Financial Ombudsman Service

Complaint

Mrs W has complained about a series of home-collected credit loans provided to her by Provident Personal Credit Limited ("Provident"). She says she doesn't think that Provident treated her fairly as it continued giving her loan after loan even though she was struggling financially. She also says that she was even offered loans when she was in arrears and she wasn't told that paying off one loan with another meant she was paying double the interest.

Background

The Statement of Account provided shows that Mrs W's first loan was taken in August 2009 and the last one, which was repaid in March 2019, was provided in October 2015. Provident gave Mrs W 12 loans over this period and on some occasions Mrs W had more than one outstanding loan. Mrs W's loan history with Provident is:

Loan	Provided	Amount	Interest	APR	Payment*	Term*	Repaid	Loans outstanding**
1	17/08/2009	£300.00	£225.00	254.50%	£10.50	50	10/08/2010	
2	27/11/2009	£300.00	£225.00	254.50%	£10.50	50	23/11/2010	1
3	08/10/2010	£600.00	£672.00	133.60%	£12.00	106	01/05/2012	2
4	27/05/2011	£500.00	£560.00	160.90%	£10.00	106	20/11/2012	3
5	26/08/2011	£300.00	£225.00	254.50%	£10.50	50	01/05/2012	3 and 4
6	30/04/2012	£800.00	£896.00	133.60%	£16.00	106	04/07/2013	4
7	16/11/2012	£700.00	£840.00	137.80%	£14.00	110	19/08/2014	6
8	01/07/2013	£1,100.00	£1,320.00	137.80%	£22.00	110	10/02/2015	7
9	18/08/2014	£1,500.00	£1,800.00	137.80%	£30.00	110	12/10/2015	8
10	06/02/2015	£1,500.00	£1,800.00	137.80%	£30.00	110	26/08/2017	9
11	11/05/2015	£500.00	£600.00	137.80%	£10.00	110	28/06/2017	9 and 10
12	12/10/2015	£2,000.00	£2,400.00	137.80%	£40.00	110	06/03/2019	10 and 11

*weeks
**identifies by its number each loan that hadn't been fully repaid at the time this loan taken

One of our adjudicators looked at Mrs W's complaint and concluded that Provident hadn't done anything wrong in relation to loans 1 to 3. But he also thought that Provident shouldn't have provided Mrs W with loans 4 – 12 as it ought to have seen that these loans were unsustainable for her. Provident disagreed with our adjudicator's assessment and asked for an ombudsman's decision.

My provisional decision

On 23 October 2019, I issued a provisional decision setting out my initial findings on Mrs W's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

Firstly, I summarised the regulatory framework, relevant law and what I considered to be relevant publications at the time (this is copied in full in the appendix to this decision and I ask Provident and Mrs W to read this again in order to give proper context to this final decision).

In light of the relevant rules, law and publications, I explained that there were three overarching questions I needed to consider in order to decide what was fair and reasonable in the circumstances of this complaint. These were:

1. Did Provident, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay in a sustainable way?

    - If not, would those checks have shown that Mrs W would've been able to do so?

2. Bearing in mind the circumstances, at the time of each application, was there a point where Provident ought reasonably to have realised it was increasing Mrs W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?

3. Did Provident act unfairly or unreasonably in some other way?

In considering the first overarching question – whether Provident completed reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay her loans in a sustainable way – I explained that the rules and regulations throughout the time Provident lent to Mrs W required it to carry out a reasonable and proportionate assessment of whether she could afford to repay any loan.

I explained that the OFT's *Irresponsible Lending Guidance* (March 2010) said that checks had to be both "borrower-focused" and "proportionate". So Provident had to think more widely than simply whether it would get its money back from Mrs W. What Provident needed to do was think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mrs W*.

In practice this meant that Provident had to find out enough about Mrs W such that it could reasonably conclude that making the payments to these loans wouldn't cause Mrs W undue difficulty or adverse consequences.

I also explained that what constitutes a proportionate affordability check was dependent upon a number of factors including – but not limited to – the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

In light of this, I provisionally found that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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 *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- 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).

I explained that there may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability and, any foreseeable changes in future circumstances.

I then proceeded to look at the checks that Provident carried out at the time of the loans and considered whether they were proportionate. Provident said that similar checks were carried out for loans 1 to 3; loans 4 to 11 and loan 12. So I looked at the checks carried out for the loans in these groupings.

- loans 1 to 3

I started by explaining that it was unclear what checks, if any, Provident carried out before it provided loans 1 to 3. Provident hadn't told me that it did complete any particular affordability checks for these loans. Instead Provident's final response said that the agreements detailed the full costings of the loans, including the interest, weekly repayment rate and term of loan. It also says that the agreements included a section which said:

"I have thought about my finances and I can afford to repay the loan at the weekly payments level (i.e. rate) set out in this agreement. I confirm that I am not in receipt of, nor seeking, nor thinking about seeking advice or assistance regarding debt restructuring from anybody, business or agency in the provision of debt management advice".

I also pointed out that Provident's final response to Mrs W's complaint stated:

"At the point of issue, this was an adequate approach to assessing affordability. The fact you repaid each of your three loans in full and on time would suggest this guideline was followed".

Having considered this, I thought that Provident appeared to have taken no information at all regarding Mrs W's income or expenditure before providing these loans to her. Indeed it was my view that Provident appeared to be suggesting that the onus was entirely on Mrs W to assess whether loans 1 to 3 were affordable for her because it asked her to confirm that this was the case and she proceeded with the applications.

I didn't see how Provident could reasonably have concluded that loans 1 to 3 were affordable for Mrs W when it appears to have sought no information at all about her income and expenditure. Equally I didn't see how what Provident did could reasonably be seen as constituting any sort of assessment of Mrs W's ability to repay these loans.

Having taken all of that into account, I strongly disagreed with Provident's assertion that what it did before providing these loans to Mrs W was consistent with "an adequate approach to assessing affordability" as such a conclusion would have ignored Provident's obligations to assess whether Mrs W could afford the loans. As I pointed out, assessing affordability requires an assessment of whether the borrowing is sustainable without the borrower incurring new financial difficulties or experiencing other adverse consequences. So

I also didn't think that Mrs W having repaid these loans was in itself indicative of them having been affordable for her in the first place.

Bearing in mind all of this, I was satisfied that Provident's checks before providing loans 1 to 3 weren't borrower-focussed or adequate. And as this was the case, I intended to conclude that Provident didn't carry out reasonable and proportionate checks before providing loans 1 to 3 to Mrs W.

- loans 4 to 11

Provident said that it carried out a full affordability assessment before providing loans 4 to 11. It said that a Customer Details Form ("CDF") was completed before each application. It said that these forms contained details of Mrs W's personal circumstances and information about Mrs W's income and expenditure. Provident also said that Mrs W signed to confirm the information obtained was accurate and that she declared an adequate level of disposable income to cover the proposed repayments on each occasion.

Having thought about what Provident said and considered the copies of the CDFs provided, I had a number of observations.

The main information Provident relied on was contained in Sections E, F and G of each CDF. I started by looking at the CDF completed before loan 4 was provided and said that I had significant concerns about the rigour applied to the responses provided to the questions asked. Section E asked Mrs W for a number of personal details such as her marital status, her employment status and how long she'd been employed for. Mrs W confirmed that she was married, had two dependents, was a self-employed mobile hairdresser and she'd been in this role for 14 years.

Section F confirmed information about the loan itself. The purpose of the loan was recorded as 'family', that the amount of the loan was £500 and the weekly payment would increase from £12 to £22. Finally, section G went on to ask Mrs W some questions about her expenditure. She was asked about the type of credit she already had and confirmed she already had home credit, at least one personal loan, a mortgage and a mail order account.

Section G then recorded a weekly income of £450. But the sections to indicate whether this was her sole income or her income together with her husband's weren't filled in. So I was unclear on what Provident took into account when establishing Mrs W had a weekly income of £450, or what this was made up of.

A mortgage payment of £200 a week, together with a weekly loan payment of £12 (presumably for loan 3) and other regular weekly expenditure of £60 was also recorded. I thought that, at first glance, this weekly payment towards loans already in existence appeared to be inaccurate given it looked like this only took into account Mrs W's existing Provident loan. This was despite her having ticked the boxes to confirm she had, at least one, other personal loan and a mail order account.

Even then I also thought that it was unclear whether this was Mrs W's weekly expenditure or that of her and her husband. By introducing the possibility of Mrs W's husband's income being included, I would have expected the expenditure section to have stated whether his expenditure was included and if it wasn't I would have expected an explanation on why this wasn't necessary. It was my view that the CDF possibly including Mrs W's husband introduced unnecessary confusion when he clearly wasn't a party to this agreement.

I was also concerned that Provident's agent appeared to have simply accepted that Mrs W had non-credit related regular outgoings of only £60 a week – especially in light of that fact that the CDF also recorded that Mrs W had two dependants. I couldn't see how Provident's agent could reasonably have believed that Mrs W could have had regular non-credit outgoings of just £60 per week – covering food, energy, travel, clothing, insurance, council tax etc. – bearing in mind she had two dependants.

