Financial Ombudsman Service

complaint

Mr M complains that Provident Personal Credit Limited (trading as Satsuma) gave him loans that he couldn't afford to pay back.

background

Mr M took out six instalment loans with Satsuma between December 2015 and November 2017. At the time of his complaint there was a balance outstanding on Mr M's final loan. I haven't seen any information to suggest that it has been paid.

Our adjudicator recommended that the complaint should be upheld in part. In summary, she thought that the checks Satsuma did before making the first four loans went far enough. But she didn't think it had carried out adequate checks before making the other loans given Mr M's borrowing history. She thought that proportionate checks when Mr M applied for loans 5 and 6 would have shown that he wasn't borrowing sustainably. So she recommended that Satsuma refund all interest and charges that Mr M paid on loans 5 and 6, with interest on the refund.

Satsuma didn't agree and said that Mr M did not demonstrate any difficulty in repaying his loans and the fact that he had a number of loans did not demonstrate that he couldn't afford to repay them. It said that the checks it did for all the loans were enough in the circumstances.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Satsuma needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr M could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.
But certain factors might point to the fact that Satsuma should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think it's important for me to start by saying that Satsuma was required to establish whether Mr M could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

So it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

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

I agree with the adjudicator that it wasn't wrong for Satsuma to give Mr M loans 1 to 4. I say this because this was early in the lending relationship and there was nothing in the information given by Mr M to suggest that further checks were necessary. The amounts Mr M had to pay back appeared affordable on the basis of the income and outgoings he declared.

Mr M took the first four loans with overlapping terms and appeared to repay them without difficulty. On the basis of the income and outgoings figures Mr M had around £1800 disposable income and so the instalments would have appeared affordable.

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

Given the particular circumstances of Mr M's case, I think this point was reached by loan 5. I say this because:

- Mr M applied for loan 5 a few weeks before loan 4 was due to be paid off. By this point Mr M had been borrowing continually from Satsuma since December 2015. This was his highest loan to date.

- I think this should have put Satsuma on notice that it was likely that Mr M was having problems managing his money. His borrowing pattern appeared at odds with his declared disposable income. So I think it should have been concerned that he wouldn't be able to repay the loan sustainably.

- Mr M continued to borrow from Satsuma without any significant break until he was unable to repay what he had borrowed after taking out loan 6.

I think that Mr M lost out because Satsuma continued to provide borrowing from loan five onwards. This is because:

- these loans had the effect of unfairly prolonging Mr M's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the number of loans, combined with the total length of time Mr M had been borrowing from Satsuma, was likely to have had negative implications on Mr M's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm upholding the complaint about loans 5 and 6. Mr M has had the benefit of the money so it is only fair that he pays it back and so Satsuma can deduct any capital amount still outstanding after the refund of interest and charges on the final loan.

I don't agree that the number of loans is not an indicator of difficulty and that the checks were enough. Once Mr M became a prolonged borrower at the point of loan 5 I think that Satsuma should have done more to check whether his borrowing was sustainable and that further checks would have revealed that Mr M was in difficulty.

putting things right – what Satsuma needs to do

Satsuma should:

- refund all interest and charges Mr M paid on loans 5 and 6 inclusive;
- write off any interest and charges not yet paid;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- apply the refund to offset any capital balance outstanding before paying the balance to Mr M.
- the number of loans Mr M has taken with Satsuma and the total length of time he'd been borrowing from it means any information recorded about loans 5 and 6 is adverse. So all entries about these loans should be removed from Mr M's credit file;

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

my final decision

My decision is that I uphold this complaint in part. I require Provident Personal Credit (trading as Satsuma) to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 October 2019.

Emma Boothroyd
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