Financial Ombudsman Service

complaint

Mr M complains in summary that Provident Personal Credit Limited, trading as Provident, provided him with six instalment loans which were unaffordable.

background

Mr M took out six instalment loans from Provident between June 2015 and April 2017 as follows:

Loan number	Date of Loan	Loan amount	Weekly repayment amounts	Date loan repaid
1.	11/6/2015	£400	£40 x 14	5/9/2015
2.	19/9/2015	£300	£30 x 14	10/12/2015
3.	10/12/2015	£1,000	£50 x 32	25/5/2016
4.	25/5/2016	£1,000	£30 x 63	3/12/2016
5.	3/12/2016	£1,400	£30.80 x 104	Unpaid
6.	3/4/2017	£300	£10.80 x 52	Unpaid

Mr M said that the loans had been mis-sold to him. He used some of the loans to repay the previous loan. The loans had caused him serious financial hardship and he thought that Provident hadn't properly taken into account his financial situation. The loans led to his spiralling debt. He is unhappy that Provident didn't ask for supporting documentation to confirm his ability to repay the loans. His work was unpredictable and he was only employed about four days a month. Mr M said that he was honest about the financial and personal information he'd provided to Provident's agent but he didn't think that the agent had put into the loan application the information he'd provided. He was surprised that he'd been approved for the loans taking into account the information he'd provided.

Provident said that it had carried out an affordability assessment including obtaining details of Mr M's income and expenditure. It said that its agent would have asked Mr M to provide evidence of his income such as payslips, benefit statements and pensions to support his application. The agent had to be satisfied that the information Mr M had provided was accurate and that the loan was affordable. It said that its assessment was proportionate. And from July 2015 its assessment process combined applicant sourced data, credit bureau data and Mr M's previous lending history with it. It said that Mr M had confirmed to it that he had free disposable income to afford the loan repayments.

our investigator's view

The investigator didn't recommend that the complaint should be upheld. She said that Provident's checks were proportionate and that Provident wasn't required to check Mr M's bank statements. She also noted that Mr M had signed documents to confirm he was working and that he'd provided evidence of his employment from his agency.

Mr M disagreed and said that the investigator hadn't considered that it was Provident's agent who had put the information on the loan application about his ability to afford the loans. He said that the investigator's findings couldn't be right taking into consideration his situation leading up to the second loan and onwards.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to Provident on 22 June 2018. I summarise my findings:

I'd noted that Provident was required to lend responsibly. It needed to make checks to see whether Mr M could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr M was borrowing, the length of the loan agreement and his lending history, but there was no set list of checks Provident had to do. The Financial Conduct Authority was the regulator at the time Mr M borrowed from Provident. Its regulations require lenders to take "reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences." The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

I noted that Provident had told us about the checks it did before lending to Mr M. It said it used credit bureau data before giving him each loan. And it had asked Mr M for details of his normal income and expenditure, including other debt repayments. I hadn't seen any information about the credit checks, but I had seen details of the income and expenditure figures provided to Provident. I'd noted that Provident had said that its agent would ask borrowers to provide evidence of income and that the agent needed to be satisfied that the information provided by a borrower was accurate. But from the information supplied by Provident, I could see that Mr M's payslip was only provided before Loan 6. The information seemed to indicate that no other evidence of income was provided for the other loans.

Loan 1

When Mr M applied for Loan 1 in June 2015, he'd completed a paper application form which he'd signed. I'd seen a copy of this and noted that Mr M told Provident that he was earning a net weekly income of £360. And he'd said his weekly expenditure was £195. So it appeared that Mr M had around £165 left over each week that he could use to make his repayments. Mr M needed to repay £40 each week on Loan 1. I could see that the repayments were relatively modest compared to the weekly disposable income of £165 Mr M had declared to Provident. I'd thought this information was enough for Provident to rely on at the time of Mr M's loan application. He hadn't borrowed from Provident before, and the repayment amounts weren't large in comparison to the amount of disposable income that he'd provided. So, overall, I didn't think it was irresponsible for Provident to make Loan 1 without carrying out further affordability checks. So I thought it was reasonable for Provident to give Mr M loan 1.

Loan 2

I'd noted that Mr M repaid Loan 1 before he'd applied for Loan 2. The loan amount had decreased to £300 and the weekly loan repayments were £30, which was £10 less than for his previous loan. I'd said that it didn't seem that Mr M had problems repaying Loan 1. I'd noted that Provident's application process had also changed so that information was provided by the borrower to Provident's agent who would enter the information on his tablet or phone. I'd noted that Mr M had questioned the information which the agent entered. But I could see for this loan that some of the information was similar to that provided by Mr M for Loan 1, and a similar weekly disposable income figure of £158.68 resulted. Otherwise, I'd seen nothing to indicate that the information was incorrect.