I thought that if Provident's agent had received a plausible explanation in this regard, I would have expected this to have been recorded on the CDF itself. It was my view, that the information on the CDF – which suggested Mrs W had a weekly disposable income of £178 (or over £700 per month) – posed more questions than it answered.

I also thought that the number of inconsistencies and unanswered questions increased as and when further CDFs were completed for Mrs W's later loans. The CDF completed for loan 5 – which was provided only three months after loan 4 – had no record of the personal loan and mail order account that had been declared on the CDF for loan 4. This was despite the assessment for loan 4 having made no provision for these debts. Mrs W's regular outgoings were also recorded as having doubled from £60 to £130 a week and the purpose of this loan was also recorded as family.

For loan 6, which was provided only 11 months after loan 4, once again Mrs W was recorded as having no other credit commitments – other than her mortgage and existing home credit loans. But her regular non-credit related outgoings had reduced to £80 a week – even though she still needed to borrow a further £800 for family related expenditure.

Loan 7 was taken out seven months after loan 6. The mail order account made a re-appearance in the declared credit commitments. And this time it did appear as though the assessment budgeted for payments of £44 a week going towards 'other credit commitments'. However, Mrs W's income was recorded as having increased to £500 and her disposable income was also recorded as having increased to £170 a week– the highest it had been since loan 4. Yet she still needed to take a fourth loan in succession to cover family expenditure.

By loan 8, in July 2013, Mrs W's income was recorded as having once again dropped to £450 a week. The mail order account once again wasn't recorded as an existing credit commitment. This time the purpose of the loan was recorded as a holiday. And Mrs W was recorded as having a lower weekly disposable income of £130 a week because her non-credit related outgoings had increased to £100 a week.

Loan 9 was taken in August 2014. Mrs W was recorded as having an increased weekly income of £500. And the mail order account reappeared as a declared credit commitment. Although once again there didn't appear to be any provision for this in Mrs W's declared expenditure – only the payments to Mrs W's existing Provident loan were included. And the loan purpose was once again recorded as holiday.

I thought that the information recorded on the CDF for loan 10 was even more extraordinary. I noted that the format of this form was slightly different to the ones used for loans 4 to 9 – nonetheless the questions and sections were similar. On the form for loan 10 Mrs W's income was now recorded as £160 a week – a reduction of almost £300 from the previous lowest declared weekly income of £450 a week. And a reduction of £340 a week from what was declared for loan 9 only six months earlier.

Mrs W was once again recorded as having a mail order account. But again no payment towards this was accounted for her expenditure. And despite being still recorded as having two dependents, Mrs W's other non-credit related outgoings were only recorded as being £40 a week. The purpose of this loan was recorded as household goods. And as far as I could see Provident's agent didn't take any additional care when completing this assessment despite the substantially lower income figure recorded.

Finally I set out that the CDF for loan 11 contained similar information to that recorded for loan 10. The only difference was that the CDF for loan 11 recorded Mrs W having £10 less in disposable income to account for the higher payment going to Mrs W's existing Provident commitments.

In considering this information, I thought that it was important to start by explaining that Provident already had an established lending history with Mrs W by the time it provided loan 4. And, in these circumstances, I thought that Provident's checks for loan 4 (as well as the subsequent ones) ought to have built upon what it already knew about Miss W from her earlier borrowing.

In my view, this meant that, to remain proportionate, Provident's affordability checks needed to evolve and take into account what it was learning as a result of earlier loans. But it seemed to me that Provident appears to have viewed each application in isolation and proceeded even when its agent was provided with information that was wholly inconsistent with what they'd been told previously and with Mrs W's pattern of credit use.

Provident placed great weight on the fact that its loans were only provided after a face-to-face assessment of income and expenditure, rather than through information having been gathered in a quick online process – such as the process carried out by payday lenders. So, in these circumstances, especially where Provident itself is suggesting that its face-to-face process enables some extra safeguards or additional degree of rigour, I didn't consider it unreasonable to have expected Provident's agent to have taken steps to have clarified these discrepancies.

Furthermore, leaving aside my significant concerns about the lack of curiosity applied to information recorded on the CDFs, I also thought that Mrs W's borrowing history itself suggested there was a reasonable prospect the information provided on the CDF was inaccurate. And, in these circumstances, I thought that Provident ought to have taken steps to verify the accuracy of the information on the CDFs.

I set out that Provident ought to have been aware that while Mrs W did sign the declarations, it shouldn't have proceeded with loan applications where it ought reasonably to have suspected that the information provided was inaccurate. And, in this case, I thought that Provident also ought to have questioned just why it was Mrs W wanted or needed fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh loans – at very high interest rates - if she genuinely had the levels of disposable income disclosed on the CDFs.

I accepted that it was possible for a borrower to have the levels of disposable income suggested and yet choose to borrow in this way and at these rates – perhaps because of the convenience of having payments collected at their home. But given Provident's obligations, I considered it fair, reasonable and proportionate for it to have taken further steps to have ascertained that this genuinely was the case, by the time of loan 4 and for the subsequent ones.

In these circumstances, I thought that it would have been reasonable and proportionate for Provident to have taken steps to verify the income and expenditure information provided – especially in light of what, bearing in mind the circumstances, appears to have been the, at first glance, low and fluctuating amounts disclosed for Mrs W's non-credit related regular expenditure. Provident could have done this in a number of ways, for example by asking for evidence such as bank statements, utility statements or copies of other bills.

I thought that, in any event, whatever Provident did it needed to get to the crux of why Mrs W's developing borrowing history was at odds with the income and expenditure information that was being provided. And it shouldn't have simply relied on what, at face value, appears to have been obviously over-optimistic declarations of Mrs W's disposable income.

I said this while also mindful of the fact that the various rules and regulations in place throughout the time Provident lent to Mrs W made it clear that where income and expenditure was used in an affordability assessment, it may not be proportionate to rely solely on a statement of these matters made by the borrower.

I was also concerned that this wasn't done even though the purpose of a number of these loans was stated to be "family". I was unclear what exactly this purpose was. But I thought that this might have implied regular day-to-day family expenditure rather than spreading the cost of a one-off expense. And I stated that it was my view that borrowing to make ends meet – especially where such expensive credit was concerned - was in itself an indication that a borrower was developing or indeed may already have developed an unsustainable dependence on credit. This was also more of a concern where a borrower only appeared to be paying off earlier loans by taking further ones out.

For all of the above reasons, having carefully considered what Provident told me about the checks it performed before providing Mrs W with loans 4 to 11, I reached the conclusion that Provident failed to conduct reasonable and proportionate affordability checks before providing Mrs W with loans 4 to 11.

- loan 12

Provident said that it used a system known as 'Lending App' in order to complete the affordability assessment for loan 12. It says that similar details to those collected for loans 4 to 11, were recorded. But instead of this being done on a paper-based application form this was inputted into an electronic device, which automatically declined an application where a loan was deemed unaffordable. It also said that to protect against any understating of expenditure Lending App *"makes use of modelled outgoings based on data obtained from the Office of National Statistics when assessing affordability"*.

I then thought about what Provident said and the data it provided.

I started by saying that Provident provided a number of different spreadsheets and it wasn't exactly clear to me what they purported to demonstrate. I thought this was the case as Provident appears to have provided the output of credit checks it carried out on Mrs W. I was concerned because some of these appeared to be for loans taken prior to loan 12. But Provident's explanation (about the checks it carried out at the time of the various applications) didn't say anything about credit checks having been carried out, or anything about what this coded information meant.

I pointed out that considering that this was information that Provident itself had collected and which it appears to have used to inform its lending decisions, it was disappointing that Provident was unable to tell me what the data revealed about Mrs W's circumstances when she applied for her loans. I made it clear that this service couldn't be expected to comb through coded information looking for evidence to support Provident's defence of Mrs W's complaint. If Provident couldn't describe what the data it provided showed about Mrs W, then I couldn't place any weight on it.

I also thought that Provident appeared to be relying heavily on the decision reached by its Lending App. For the avoidance of doubt, I wanted to be clear in saying that Provident was responsible for any lending approved by its own system. Given that Provident insisted that loan 12 was responsibly lent, it ought to have known – and have explained – not only what information its Lending App obtained, but also how it used and interpreted this information to make a fair, reasonable and responsible lending decision. Without this explanation from Provident, I couldn't and wouldn't take it as read that this automated decision was fair.

Indeed I had significant concerns even about what some of the clearer information indicated. I thought this because the information provided about the loan created in October 2015 (I referred to it in this way because the application number didn't match the agreement number for loan 12) appeared to indicate that Mrs W's monthly outgoings were almost £200 more than her monthly income. And even then it seems to have been decided that no further evidence was required to verify that the loan was affordable.

