Financial Ombudsman Service

complaint

Mr K complains that Provident Personal Credit Limited (trading as Satsuma) lent him money that he couldn't afford to repay.

Mr K wants Satsuma to refund the interest and charges that he paid.

background

Mr K took out five loans with Satsuma between December 2015 and November 2016. A summary of the loans is bellows:

No.	Date of loan	Amount borrowed	Term	Repayments (monthly)	Date repaid
1	26/12/2015	£350	52 weeks	£58	25/11/2016
2	12/11/2016	£200	4 months	£81 (combined £139	26/03/2017
3	28/01/2017	£350	9 months	£78 (combined £159)	28/10/2017
4	30/09/2017	£1,000	12 months	£166 (combined £244)	unpaid
5	04/03/2018	£800	12 months	£133 (combined £299)	unpaid

Mr K says that he struggled to stop borrowing money from Satsuma. And he ended up borrowing larger amounts to try and get back on track with his finances.

The adjudicator recommended that Mr K's complaint be upheld in part. The adjudicator thought that Satsuma shouldn't have agreed loans three to five. She recommended that Satsuma refund the interest and charges Mr K had paid on the affected loans.

The adjudicator recommended that Satsuma remove loans three to five entirely from Mr K's credit file.

Satsuma disagreed with the adjudicator's view. It said it carried out individual affordability assessments. Satsuma didn't agree that the number of loans alone was sufficient to indicate they were unsustainable.

As Satsuma didn't agree with the adjudicator's recommendation, the complaint came to me.

my provisional findings

After considering all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint I was minded not to uphold Mr K's complaint about loan three. But I agreed with the adjudicator's recommendation in relation to loans four and five.

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.

When Satsuma lent to Mr K, the regulator was the Financial Conduct Authority (FCA) and the relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC carried guidance for lenders about responsible lending.

Satsuma 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 K 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 thought 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 included:

- 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.

Satsuma was required to establish whether Mr K could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course 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 CONC 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.

So 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 will need to borrow more money to afford the repayments.

Mr K didn't make any comments about the adjudicator's opinion as it related to loans and two. As I didn't think there was any ongoing dispute about these loans, I wasn't going to make a decision about this lending. But as the loans were part of the borrowing relationship that Mr K had with Satsuma, I took them in to account when considering his other loans.

loan three

This was where I was minded not to uphold Mr K's complaint. I wasn't persuaded that the length of time that Mr K had been borrowing from Satsuma - 13 months - was enough to indicate, by itself, that Mr K had become persistently reliant on unsuitable short term loans.

Although I appreciated that Mr K asked to borrow more than for loan two, it was the same amount that he asked for when he took out loan one. So I couldn't say that there was a dramatic increase in the level of Mr K's borrowing from Satsuma.

Although loan two remained outstanding at the time, this still meant that Mr K's combined monthly repayments didn't exceed £160. And I couldn't see any evidence of missed or late payments on loan two which might have indicated that Mr K was already struggling with his finances.

Satsuma gave us evidence that it also asked Mr K for details of his housing costs, credit commitments and other outgoings. And Satsuma carried out a credit check and included any undeclared credit commitments that it could see together with a further buffer.

Mr K had declared a monthly income of £2,200. Given the amount that Satsuma expected Mr K to repay each month, I was satisfied that it carried out adequate checks. Based on what Satsuma knew about Mr K, I didn't think it was unreasonable to agree loan three.

loans four and five

I also looked at the overall pattern of Satsuma's lending history with Mr K with a view to seeing if there was a point at which Satsuma should reasonably have seen that further lending was unsustainable or otherwise harmful. And so Satsuma should have realised that it shouldn't have given Mr K any more loans.

By loan four, Mr K had been borrowing from Satsuma for more than 21 months. As far as I could see there hadn't been a day when Mr K wasn't in debt to Satsuma. Furthermore, when Mr K applied for loan four, he still owed money on loan three. So Mr K was repaying more than one loan at the same time.

Loan four was the highest amount so far at £1,000. So I thought that Satsuma should've been alerted to the fact that Mr K was reliant on short term lending and wasn't using the loans as they were intended – for unexpected expenses. And that it was likely that Mr K couldn't afford to repay the loans in a sustainable way.

Mr K wasn't making any real inroads into what he owed Satsuma and his indebtedness was being prolonged. This meant that Mr K had been paying large amounts of interest to, in effect; service a debt to Satsuma over a long period.

I thought that Mr K lost out because Satsuma continued to lend money from loan four onwards because:

- these loans had the effect of unfairly prolonging Mr K's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.

- the extended period of time he owed Satsuma money was likely to have had negative implications on Mr K's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I upheld Mr K's complaint about loans four and five.

further submissions

Neither Mr K nor Satsuma responded to my provisional decision with any comments or evidence to consider.

my findings

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

As I haven't been asked to consider any more information or evidence, I find that it's fair to make my final decision along the same lines as my provisional decision.

putting things right – what Satsuma needs to do

- refund all interest and charges that Mr K paid on loans four and five;
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*;
- remove any unpaid interest and charges from loans four and five;
- if it chooses to, apply the refund to any outstanding principal balance before paying the remaining balance (if there is any) to Mr K; and
- the number of loans taken by the time of loan four means that any information about loans four and five is negative. So all entries about loans four and five should be removed from Mr K's credit file once the outstanding principal balance on each loan has been settled.

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

**If after taking the above steps there is still a principal balance due, I remind Satsuma of its obligation to treat Mr K fairly and reasonably in any settlement discussions.

my final decision

My final decision is that I uphold Mr K's complaint in part. In full and final settlement, I require Provident Personal Credit Limited (trading as Satsuma) to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 November 2019.

Gemma Bowen
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