I thought the repayments for Loan 2 were still relatively modest compared to Mr M's declared disposable income. And I'd thought it was proportionate for Provident to consider Mr M's declared income and expenditure, without making further checks for Loan 2. So I didn't think Provident had done anything wrong in giving Loan 2 to Mr M.

Loan 3

Mr M had applied for Loan 3 before Loan 2 was repaid and he'd used the loan proceeds to repay the loan balance. I'd also noted that the loan amount had substantially increased to £1,000 and the weekly loan repayments had increased significantly to £50 to be spread over 32 weeks, more than double the previous loan term. I'd thought by this time that Provident should have been concerned about the frequency and size of Mr M's borrowing. I'd also noted from Provident's records that the income and expenditure figures supplied by Mr M differed considerably from those for Loan 2, less than three months earlier. Mr M's monthly income had increased by nearly £500, but his weekly expenditure had decreased by around £40 which I thought should have concerned Provident.

I noted that Provident hadn't supplied a breakdown of Mr M's financial information for Loan 3 as it had for his other loans so I couldn't see why his expenses had decreased. I'd also noted that Provident had said that its agents asked for evidence of income to support the application, but I couldn't see that it did that here. Mr M had provided us with a benefits letter from around the same time which showed a significantly smaller income than that recorded by Provident's agent. So, I wasn't certain that Provident had seen evidence of income here. And I didn't think that Provident could rely on Mr M's declared disposable income here. Considering that the loan repayments needed to be made over seven months, I'd thought that this should have prompted Provident to question Mr M about his income and expenditure before lending. And I'd also thought it would have been proportionate for Provident to have asked him some more detailed questions at this point, such as whether he was borrowing from other short term lenders at the same time. So, overall, I didn't think that Provident's checks were proportionate for Loan 3.

Loan 4

Mr M had applied for Loan 4 before Loan 3 was repaid and Mr M had again used nearly half the loan proceeds to repay the Loan 3 balance. I'd also noted that the loan amount borrowed was again £1,000, but although the weekly loan repayments had reduced to £30, they were to be spread over 63 weeks, almost double the previous loan term. I'd thought again that Provident should have been concerned about the frequency and size of Mr M's borrowing as well as the increased loan period.

I'd also noted that there were again fluctuations in the financial information provided to Provident. Mr M's monthly income had reduced by £300 and the information showed that he was now self-employed. I'd also noted that Mr M's weekly declared expenditure had reduced by over £30. I'd thought that Provident should have been concerned about the relatively low and fluctuating expenditure amounts provided by Mr M to Provident by Loan 4, and that it couldn't rely on Mr M's declared disposable income. I also couldn't see that it required evidence from Mr M of his income and expenditure.

So I thought all this should have prompted Provident to be more concerned about Mr M's financial situation, and I thought it should have been clear to Provident that it could no longer rely on the information Mr M had provided about his financial situation. I thought Provident should have looked in much more depth at Mr M's true financial situation to assess the affordability of its lending. I'd said that it could've done this in a number of ways. It could've asked for evidence of Mr M's income and expenditure such as payslips and bills, or it could've looked at things like his bank statements.

Loan 5

Loan 5 was for the significantly higher amount of £1,400 and almost £800 from this loan was used to repay Loan 4. The loan term had again substantially increased to 104 weeks. I thought all this might have indicated that Mr M was struggling to manage his finances and that Provident should have been concerned that Mr M needed to borrow regularly. So again, I thought it should have been clear to Provident that it could no longer rely on the information Mr M had provided about his financial situation. And I thought it would have been reasonable to have expected Provident to enquire further into Mr M's financial situation at this time.

Loan 6

Whilst Loan 6 was for the smaller amount of £300 with weekly repayments of £10.80 over 52 weeks, I noted that Mr M would have been repaying these at the same time as Loan 5 which hadn't yet been repaid. I'd thought Provident should have been concerned from all this that Mr M was borrowing frequently from it and becoming reliant on Provident's loans. So, I didn't think it had made proportionate checks for Loan 6. I could see that it had asked Mr M for a payslip and noted that his financial commitments had increased to £74. But I'd thought it would have been proportionate to have looked at Mr M's financial situation in much more depth here.