By this stage I'd already explained why I thought that Provident's failure to obtain information from Mrs W to support and verify the income and expenditure declarations meant that the checks carried out for loans 4 to 11 weren't reasonable and proportionate. So it followed that similar failings in the checks before providing loan 12 even further on in Provident's lending relationship with Mrs W also meant the checks it carried out before providing this loan weren't fair, reasonable and proportionate either.

As I didn't think that the checks Provident had carried out before providing any of Mrs W's loans were sound, proper or proportionate, I then went on to consider whether she lost out as a result of Provident's shortcomings – in other words, I considered whether reasonable and proportionate checks would more likely than not have indicated to Provident that Mrs W wouldn't have been able to repay her loans in a sustainable manner.

I'd already explained that I thought a proportionate check for loans 1 to 3 would've involved finding out – for example – about Mrs W's normal monthly outgoings and regular financial commitments. And to help me understand for myself what Provident would more likely than not have discovered if it had completed reasonable and proportionate checks before providing these loans, Mrs W was asked to provide us with a number of bank statements. But Mrs W was unable to provide these.

As Provident hadn't carried out proportionate checks for loans 1 to 3 and I didn't have enough information from Mrs W either, I couldn't say what proportionate checks would more likely than not have shown.

So while I had concerns about the increasing proportion of Mrs W's income that was going towards repaying these loans (loan 2 looked to have been provided when loan 1 was outstanding and loan 3 while loan 2 was outstanding), I didn't have enough to make the finding that proportionate checks would more likely than not have shown Provident that these payments for these loans were unaffordable either individually or cumulatively. As this was the case, I didn't find that Provident unfairly and unreasonably provided loans 1 to 3 to Mrs W.

I didn't recreate individual, proportionate affordability checks for loans 4 to 12 because I didn't consider it necessary to do so. I considered this to be the case because in addition to assessing the circumstances behind each *individual* loan provided to Mrs W, Provident ought to have regard to the *overall pattern* of lending and what unfolded during the course of its lending history with Mrs W.

I was mindful here that the relevant rules and guidance made it clear that a lender shouldn't continue lending where the loans were unsustainable or otherwise harmful and/or it was apparent that the customer may be experiencing financial difficulties. And it seemed to me that there may come a point at which a responsible lender ought fairly and reasonably to question whether continuing to offer further lending to a customer who appeared to be persistently and repeatedly reliant upon them was unsustainable or otherwise harmful. As a result, I considered whether that point had been reached in this case.

I then thought about the first few loans provided to Mrs W to try to identify whether and when there were indications that the lending had become (or was becoming unsustainable).

I thought that it would be useful to start by setting out some examples of the kind of indicators that were particularly important when deciding this matter. Some examples of the kind of indicators included:

- the number of times that Provident had lent to Mrs W in total
- the number of loans outstanding (as well as the total amount Mrs W owed Provident) at a particular time
- the time period over which Mrs W had been in debt to Provident (particularly in light of the high-interest rate applying to these loans)
- the amounts that Provident was lending to Mrs W, including any general trends
- the time between Mrs W repaying one loan and Provident providing the next, if any

Having considered everything, I thought that there were some early warning signs that loans 2 and 3 might have been starting to become unsustainable for Mrs W. I said this because Mrs W approached Provident for loan 2 before loan 1 was repaid. And she then applied for loan 3 before loan 2 was repaid. Loan 3 was also for substantially more than the first two provided.

But even though I thought that there were some clear warning signs that Provident ought to have been alert to, I didn't think that Provident ought to have concluded that the pattern of lending had, in itself, become demonstrably unsustainable or harmful – such that I could reasonably say that the facts spoke for themselves – before loan 4. So I didn't find that Provident ought fairly and reasonably to have realised that it was increasing Mrs W's in a way that was unsustainable or otherwise harmful when it provided loans 1 – 3.

Looking beyond loan 3, though, I thought that Provident ought fairly and reasonably to have realised that these loans had become demonstrably unsustainable. From this perspective, having considered everything, I thought the point at which this borrowing became unsustainable and harmful is from loan 4.

I explained that I thought that there was an emerging pattern, between loans 1 to 3, of Mrs W taking out new loans before repaying previous ones. And I thought that, by loan 4 Provident ought to have regarded that pattern as established. When Mrs W applied for loan 4 her total indebtedness (when loan 3 was taken into account) was for substantially more than before - Mrs W was borrowing a further £500 only 7 months after she'd borrowed £600.

In my view, the pattern that had been established by loan four is borne out by Mrs W's ongoing borrowing. This showed that she was never able to recover and get herself on an even financial keel from this point onwards. I said this for a number of reasons.

Firstly, Mrs W's loan history showed that only one (loan 5) was for less than the amount of loan 4 – and even then when Mrs W was provided with loan 5 she still had outstanding balances on loans 3 and 4. So the total amount she owed at this stage was substantially more. Six of the eight loans Mrs W was provided with after loan 4 were for significantly more than the £500 advanced for this loan. And four of the six loans were for more than double this amount.

I was also particularly concerned by the fact that loans 3 and 5 were settled the day after loan 6 was provided. In these circumstances, I thought it was likely that Mrs W only repaid loans 3 and 5 by taking a further loan from Provident (loan 6). The rules and regulations in place throughout the period I was looking at all made it clear that a borrower should be able to repay a loan without needing to borrow further. So to start with Mrs W's repayment history in itself was arguably an indication that the borrowing was unsustainable and harmful.

In any event, what I was most concerned about was the effect that Mrs W borrowing to repay, in this way, had on her overall indebtedness. At the time of settlement, Mrs W had £314 remaining to repay on loan 3 and £168 to repay on loan 5 of the total amounts payable on these loans had they run to term. By 'repaying early' she avoided interest of £48.32 on loan 3 and £21.34 on loan 5, meaning that she made net payments of £265.68 and £146.66 towards those loans respectively from the proceeds of loan 6. And so together, these loans made up £412.34 of the £800 lent for loan 6. The total interest payable on loan 6 was £896. So, allocating this interest charge on a pro-rata basis to the earlier loans, the interest liability that Mrs W assumed on the portion borrowed to repay loan 3 was £297.56 and the interest on the portion borrowed for loan 5 was £164.24.

Mrs W taking loan 6 to repay loan 3 in this way meant that she had to pay £563.24 – some £250 more than the £314 that had been outstanding at the date of settlement. And taking loan 6 to repay loan 5 meant that Mrs W had to pay £310.90 – some £140 more than the £168 outstanding at settlement. This was made even worse by the fact that loan 6 didn't run to term either. Mrs W repaid loan 6 by taking loan 8 so this process repeated itself again.

Mrs W owed £739 on loan 6 at the time of settlement. The proportion of loan 6 that had been made up by the settlement amounts for loans 3 and 5 was 51.5%. So £380.58 of the £739 outstanding on loan 6 when it was settled could be attributed to the unpaid part of the settlement for loans 3 and 5. Mrs W received a settlement rebate of £198.80 when she settled loan 6 early.

This meant that £278.20 of the £1,100.00 advanced for loan 8 consisted of the settlement for sums originally advanced under loans 3 and 5. This was around 25.3% of the amount advanced by loan 8 and this proportion of the total interest due was £278.30[1]. All of this

[1] The figure quoted in my provisional decision should have read £333.96, which is 25.3% of the total

meant that instead of paying the £380.58 that she would have paid in respect of outstanding liabilities originating from loans 3 and 5, as she would have needed to do without taking loan 8, Mrs W was now due to repay £556.50.

As far as I could see, most of Mrs W's loans were repaid in this way. Loan 4 was repaid by taking loan 7, loan 7 itself was repaid when loan 9 was provided and loan 8 (which I'd already explained, in some detail, had rolled-over amounts from loans 3, 5 and 6) was repaid by loan 10. And finally loan 9, which itself included settlement amounts for loans 4 and 7, was settled by loan 12. Provident allowing (and in Mrs W's words even encouraging) Mrs W to take out these loans in this way meant that interest was being capitalised into later loans. This made the total cost of these loans much more expensive and, in my view, made them unsustainable.

In its submissions, in advance of my provisional decision, Provident had referred to the FCA's High-cost Credit Review – update ("HCR update") which was published in January 2018. I pointed out in my provisional decision that Provident quoted selected extracts from this document (which I put in **bold font**):

"at paragraph 3.13 ***Repeat borrowing and multiple borrowing is clearly a prevalent feature of home-collected credit use. We do not consider that this in itself is harmful. Providing creditworthiness assessments are carried out effectively, weekly repayments should be affordable and sustainable. Repeat borrowing can be a useful means of managing cyclical income shortfalls****.*

Paragraph 3.21 states that it ***"recognise[s] that there is value for consumers in having continuing access to home collected credit and maintain additional weekly repayments on separate loans may not be affordable."*** *The FCA therefore recognise that repeat borrowing may serve a useful purpose depending on the customers individual circumstances and that they are only looking at if* ***"repeating borrowing could work better for consumers"****.*

That paper also states at paragraph 3.7 that in their view ***"provision of credit can nevertheless have a socially valuable function. Consumers can benefit from using high-cost credit where repayments are sustainable and appropriate forbearance is shown if they have temporary repayment problems."***

I thought about what Provident said and the content of FCA publications it referred to.

