and his weekly expenditure amounted to £320. This would have left Mr M with a monthly disposable income of £130 from which to meet his contractual weekly repayment of £10. So, I think the evidence suggested he had enough to meet his repayments.

Mr M says he was in arrears with his mortgage and he had other debts at the time. But I don't think the fact he was in arrears or had other debts automatically meant Provident shouldn't have approved the loan. This would be dependent on other factors. Provident has been unable to provide the results of Mr M's credit checks showing the information it was aware of at the time of his applications. This is due to the data not being available due to these loans being taken more than six years ago – which I don't find unreasonable. And Mr M has not provided a copy of his credit file showing what his circumstances were like at the time of his applications.

But considering Mr M had declared he had enough disposable income to comfortably meet his repayments, and this was his first loan in over five years - I don't think it was unreasonable that Provident approved loan 4.

Mr M applied for his fifth loan around the same time he repaid loan 4. It appears that Provident completed the same level of checks as it had done for Mr M's previous loan, by asking him for his weekly income and expenditure.

Mr M declared his income had increased to £700 a week. This was made up of £450 salary and £250 for other income. Furthermore, Mr M's declared weekly expenditure was now higher – £495. This left him with a disposable income of £205 from which to meet the contractual loan repayments of no more than £22.75 a week. So, given the monthly repayments that Mr M was committed to making, on this information alone, the repayments would have appeared affordable.

However, I think at this point Provident's checks ought to have gone further to understand if Mr M was in a position to sustain his repayments. I say this because Mr M was committing himself to be indebted for a further 52 weeks – which is quite a significant period of time when considering Mr M was to make his repayments weekly. I think Provident should have verified the information Mr M was declaring, for example by obtained Mr M's bank statements. But it could've done this a number of ways, including asking to see payslips and or copies of bills that he had to pay. So for loan 5, and for any subsequent loans, Provident

needed to understand Mr M's full financial position, rather than just relying on what it was being told.

In these circumstances, I would look at what proportionate checks would have revealed for loans 5-7. But Mr M has not been able to provide copies of his bank statements showing what his finances were like at the time of his loan application. And Mr M has already told us he isn't able to provide a copy of his credit file.

So, in the absence of any information showing Mr M's actual circumstances, I'm unable to conclude that loans 5-7 were unaffordable for Mr M. Or that Provident were wrong to approve these loans.

So, I'm not upholding Mr M's complaint about loans 4-7. I appreciate this will be disappointing for Mr M, but I hope that he'll understand why I've reached the findings that I have.

Loan 8-10

As I've explained above, I won't be making a finding about these loans, because Provident has already agreed to put things right for Mr M as the adjudicator recommended. However, Mr M says he doesn't understand how he can still have a balance to pay to Provident.

It may help if I explain this service's approach to putting things right in cases that involve unaffordable lending. If a lender has done something wrong, as far as possible, this service attempts to put the consumer back into the position they would've been in had an error not been made. But that isn't always possible, especially in cases of unaffordable lending because the consumer has been given the money and normally spent it.

So, in unaffordable lending cases, we'd expect a lender to refund any interest and charges paid to the on the amount borrowed, which, in effect, means the consumer would end up with an interest free loan. But they would only get a refund on anything extra that has been paid, so if a loan has been taken, and not repaid, there wouldn't be a refund due. But the outstanding balance would likely be reduced to at most the capital borrowed. However, this service considers it reasonable that if an outstanding balance remains a lender can recover any remaining amount.

So, in this case, Provident accepts that loans 8 – 10 shouldn't have been lent, this means Mr M shouldn't have to pay any interest on these loans. But, it seems, based on the payments that Provident has recorded, Mr M hasn't repaid it enough to clear the capital amount he borrowed. This is why, Provident says there is still a balance left to be paid. If Mr M believes that Provident's records are incorrect, and can show something to contradict them, he is able to raise that separately with Provident.

Putting things right

In deciding what redress Provident should fairly pay in this case, I've thought about what might have happened had it not provided Mr M's loans, 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 M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between him and this particular lender which he may not have had with others. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or Mr M 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 he 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 M in a compliant way at this time.

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

If Provident has sold the outstanding debts it should buy the debts back, if it is able to do so and then take the following steps. If Provident isn't able to buy the debts back then it should work with the new debt owner to achieve the results I've outlined below.

I think Provident was wrong to lend loans 8-10.

- Provident should remove all unpaid interest, fees and charges from the outstanding loan balances on loan 8, 9 and 10.

Provident should rework the account so that Mr M only has to repay the principal borrowed for loans 8 - 10. It should treat any repayments made by Mr M (and to the third party if applicable) as if it went towards the principal balance.

- If and when Mr M has repaid enough to repay the principal, then any overpayment should be refunded to him. To this overpayment, 8% simple a year interest should be added from the date of the overpayment came due to the date of settlement*;

However, if after doing the above, an outstanding principal balance remains, Provident should try and come to an affordable arrangement with Mr M to repay the balance. But I'd remind Provident of its obligation to treat him fairly.

- Provident should provide Mr M with a breakdown detailing the amounts he has repaid for each loan, along with the redress calculations for his upheld loans.
- Provident should remove any adverse information recorded about loans 8-10 from Mr M's credit file.

*HM Revenue & Customs requires you to deduct tax from this interest. Provident should give Mr M a certificate showing how much tax is deducted, if he asks for one.

My final decision

For the reasons I've explained above, I'm upholding Mr M's complaint in part.

Provident Personal Credit Limited should put things right for Mr M as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 June 2021.

Robert Walker
Ombudsman