Although I didn't think the checks Provident had done for Loans 3 to 6 were sufficient, that in itself didn't mean that Mr M's complaint about these should succeed. I also needed to see whether what I considered to be proportionate checks would have shown Provident that Mr M couldn't sustainably afford the loans. So I'd looked at the bank statements we'd received from Mr M, and what he'd told us about his financial situation, to see what better checks would have shown Provident.

For Loan 3, as I'd said above, I didn't think that it was reasonable for Provident to rely on the information Mr M had provided about his financial position in view of the fluctuations in his income and expenditure. And I'd also thought Provident needed to supplement its information by asking Mr M if he had other short term borrowing. To find out what, if any, outstanding short term commitments Mr M had, and to check his income and expenditure, I'd asked the adjudicator to obtain copies of Mr M's bank statements for November and December 2015. I could see that in the month before Loan 3, Mr M's monthly income from his pension, benefit and wages had totalled around £545. This was broadly the same as the weekly income which Provident said that Mr M had declared to it. I'd thought it was possible that there might have been some confusion over whether weekly or monthly amounts were required.

I couldn't see that Mr M had taken other short term lending. But the bank statements showed that his normal living costs and regular financial commitments totalled around £150 and there were a large number of cash withdrawals. Mr M said that the monthly payments for his rent, council tax, water and utilities totalled over £600. A debt management company's ("DMC") budget form completed in May 2017 showed that these totalled around £400 per month. Mr M said that when he had money, his rent, council tax and utilities were paid in cash. The payments for these items weren't specifically shown on Mr M's bank statements. Taking into account the DMC's figures, I could see that Mr M's cash withdrawals for the month before Loan 3 would have been sufficient to have paid for these items. As Mr M's normal living costs and regular financial commitments appeared to be larger than his income, I'd thought that if Provident had carried out what I considered to be proportionate checks before Loan 3, it would have seen that Mr M couldn't meet his repayments in a sustainable way. So I didn't think a responsible lender would have considered this a sustainable loan. And I thought Provident was wrong to give Mr M this loan.

With regard to Loans 4, 5 and 6, as I'd said above, I'd thought it might have been proportionate before these loans for Provident to have independently reviewed the true state of Mr M's finances. If it had done so, I'd said it would have seen that Mr M's monthly income before each of these loans was under £500, but his normal living costs were more than his income. He was also in arrear with his rent, council tax, water and utilities and he had other debts. I thought the better checks I'd suggested here would have allowed Provident to discover the true state of Mr M's income and expenditure. And from that I thought it would have been clear to Provident that Mr M couldn't sustainably afford to take on Loans 4, 5 and 6. So I didn't think Provident should have lent these loans to him, and it needed to put things right.

In summary, I thought the checks Provident had done for Loans 1 and 2 were proportionate. But I didn't think Provident had done enough checks for any of the remaining loans. I thought proportionate checks would have shown Provident the state of Mr M's finances and that Mr M couldn't afford to sustainably repay Loans 3, 4, 5, and 6. So I didn't think Provident should have given Mr M loans 3, 4, 5, and 6, and I thought it needed to pay Mr M some compensation relating to these loans.

Subject to any further representations by Mr M or Provident my provisional decision was that I intended to uphold this complaint in part. I intended to order Provident Personal Credit Limited, trading as Provident, to:

1. Refund all the interest and charges applied to Mr M's accounts for Loans 3 and 4;
2. Pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
3. Refund all the interest and charges that Mr M had paid on Loans 5 and 6 and pay 8% simple interest* a year on the refund from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loans 5 and 6;
5. Apply the refunds and 8% interest to reduce any capital outstanding on Loans 5 and 6 and pay any balance to Mr M; and
6. Remove any adverse information recorded on Mr M's credit file with regard to Loans 3 to 6.

*HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Mr M a certificate showing how much tax it has taken off if he asks for one. If Provident intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Both Mr M and Provident agreed to my proposed award. Neither of them has provided any further information in response to my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that Mr M and Provident have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require Provident to pay Mr M some compensation as set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Provident Personal Credit Limited, trading as Provident, to:

1. Refund all the interest and charges applied to Mr M's accounts for Loans 3 and 4;
2. Pay 8% simple interest* a year on those refunds from the date of payment to the date of settlement;
3. Refund all the interest and charges that Mr M paid on Loans 5 and 6 and pay 8% simple interest* a year on the refund from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loans 5 and 6;
5. Apply the refunds and 8% interest to reduce any capital outstanding on Loans 5 and 6 and pay any balance to Mr M; and
6. Remove any adverse information recorded on Mr M's credit file with regard to Loans 3 to 6.

*HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Mr M a certificate showing how much tax it has taken off if he asks for one. If Provident intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 August 2018.

Roslyn Rawson
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