I started by saying that I thought Provident had referred to sections from more than one FCA publication. The paragraph 3.13 it referred to was from "Consultation Paper 18/12 High-cost Credit Review: Consultation on rent-to-own, home-collected credit, catalogue credit and store cards, and alternatives to high-cost credit Discussion on rent-to-own pricing" ("CP18/12"). Not the HCR update. CP18/12 was published in May 2018.

I also thought that Provident was overlooking the fact that paragraph 3.13 of CP 18/12 says that repeat borrowing can be a useful means of managing cyclical income shortfalls *where creditworthiness assessments are carried out effectively*. And I've already explained, in some detail why I thought that Provident's creditworthiness assessments weren't fair, reasonable and proportionate and therefore, in my view, weren't effective.

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interest of £1,320.00 for loan 8. I instead quoted a figure (£278) which was 25.3% of the £1,100.00 advanced for loan eight.

Moreover, paragraph 3.14 of CP18/12 also states:

“we are concerned that there is a small core of customers who are using home-collected credit over an extended period and that some customers are being unduly influenced by firms’ representatives to keep borrowing.”

Mrs W owed Provident for a period approaching ten years. And so I thought that Mrs W may well have fallen into this category. I invited Provident’s thoughts on this matter.

I also thought about paragraphs 3.7 and 3.21 of the HCR update, which I thought made clear the FCA’s view that high cost credit users had low credit scores and may have needed credit to make ends meet. And, in my view, this meant that there was a need to ensure that payments were affordable and sustainable in line with the rules, regulations and good industry practice. I also didn’t agree with Provident’s suggestion that the FCA’s publications state that repeat lending (where home-collected credit was concerned) would always be fair reasonable and proportionate in all circumstances.

Indeed I thought that Provident appeared to have either overlooked or ignored paragraph 3.20 of the HCR update which stated:

“We are focusing our evidence gathering on repeat borrowing and refinancing, including where consumers take out additional borrowing with the outstanding amount from the previous loan incorporated into the new loan. We are concerned that when consumers refinance their loans in this way, it may result in them paying significantly more interest on the amounts originally borrowed than they would had they maintained separate loans.”

In any event, while I didn’t consider that my findings were inconsistent with the content of the FCA’s publications, I was required to decide what I thought was fair and reasonable in the particular circumstances of Mrs W’s case.

I thought that in this particular case, Mrs W was in debt to Provident for an unbroken period of approaching ten years. This lack of any break in Mrs W’s indebtedness led me to think that it ought to have been apparent to Provident that Mrs W was unlikely to have been using these loans as a useful means of managing cyclical income shortfalls – especially as the loan amounts increased substantially and were in large part used to discharge the debts arising as a result of earlier Provident loans.

These loans were very expensive - all of them had an APR of in excess of 100% and some of them an APR of in excess of 200%. And where the loans were refinancing outstanding debts to Provident, this led to interest being paid on interest and so the APRs (which related to the principal of each loan in isolation) high as they were didn’t capture the compounding effect that such refinancing had on the interest paid by Mrs W.

Indeed the ‘Handycash’ Product Explanation leaflet Provident says it provided with Mrs W’s agreements said:

“Borrowing small sums over short terms is more expensive than larger sums over a longer term. Handycash loans are intended to meet short-term, immediate needs. These are not suitable if you are looking for a long term, high value loan.”

So it seemed to me that Provident itself recognised the harm of borrowers taking such loans and paying these interest rates over the longer term. In these circumstances, I couldn't see how it was fair and reasonable for Provident to have given Mrs W all of these loans in the way that it did. It was my view that the effect of Provident allowing Mrs W to enter into sequential loan agreements, which it itself said were for short-term use, some of which were concurrent, over this extended period had the effect of unfairly prolonging and increasing her indebtedness.

On almost every occasion Mrs W agreed to pay far more interest than the amount she borrowed, and because of her refinancing early loans, she then ended up paying interest (at similar very high rates) upon the unpaid interest, resulting in what I considered to be truly enormous costs over a long-term period. I thought that Provident could and should have identified, from the way Mrs W sought to use its loans, that her debts were problematic and taken steps other than continuing to provide more and more expensive loans.

Instead, I thought its actions meant that Mrs W was paying Provident high amounts of interest for the privilege of it allowing her to delay dealing with her unsustainable debt. I didn't think that offering further expensive loans to repay previous ones was exercising forbearance. It wasn't in dispute that Provident wouldn't have provided a single loan, encompassing the entire period of borrowing, with a similar APR to even the lowest one Mrs W was charged. This is because it was and still is widely recognised that such interest rates are unsuitable for longer term borrowing because the required repayments would be unsustainable (I mentioned that Provident's own product literature appears to accept this).

So I didn't think it was fair and reasonable for Provident to provide Mrs W with a series of these loans over a six-year period when the effect was the same (or worse, given the compounding effect of the multiple refinances) and in circumstances where Provident ought to have seen that Mrs W was already struggling financially.

I also considered what Provident had said about our adjudicator referring to loans outside our jurisdiction to inform his decision on the ones within our jurisdiction. But I didn't think that Mrs W was provided with any loans that we couldn't consider a complaint about. All of Mrs W's loans were provided after 6 April 2007 and so after our Consumer Credit jurisdiction started. And Provident accepted that Mrs W complained in time. So I couldn't see how our adjudicator did comment on loans that were outside of the jurisdiction of this Service and Provident's arguments on this point didn't persuade me that it was fair and reasonable for it to have provided loans 4 to 12 to Mrs W.

Provident's obligations together with what I thought was fair and reasonable taking into account the circumstances and everything I covered led me to find that Provident ought fairly and reasonably to have realised it was increasing Mrs W's indebtedness in a way that was unsustainable or otherwise harmful and so it shouldn't have provided loans 4 to 12.

Finally I considered the third of the overarching questions that I thought were relevant to my determination of Mrs W's complaint. And having done so, I hadn't seen anything that led me to conclude Provident acted unfairly or unreasonably towards Mrs W in some other way.

All of this led me to find that:

- Provident *didn't* complete reasonable and proportionate checks on Mrs W to satisfy itself that she was able to repay any of her loans;

- there wasn't enough to conclude reasonable and proportionate checks *would* more likely than not have individually shown Mrs W was unable to sustainably make the repayments for loans 1 to 3;

- Provident ought to have realised that the loans from loans 4 onwards were unsustainable or otherwise harmful for Mrs W and were unfairly and excessively increasing her overall indebtedness;

So overall my provisional decision found that Provident had not acted fairly and reasonably to Mrs W when providing her with the loans from loan four onwards.

I then found that Mrs W lost out as a result of having unfairly and unreasonably been provided with loans 4 to 12 in two key ways.

- Firstly, these loans had the effect of unfairly prolonging Mrs W's indebtedness to Provident by allowing her to take very expensive credit over an unbroken and extended period of time. And I thought that the financial loss arising (by way of interest and charges on loans she shouldn't have been given) unfairly exacerbated what was already an adverse and precarious financial position for Mrs W.

- Secondly, the sheer number of loans is likely to have had implications for Mrs W's ability to access mainstream credit. The greater the presence of these loans on Mrs W's credit file the less likely Mrs W was able to rehabilitate her finances and regain access to mainstream credit.

  In my view, Provident giving Mrs W this many loans over such an extended period of time, unfairly placed her in a position where she was trapped into taking very expensive high-cost loans over an extended period as no-one else (other than similar providers) would lend to her. In these circumstances, I thought that Mrs W had little choice other than to keep turning to Provident for further loans, because it, as well other similar providers, was the only one prepared to lend to her bearing in mind everything that had gone on previously.

I finally set out a method of putting things right for Mrs W, which I found addressed Provident's failings and Mrs W's resulting loss.

Provident's response to my provisional decision

Provident responded to my provisional decision. Its response was split into two sections. Section 1 intended to provide more clarity about Provident as a business. And section 2 addressed my provisional findings regarding Mrs W herself.

In summary, section 1 of the response:

- covered Provident's background as a company;

- provided a summary of home credit as a product;

- detailed Provident's approach to assessing affordability and how it has evolved over time;

- referred to the role of Provident's agents, their responsibilities, method of remuneration and training;
- explained how forbearance and arrears was and is approached in home credit and the training provided to agents in respect of this.

And, in summary, section 2 of the response:

- confirmed that as all of Mrs W's loans were provided before July 2017, they were issued by self-employed agents;
- apologised for the format that the Credit Bureau data had been provided in and gave some context and clarity regarding this information. Provident said that there were a few positive indicators in the information, such as:
  - there being a long period of time since Mrs W's last recorded default (ranging from 23 months to 58 months at the point of application);
  - Mrs W not having taken on any other credit commitments in the three months prior to any of her Provident loans being taken;
  - Mrs W's worst recorded status on her other commitments was 3 missed payments but this didn't happen until after her final Provident loan was provided.
- addressed some of the specific points raised in my provisional decision by saying:
  - Mrs W's income only fluctuated once between loans 4 to 9 when an amount of £50 more was recorded for loan 7. As Mrs W was a self-employed mobile hairdresser this fluctuation doesn't seem excessive;
  - while the concerns I raised about the amount recorded for Mrs W's non-financial regular outgoings not being plausible for a family of four are "acknowledged", the minimum monthly disposable income recorded (of between £284 and £675) were sufficient to cover any unforeseen costs Mrs W may have had;
  - during the period that loans 4 to 9 were provided the agent could accept applications supported by partner or spousal income where their knowledge of the customer satisfied them that these funds would be available to support the loan repayments. But where this income was included the partner or spousal expenditure also needed to be included in the affordability assessment;
  - the assessment process was changed in September 2014 and affordability assessments had to be based solely on the applicant's income and expenditure. This is evidenced by the fact that application for loan 10 (completed after September 2014) didn't have an amount for rent/mortgage as Mrs W's partner paid for this and it also saw a significant reduction in income as Mrs W's husband's wages were stripped out;

- Provident considers that family is a broad category relating to non-essential spending such as birthdays, Christmas and leisure etc. So family related expenditure is not a need but more of a luxury item a customer may wish to purchase. The loan purpose recorded for loans 8 and 9 was holiday and given the amounts of the loans and the fact that they were taken out in the summer, this isn't unreasonable;

- Mrs W repaid the capital and interest on all loans and the credit bureau data suggests that she wasn't borrowing from other lenders to do so. So Mrs W used the product as intended for loans 4-9;

- According to credit bureau data at the time of loans 9,10, 11 and 12, a balance for a running account credit agreement ran at an average outstanding value of £4,233, carrying an associated weekly repayment of £52.91, and this appears to have been left off the CDFs for those loans. When the cost of repaying this facility is added to Mrs W's other commitments she still had enough left over to be able to make the repayments for loan 9. However, she wouldn't have had enough left over to repay loans 10, 11 and 12;

- bearing in mind all of the above, it disagreed with my provisional conclusions on loans 4 to 9. But it accepted that it shouldn't have provided loans 10 to 12 to Mrs W and agreed to pay compensation for these loans in the way set out in my provisional decision.

Mrs W's response to my provisional decision

Mrs W responded confirming that she accepted that my provisional decision and that she had no further points to make.

My findings

I thank the parties for their further comments and I also want to say that I was pleased to see that Provident paid compensation for loans 10 to 12 as soon as it provided its response to my provisional decision. As Provident has accepted my provisional findings that loans 10 to 12 should not have been lent to Mrs W, the findings I set out below relate to loans 4 to 9 as they are the only ones that remain in dispute.

I've considered all the available evidence and arguments provided from the outset, including the responses to my provisional decision, in order to decide what's fair and reasonable in the circumstances of this complaint.

In reaching my decision, I've taken into account the relevant law and regulations; relevant regulators' rules, guidance and standards; and relevant codes of practice. I've set out all of this in the appendix to this decision.

Taking into account the relevant rules, law and publications, I remain of the view that the three overarching questions that I set out in my provisional decision are what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint. These are:

1. Did Provident, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mrs W would be able to repay in a sustainable way?
    - If not, would those checks have shown that Mrs W would've been able to do so?
2. Bearing in mind the circumstances, at the time of each application, was there a point where Provident ought reasonably to have realised it was increasing Mrs W's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further loans?
3. Did Provident act unfairly or unreasonably in some other way?

Provident hasn't challenged my conclusion that these overarching questions are relevant to me deciding this complaint. Indeed, Provident's response to my provisional decision appears to accept that these are the relevant questions. The content of Provident's response suggests it is my findings on these matters that it disagrees with.

As I set out on page 14 of this decision, Provident's response was split into two sections. I thank Provident for the clarity it has provided about its business. And I have kept this in mind whilst reviewing all of the points that it has made in relation to Mrs W's loans. For ease of reference, I'll address Provident's points thematically.

The disposable income recorded

Provident has made a number of arguments regarding the disposable income recorded on the CDFs for loans 4 to 9. Provident has argued that the fluctuation recorded in Mrs W's declared income for loans 4 to 9 wasn't excessive.

I want to start by saying that it wasn't solely the fluctuation in Mrs W's recorded income that I was concerned about. My main concern in relation to the income recorded for Mrs W was that it wasn't clear from the CDF whether the income recorded was Mrs W's alone or that of Mrs W and her husband.

Provident has stated that Mrs W's weekly income fell from an average of £479 during loans 4 to 9 to £169 during loans 10 to 12 and has explained that this reflects a change in its processes that occurred when spousal income stopped being taken into account.

I welcome the clarity that Provident has provided in relation to this and do accept that the information recorded on the CDF for loan 10 does appear to support that the affordability assessment completed for loans 4 to 9 was, at least, intended to be based on Mrs W's total household income and expenditure – including Mrs W and her husband. That said, I still have concerns about the scrutiny that Provident should have applied to the information used on the expenditure side of the assessment.

To explain, as I set out in my provisional decision, it isn't unreasonable to expect Provident to have included all of Mrs W's husband's (who for the sake of simplicity I'll refer to as "Mr W" from here onwards) regular expenditure in its affordability assessment should his income have been taken into consideration. But the clarification Provident has provided and the arguments it has made in relation to the credit bureau data, suggests to me that it's only Mrs W's existing credit commitments that were included on the expenditure side of the assessment.

I accept that it's possible Mr W didn't have any existing credit commitments and so it doesn't automatically follow that not including any expenditure for credit means that any assessment was inaccurate. But given Mr W appears to have been the party in receipt of a large proportion of the declared income, this would be unusual.

I also have to question the reasonableness and proportionality of only completing a credit check on Mrs W, when the affordability assessment was based on the household income and expenditure. Indeed I haven't seen anything to indicate that Mr W was even present at the time of these applications and so any declaration may well have been based on Mrs W's knowledge of her husband's commitments, rather than Mr W's knowledge and so, in any event, may well have been incomplete.

I'm also mindful that paragraph 1.3.3 of Provident's response to my provisional decision says:

"*Home Credit customers typically have little leeway in their day to day finances and little or no savings. As a result, these consumers can be disproportionately affected by income or expenditure shocks. Home Credit is used by customers to smooth the ups and downs in both income and expenditure. Many users of Home Credit may not receive the same income each month due to the nature of their employment."*

Given the proportion of the joint income that was made up of Mr W's wage, the fact that Provident felt the need to carry out a credit search on Mrs W, and the fact that (by Provident's own admission) home credit users typically have little leeway in their finances, I would have expected Provident to have asked about Mr W's circumstances and commitments and to have taken steps to verify the accuracy of whatever was declared as Mr W's existing credit commitments.

Furthermore, Provident's submission that its agent recorded in the CDF Mrs and Mr W's joint expenditure leaves me even less persuaded about the plausibility of the figure recorded for non-credit related regular outgoings. In my provisional decision, I couldn't see how Provident's agent could reasonably have believed that Mrs W could have had non-financial regular outgoings of just £60 per week – covering food, energy, travel, clothing, insurance, council tax etc. – bearing in mind she had two dependants.

I said this while open to the possibility that this was Mrs W's contribution to these costs thinking that Mr W might have been responsible for meeting the remainder. Now that Provident has confirmed that CDF actually recorded Mrs and Mr W's joint expenditure I find the amount recorded – for a family of four - to be even more implausible.

I've seen what Provident has said about Mrs W having sufficient disposable income during loans 4 to 9 to cover unforeseen costs and that the disposable income recorded met reasonable standards for the customers it served. But I think that this somewhat misses the point here. Costs such as food, energy, travel, clothing, insurance, council tax etc aren't unforeseen expenses. Mr and Mrs W will have had to pay these costs. And given the implausibility of the figure for the family's expenditure, their recorded disposable income strikes me as equally implausible and I think that, most probably, it was significantly inaccurate and should have been probed.

So the fact that the CDFs for loans 4 to 9 recorded a disposable income which might have met Provident's standards doesn't persuade me that those disposable income calculations are accurate, nor that Mrs W could sustainably repay these loans. And for the sake of completeness, I'd also add that my concerns about the veracity and rigour applied to the income and expenditure information obtained mean that I'm not persuaded simply adding an amount to reflect the 'missing' revolving credit payments of £52 per week (i.e. the repayments attributable to the additional debt which Provident has now highlighted) is a sufficient adjustment for Provident now to judge that it was fair and reasonable for it to have provided loan 9 to Mrs W either.

Provident's arguments regarding Mrs W's loans having been fully repaid

Provident has argued that Mrs W ultimately paid down the capital and interest on all its loans and that an analysis of the credit bureau data provided indicates that she wasn't running into difficulty on other credit or relying on loans from other providers to repay her Provident ones. And it says these factors indicate that loans 4 to 9 were provided responsibly.

Provident has also said that its agents were self-employed prior to September 2017 and that the commission its agents received was principally derived from the amount collected from customers – rather than the amount lent to them – and that this disincentivised poor lending decisions.

Whilst considering Provident's arguments, I've borne in mind what it has said in section 1.4 of its response entitled *'Home Credit: Assessing Credit Worthiness and Affordability in general: the 3 Cs'* and what it has said in section 1.8 entitled *'No Incentive to Make Poor Lending Decisions'*. And having done all of this, I think that Provident's arguments in relation to Mrs W's loans having been repaid are somewhat misguided. I'd like to explain why.

It's interesting to note that Provident considers 'Character', which it says is the customer's willingness to repay a debt, to be the most important of its 3 Cs. And I think that this is reflected in how it has viewed Mrs W's repayment history.

I say this because whilst I accept that all of Mrs W's loans (apart from loan 12) were repaid, Provident is overlooking the fact that loans 3,4,5,6,7,8 and 9 were all settled with funds from later Provident loans. So while Mrs W might have shown a willingness to repay her debt and her credit file might not show that she was borrowing from other lenders to repay Provident, I don't think it's reasonable to say that loans 4 to 9 were repaid in full without Mrs W borrowing further.

Equally while I can see why a borrower having shown willingness to repay previous loans (what Provident terms a borrower's 'character') might have provided Provident with increased confidence that it would get back what it was lending and so might be the most important aspect from the point of view of *its own credit risk*, I'm not persuaded that is a key factor to assessing *affordability for Mrs W*.

In my view, it's the second of Provident's 3 Cs 'Capacity' (which Provident says refers to a customer's ability to meet their repayments) which is by far the most important aspect of any affordability assessment and is of paramount importance to ensuring that a fair lending decision is made.

After all a customer may be willing to make repayments or even have an overwhelming desire to avoid defaulting. But they may end up doing so by using unsustainable methods – such as borrowing further (either from the same lender or an alternative one) or cutting back on basic living expenses or other commitments. -. And my experience of irresponsible and/or unaffordable lending cases has shown me that it is precisely this determination to avoid defaulting which often leads to a customer borrowing further even at the expense of worsening their situation by incurring still greater liabilities.

In this case, I set out, in some detail, in my provisional decision what effect Mrs W settling her loans in the way that she did had on her overall borrowing costs – she paid enormous amounts of interest, far exceeding the amount borrowed, which unsustainably increased her debt until she finally ended up defaulting on loan 12. And while Provident's response has focused on its loans having been repaid it hasn't engaged on the costs Mrs W incurred as a result of her repaying her loans in this way, or explained why it was fair and reasonable to continue lending to Mrs W notwithstanding this.

I can see that one of the arguments Provident has advanced in favour of its home lending model and the high interest rates charged within it, is that borrowers are permitted to delay repayments without penalty. This is because there are no late payment or arrears charges so this doesn't add to the interest burden and, in its view, ensures that a borrower never pays more than the original contracted amount.

But in circumstances where an agent refinances a loan with another larger one – as happened in this case - any potential benefits of this system - in terms of an interest amount that isn't added to and the ability to delay payments, are lost. In my view, repaying loans in this way clearly results in the interest compounding and new (usually significantly) higher payments falling due on pretty much the same dates as the original lower payments would have.

Provident has also sought to persuade me that its general business model provides no incentive for agents to make poor lending decisions. I have considered this argument. But it hasn't persuaded me to alter my conclusions about its lending to Mrs W.

Whilst I make no findings about what motivated the agent in this case, I think that it is possible that agents could just as easily have advanced loans - without having proper regard to whether or not they were affordable – in the knowledge that they could still receive their commission by arranging a further loan to repay an initial one should a customer encounter any difficulty repaying. Indeed one of Mrs W's main arguments, in this case, is that she was offered further loans when in arrears without being told that this would be much more expensive.

So, I have no reason not to accept that Provident's agents might well have received the majority of their commission on loan repayments – rather than loan approvals. But this case shows how prior loans can be repaid by subsequent loans. And I can see nothing in Provident's submission that this method of repayment would deprive an agent of commission. Overall I'm not persuaded that Mrs W's loans having been 'repaid' or Provident's lending model in themselves, or taken together, mean that Provident reached fair lending outcomes on loans 4 to 9.

Loan Purpose, purpose of home credit and repeat lending in this context

Provident also responded to my comments regarding the loan purpose recorded for each of Mrs W's loans.

In my provisional decision, I queried the meaning of the family category, which was the purpose selected for loans 4 to 7, and asked whether a loan taken for this purpose meant that the loan was being taken to cover day-to-day family spending. Provident has said that family related expenditure wasn't a need but more of a luxury item such as a birthday, Christmas or leisure item that a customer wished to purchase.

In relation to loans 8 and 9, Provident has said the purpose recorded was holiday. It says these loans were taken in the summer holidays and a year apart and the amounts are reasonable and proportionate to a budget family holiday for four people. As I understand it Provident is of the view that these arguments point to these loans being taken out for separate, discrete and distinct needs rather than because Mrs W was struggling financially. And this means that loans 4 to 9 were utilised in the way home credit's intended use.

I've thought about what Provident has said. But I'm not in agreement with its view on these matters. While Provident suggests that loans 4 to 7 may have been taken to cover a luxury item – such as a birthday, Christmas or leisure item - there isn't anything, at all, to corroborate this being the case here.

For example, only one of these loans (loan 7, on 16 November 2012) was taken anywhere near Christmas. And even then more than a third of the £700 advanced went towards paying loan 4. Loans 4 to 6 were all taken much earlier in the year and as I explained in my provisional decision more than half the £800 advanced went towards settling loans 3 and 5. I accept that it's possible that when viewed individually loans 4 and 5 might have been taken to purchase 'luxury items' given Mrs W appears to have received all of the funds advanced. But Mrs W's increasing indebtedness by the time of loan 4, doesn't persuade me that this is more likely than not the case.

I'd also add that while the circumstances at the time of loans 8 and 9 (the timing and the amounts) when taken in isolation may, at first glance, support Provident's argument that these loans were taken for family holidays, Provident's argument is far less plausible when the broader circumstances at the time of the applications and the overall context of Mrs W's borrowing history is considered.

To explain, as I understand it Provident argues that loan 8 being taken in July 2013 (in the summer holidays) for an amount of £1,100.00 is reasonable grounds for concluding that this loan was used for the recorded purpose of a holiday. In its view, the amount is reasonable and proportionate to a budget family holiday for four people at that time. I don't agree with this for two reasons.

Firstly, I'm not entirely persuaded by the notion that £1,100 would be enough for a family holiday for four people – whether budget or not – in the peak holiday season. That said, even if I leave my concerns about this to one side, I think that Provident is overlooking the fact that Mrs W didn't receive anywhere near £1,100 when loan 8 was approved in July 2013. This was because almost half of the funds advanced (£540.02) went towards repaying loan 6.

So Mrs W only received £559.98. And while there is an argument for saying that £1,100 could be enough for a budget holiday for four people in the peak season (which I'm not entirely persuaded by), I think that it would be stretching the bounds of credulity to reasonably conclude that £559.98 would be enough for this. I say this while especially mindful of the fact that it's difficult to have much confidence at all in the reason recorded given the very brief description and the fact that no record at all was made of the definite purpose of almost half the funds – settling the balance on loan 6.

I'm also mindful that Mrs W had been borrowing from Provident for an unbroken period of approaching five years by the time she was provided with loan 9. And while I've thought about the points Provident made in section 1.3 of its response (regarding the users of home credit and the FCA's High Cost Credit review), I had considered much of this in my provisional decision, and I'd like to once again refer to the FCA's comments in paragraph 3.14 of CP18/12, which states:

"we are concerned that there is a small core of customers who are using home-collected credit over an extended period and that some customers are being unduly influenced by firms' representatives to keep borrowing."

In my provisional decision, I invited Provident's comments on this paragraph as I was of the view that Mrs W's borrowing circumstances and lending history (in terms of having a significant number of refinanced loans) suggested that she may have been one of the customers in this category. And while I acknowledge that the FCA has said that repeat lending won't always lead to an unfair outcome for consumers, I think it would be helpful for me to restate why I thought the loans provided from loan four onwards were unsustainable for Mrs W given the circumstances of this case.

The conclusion that I reached in my provisional decision has not changed as a result of anything Provident has told me. Mrs W's pattern of consistently settling loans with funds from later ones was indicative of a customer whose debt had become unsustainable. And Provident continuing to provide Mrs W with loans in this way, meant that she was paying Provident high amounts of interest for the privilege of it allowing her to continue to delay dealing with her unsustainable debt. Provident's own literature from the time (which I referred to in my provisional decision) suggests that it knew that home credit was unsuitable for longer term borrowing.

I accept that providing a consumer with more than one home credit loan and/or a consumer being lent to for longer than the originally agreed term, won't, in itself, always produce an unfair outcome for a consumer. And for the avoidance of doubt I want to be clear in saying that isn't the conclusion I reached in my provisional decision or this decision.

What I'm doing in this case is deciding whether it was fair and reasonable for Provident to have provided this many loans to Mrs W, for these amounts, in the way that it did for this extended period of time. And I don't think that it was fair and reasonable for Provident to provide Mrs W with this series of loans over this extended period when the effect was the same (indeed worse, given the compounding effect of the multiple refinances) as it providing a single loan encompassing this period whilst knowing that it'd never provide a single loan on these terms.

And, in my view, Provident did this in circumstances where it ought to have seen that Mrs W was already struggling financially. This together with Provident's failure to carry out reasonable and proportionate checks, is the primary reason why I think that Provident also unfairly provided loans 4 to 9 (as well as loans 10 to 12) to Mrs W.

Having carefully thought about all of Provident's further points, I remain of the view that Mrs W's complaint about loans 4 to 9 (as well as loans 10 to 12) should be upheld. So I think that Provident should put things right for Mrs W. And I'll now set out what I think Provident should do.

Fair compensation – what Provident needs to do to put things right for Mrs W

I've thought about what amounts to fair compensation in this case. Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Provident putting Mrs W in the position she'd now be in if she hadn't been given the loans from loan 4 onwards.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mrs W *was* given the loans in question and she used the funds – albeit she's used some of the funds to repay previous ones. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mrs W back in the position she would be in if she hadn't been given these loans in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to explain the reasons why I think that it would be fair and reasonable for Provident to put things right in the following way.

Interest and charges on the loans Mrs W shouldn't have been provided with

As I've explained throughout this decision, Provident continually lending to Mrs W left her in a position where she wasn't able to properly settle her debt. This was because Mrs W kept having to find additional funds to pay the (increasing) interest and charges on her Provident loans.

Mrs W then had to borrow again from Provident to either make payments to earlier loans or cover the hole in her finances and she incurred more interest and charges when she did this. After my provisional decision, Provident refunded the interest and charges (plus interest at 8% simple per annum) paid on loans 10 to 12. As I still think that Provident shouldn't have provided loans 4 to 9 either, it should now also refund the interest and charges Mrs W paid on loans 4 to 9.

I'm also mindful that Mrs W lost the use of the funds she used to pay the interest and charges. As Mrs W lost the use of these funds, I think that she should be compensated for this.

We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid, is fair and reasonable in the circumstances of this case.

So Provident should pay Mrs W 8% per year simple interest on the interest and charges she paid from the dates those charges were paid to the date it settles Mrs W's complaint.

Mrs W's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe.

But I'm upholding Mrs W's complaint about loans 4 to 12 because I think the overall pattern of lending increased Mrs W's indebtedness in a way that was unsustainable or harmful in some other way.

I've also explained that there were two main adverse consequences of Provident having given Mrs W so many loans. Firstly it caused her to pay an excessive amount of interest and charges. And I've already explained how Mrs W should be compensated for this.

I also explained that the number of loans and the period Provident lent to Mrs W is likely to have had implications for her ability to access mainstream credit. The greater the presence of these loans on Mrs W's credit file (and the longer the period of time this spanned) the less likely Mrs W was able to rehabilitate her finances and regain access to mainstream credit. And I think my direction in relation to Mrs W's credit file needs to reflect this.

So while I recognise the importance of preserving an accurate picture of Mrs W's credit history and creditworthiness in order to enable a lender to make an informed decision on whether to lend to her, I think that the mere presence of this level of lending for this period of time on Mrs W's credit file, in itself, constitutes adverse information. I think that the impression that is likely to be generated from Mrs W's credit file is unfair to her and potentially misleading to prospective lenders, because if Provident had behaved fairly and reasonably towards her, loans 4 to 12 would not have been provided in the first place.

I think that this many home-collected credit loans over the period of time they were taken appearing on Mrs W's credit file is likely to continue unfairly adversely affecting Mrs W going forwards. In these circumstances, I think that it is fair and reasonable for Provident to remove all reference to loans 4 to 12 from Mrs W's credit file, as the number of loans (and the period of time they cover) in itself is adverse information.

All of this means that (in addition to what it has already paid Mrs W in compensation for loans 10 to 12) Provident also now needs to:

- refund all the interest, fees and charges for loans 4 to 9; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid by Mrs W to the date of settlement†;
- remove all reference to loans 4 to 12, where they remain, from Mrs W's credit file.

† HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given above and in my provisional decision of 23 October 2019, I'm upholding Mrs W's complaint. Provident Personal Credit Limited should pay Mrs W compensation as set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs W to accept or reject my decision before 26 March 2020.

Jeshen Narayanan
Ombudsman

appendix – relevant considerations as set out in my provisional decision

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A the legal and regulatory framework
B other relevant publications

A the legal and regulatory framework

<u>*Regulation by the Office of Fair Trading (up to 31 March 2014)*</u>

Provident gave Mrs W her first 8 loans in the period up to the end of March 2014. During this time it needed a standard licence from the Office of Fair Trading ("OFT"), in order to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> > *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
> >
> > *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
> >
> > *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
> >
> > *(d) evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> > *(a) committed any offence involving fraud or other dishonesty or violence;*
> >
> > *(b) contravened any provision made by or under—*
> >
> > *(i) this Act;*
> >
> > *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
> >
> > *(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*

(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);

(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or

(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)** [my emphasis]**.

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the ***OFT to involve irresponsible lending*** *[my emphasis].*

In March 2010, as required by s.25A, the OFT produced guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending (“ILG”).

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome in Mrs W’s case.

The foreword to the guidance set out its purpose and it said:

The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

Section two of the guidance sets out the general principles of fair business practice. Section 2.1 says:

In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.

Section 2.2 of the guidance says:

In general terms, creditors should:

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*

- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*

- *explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

In addition to the above there should be:

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.

Section four of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. Section 4.1 says:

In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors (see paragraph 4.10 of this guidance document).

'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

Section 4.2 of the OFT guidance says:

Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.

We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner.

“In a sustainable manner” is defined in Section 4.3 of the OFT guidance. And Section 4.3 says:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – in particular without incurring or increasing problem indebtedness*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

Section 4.4 goes on to describe “undue difficulty” and says:

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Building on the proportionality principle set out in section 4.1, section 4.10 deals with the issues that might influence how detailed the affordability assessment should be. It includes factors such as:

- *the type of credit product;*
- *the amount of credit to be provided and the associated cost and risk to the borrower;*
- *the borrower’s financial situation at the time the credit is sought;*
- *the borrower’s credit history, including any indications of the borrower experiencing (or having experienced) financial difficulty*
- *the vulnerability of the borrower*

Section 4.12 is a non-exhaustive list of the types and sources of information that a lender might use to assess affordability, including:

- *evidence of income*
- *evidence of expenditure*
- *records of previous dealings with the borrower*
- *a credit score*

- *a credit report from a credit reference agency*
- *information obtained from the borrower through a form or a meeting*

Section 4.15 concerns the verification of income and expenditure for the purposes of making an appropriate assessment of affordability. It states:

In our view, creditors who do not require documentary evidence of income and/or expenditure as part of their assessment of affordability, but rather accept information provided by the borrower without any supporting evidence or, in the alternative, do not seek any information on income and/or expenditure at all as part of their assessment, should ensure that whatever means and sources of information they employ are sufficient to make an appropriate assessment. We do not consider that self-certification of income would generally be sufficient in respect of significant long-term credit agreements, particularly those secured on property.

Section 4.16 specifically touches on the issue of proportionality in the context of short-term credit. It says:

Whilst the OFT accepts, as a general principle from a proportionality perspective, that the level of scrutiny required for small sum and/or short-term credit may be somewhat less than for large sum and/or long term credit, we consider that creditors should also take account of the fact that the risk of the credit being unsustainable would be directly related to the amount of credit granted (and associated interest / charges etc.) relative to the borrower's financial situation

Sections 4.18 to 4.33 of the ILG set out some examples of "specific irresponsible lending practices" relating to how businesses assess affordability. Section 4.20 says this would include where a lender is:

Failing to undertake a reasonable assessment of affordability in an individual case or cases

Section 4.21 gives another example:

Failing to consider sufficient information to be able to reasonably assess affordability, prior to granting credit, significantly increasing the total amount of credit provided, or significantly increasing the credit limit (in the case of a running account credit agreement)
This could (but not necessarily) include for example:
…
Where applicable, appropriate and proportionate, failing to verify details of current income and/or expenditure by, for example, checking hard copies of payslip/contract of employment (when a borrower is in employment), accountant's letters (where a borrower is self-employed) or benefit statements (where a borrower is not in employment).

And Section 4.26 says a business would be acting irresponsibly if:

Granting an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

Sections 4.29 and 4.31 deal with a lender's treatment of information disclosed by the customer. 4.29 says it would be an unsatisfactory business practice where a lender:

fail[s] to take adequate steps, so far as is reasonable and practicable, to ensure that information on a credit application relevant to an assessment of affordability is complete and correct.

And section 4.31 says it would be unsatisfactory for a lender to:

[Accept] an application for credit under circumstances in which it is known, or reasonably ought to be suspected, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once loan(s) have been agreed. Section 6.2 says it would be an unsatisfactory practice where a business is:

Failing to monitor a borrower’s repayment record

Section 6.2 goes on to say:

The OFT considers that creditors should take appropriate action…when/if there are signs of apparent / possible repayment difficulties.

<u>*Section 55B of the Consumer Credit Act 1974*</u>

On 1 February 2011 the majority of the legislation implementing the provisions of the Consumer Credit Directive 2008 came into force. At this point the ILG was amended to reflect any changes required by the Consumer Credit Directive and an additional requirement on a lender to carry out an “Assessment of creditworthiness” was set out in section 55B of the Consumer Credit Act.

It’s important to note that both section 25 and section 55 remained in force until regulation of Consumer Credit providers passed to the FCA in April 2014.

Section 55B said:

Assessment of creditworthiness

55B *(1) Before making a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the creditworthiness of the debtor.*

(2) Before significantly increasing—

(a) the amount of credit to be provided under a regulated consumer credit agreement, other than an excluded agreement, or

(b) a credit limit for running-account credit under a regulated consumer credit agreement, other than an excluded agreement, the creditor must undertake an assessment of the debtor’s creditworthiness.

(3) A creditworthiness assessment must be based on sufficient information obtained from—

(a) the debtor, where appropriate, and

(b) a credit reference agency, where necessary.

(4) For the purposes of this section an agreement is an excluded agreement if it is—

(a) an agreement secured on land, or

(b) an agreement under which a person takes an article in pawn.".

By the time of loan 9 and for all of Mrs W's subsequent loans (1 April 2014 onwards) this requirement to assess creditworthiness moved from S55B of the Consumer Credit Act, to the rules of the new regulator the Financial Conduct Authority.

Regulation by the Financial Conduct Authority (from 1 April 2014)

Provident gave Mrs W loans 9 to 12 after regulation of Consumer Credit Licensees had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. Provident initially obtained interim permission to provide consumer credit before it went on to successfully apply for authorisation. Provident's interim permission to provide consumer credit and its eventual authorisation to do so meant that it was subject to the FCA rules and regulations from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

A firm must pay due regard to the interests of its customers and treat them fairly.

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to providers of consumer credit like Provident. CONC also replaced the requirements set out in Section 55B. CONC 5 sets out a firm's obligations in relation to responsible lending. And CONC 6 sets out a firm's obligations after a consumer has entered into a regulated agreement.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6 when they were introduced in April 2014. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

*[**Note**: paragraph 4.1 of ILG]*

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

*[**Note**: paragraph 4.3 of ILG]*

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

*[**Note**: paragraph 4.11 and part of 4.16 of ILG]*

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. And CONC 5.3.1G(1) says:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

*[**Note**: paragraph 4.2 of ILG]*

CONC 5.3.1G(2) then says:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking 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.

*[**Note**: paragraph 4.1 (box) and 4.2 of ILG]*

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in *completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).*

*[**Note**: paragraph 4.31 of ILG]*

Section 140A of the Consumer Credit Act 1974

All of Mrs W's loans were given to her after Section 140A of the Consumer Credit Act came into force on 6 April 2007. Section 140A sets out circumstances where the court may determine that the relationship between a creditor and a debtor is unfair to the debtor. Section 140A says:

140A Unfair relationships between creditors and debtors

(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following-

(a) any of the terms of the agreement or of any related agreement;

(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;

(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.

(4) A determination may be made under this section in relation to a relationship notwithstanding that the relationship may have ended.

(5) An order under section 140B shall not be made in connection with a credit agreement which is an exempt agreement [for the purposes of Chapter 14A of Part 2 of the Regulated Activities Order by virtue of article 60C(2) of that Order (regulated mortgage contracts and regulated home purchase plans)]

Section 140B sets out the types of order the court could make should it determine that the relationship between the creditor and debtor is unfair to the debtor. Section 140B says:

140B Powers of court in relation to unfair relationships

(2) An order under this section in connection with a credit agreement may do one or more of the following—

(a) require the creditor, or any associate or former associate of his, to repay (in whole or in part) any sum paid by the debtor or by a surety by virtue of the agreement or any related agreement (whether paid to the creditor, the associate or the former associate or to any other person);]

(b) require the creditor, or any associate or former associate of his, to do or not to do (or to cease doing) anything specified in the order in connection with the agreement or any related agreement;

(c) reduce or discharge any sum payable by the debtor or by a surety by virtue of the agreement or any related agreement;

(d) direct the return to a surety of any property provided by him for the purposes of a security;

(e) otherwise set aside (in whole or in part) any duty imposed on the debtor or on a surety by virtue of the agreement or any related agreement;

(f) alter the terms of the agreement or of any related agreement;

(g) direct accounts to be taken, or (in Scotland) an accounting to be made, between any persons.

B other relevant publications

<u>*The FCA's Portfolio Strategy Letter to firms providing high cost lending products*</u>

On 6 March 2019, The FCA wrote a '*Dear CEO'* letter to the Chief Executive Officer of all firms allocated to the 'High Cost Lenders' portfolio, which Provident is part of. I accept that this letter was published sometime after Mrs W's agreements were entered into. But given that this letter didn't include any new rules and deals with how firms ought to be handling complaints about whether their previous lending was unaffordable, I do think that it offers some insight on the FCA's perspective on the rules. So I do consider it to be of some relevance in this case.

The letter set out the FCA's view of the key risks that High Cost Lenders pose to consumers and the markets they operate in. On page two of this letter, the FCA sets out its view of the key causes of harm. It says:

"To assess how firms in the High Cost Lenders portfolio could cause harm, we analysed their strategies and business models. We considered a wide range of information and data, including firms' regulatory histories, the number and nature of complaints, and findings from the HCCR. We also carried out diagnostic work on guarantor lenders, which involved issuing a data request to firms in October 2018.

Following our analysis, we see two key ways that consumers may be harmed across the High Cost Lenders portfolio:

- *a high volume of relending, which may be symptomatic of unsustainable lending patterns*
- *firms' affordability checks may be insufficient, leading to loans that customers may not be able to afford".*

The FCA sets out its areas of focus for all firms in the portfolio on page three of the letter.

The section entitled 'Relending' says:

*"**Relending:** We have seen a high volume of relending across all credit products in the portfolio. We aim to carry out diagnostic work across the portfolio so that we can better understand the motivation for, and impact of, relending on both consumers and firms. This work will examine aspects of relending such as customers' borrowing journeys, firms' marketing strategies for offering additional credit and the costs of relending for consumers. We want to understand what harm, if any, relending may cause consumers. As part of this work, we will proactively engage with home-collected credit firms to ensure they understand our expectations. We will also discuss any changes to their processes as a result of the new rules and guidance on relending which we issued in our December 2018 Policy Statement on high-cost credit".*

The section entitled 'Affordability' says:

Affordability: *We recognise that there is an inherent challenge for these firms in assessing affordability for both new loans and repeat borrowing. High-cost credit customers' finances are often squeezed and they may have poor credit histories and low financial resilience. Nevertheless, firms must ensure that they are complying with all our affordability requirements. We gave an outline of these requirements in the Dear CEO letter we sent to*

HCSTC firms in October 2018. While this letter was aimed at HCSTC firms, the main principles are relevant to all firms in this portfolio.

Finally the section entitled ***'Complaints'*** it says:

*"**Complaints:** We know that there have been increasing numbers of complaints about many of the products in this portfolio. Firms should ensure that they are handling complaints appropriately. We expect firms to fulfil all relevant obligations, including analysing the root causes of complaints and taking into account the Financial Ombudsman Service's relevant decisions. We gave further detail about what we expect from firms' complaint-handling procedures in the Dear CEO letter we issued to HCSTC firms in October 2018. This is equally relevant to all firms in the portfolio".*

the FCA's Dear CEO letter on affordability of High-Cost Short-Term Credit ("HCSTC") loans

On 15 October 2018, the FCA wrote a '*Dear CEO'* letter to the Chief Executive Officer of all HCSTC providers. The letter was about the issues surrounding the increase in complaints about unaffordable lending.

The third paragraph of this letter said:

"We note that the Ombudsman has recently published four examples of determinations of individual complaints about payday loans to illustrate its approach to the issues raised in those complaints (see: https://www.financial-ombudsman.org.uk/publications/technical.htm). If relevant, firms should take these examples of determinations into account as part of establishing their own effective procedures for complaints handling (see DISP 1.3.1R)".

Paragraph eight of the letter went on to say:

"We would highlight in particular the risks in relation to repeat borrowing. These were flagged in our price cap proposals in CP14/10, in July 2014, in which we said that we were concerned that repeat borrowing could indicate a pattern of dependency on HCSTC that is harmful to the borrower. We noted that rigorous affordability assessments were key to avoiding harm in this area, and firms should ensure they are making responsible assessments of the sustainability of borrowing".