

**complaint**

Mrs N complains that Provident Personal Credit Limited lent to her irresponsibly.

Mrs N is represented by a member of her family.

**background**

Using information provided by Provident, Mrs N's approved loans are summarised here. I have removed reference to pence. Accurate details of each loan are held by Provident and this table is here as a brief illustration of the lending relationship and history over the years. These were a series of loans collected at Mrs N's home by an agent.

<b>Loan</b>	<b>Approved</b>	<b>Repaid</b>	<b>Amount</b>	<b>Repaid</b>	<b>weeks</b>	
1	13/12/2006	14/08/2007	£200	£310	31	£10
2	24/07/2008	05/06/2009	£400	£670	56	£12
3	04/06/2009	23/11/2010	£346	£346	115	£3
4	19/11/2010	10/05/2011*	£400	£700	50	£14
5	06/05/2011	31/01/2012*	£800	£1,400	50	£28
6	30/01/2012	04/12/2012*	£1,000	£1,800	60	£30
7	30/01/2012	04/12/2012*	£200	£350	50	£7
8	29/11/2012	15/01/2013	£0	£0	52	£0
9	29/11/2012	27/10/2014§	£600	£1,134	63	£18
10	29/11/2012	29/06/2015§	£1,000	£2,016	84	£24
11	29/06/2015	15/08/2016	£1,000	£1,890	63	£30
12	17/08/2016		£2,000	£4,400	110	£40
13	04/12/2017		£1,700	£4,066	104	£39

\* repaid early

§ repaid late

One of our adjudicators looked at the complaint details and thought that Provident should put things right for Mrs N in relation to Loans 4 to 13. We are not able to adjudicate on Loan 1 as it pre-dates our authority to do so.

Provident has not responded. Mrs N has not disagreed with our adjudicator's view. The complaint was passed to me for a decision. I do not plan to review loans 1 to 3 although I have referred to the regulatory situation, in brief, which covers the time from 2008.

**my findings**

I have considered all the available evidence and arguments to decide what I consider to be fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints on our website. These include all of the relevant rules, guidance and good industry practice about high cost credit lending - including for home credit.

These loans for Mrs N date back to April 2008 (Loan 2) and at that time businesses were licensed by the Office of Fair Trading (OFT). Section 25 of the Consumer Credit Act 1974

(as amended) (“the CCA”) required the OFT to ensure that consumer credit licences were only given to – and retained by – those who were fit to hold them.

Section 25(2) of the CCA contained specific matters which (alongside any matters it considered to be relevant) the OFT should have regard to when determining whether an applicant for a licence was a fit person to hold one. One of which, section 25(2) (d) outlined the evidence of the kind mentioned in subsection (2A).

Subsection 2A (e) listed:

*“engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not).”*

Subsection 2B went on to provide an example of the type of business practice referred to in subsection 2A (e). It 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.”*

In January 2008 the OFT produced general guidance on ‘fitness and requirements’. That document’s reference was OFT969.

This addressed the scrutiny the OFT was likely to carry out on businesses’ activities and refers to one of the OFT’s ‘main regulatory interests’ which was to ensure that businesses lent responsibly. It says in paragraph 2.13: “*‘Irresponsible lending’ is now cited specifically in the fitness test as a business practice that [it] may consider deceitful or oppressive or unfair or improper*”. The significance being that such a practice may impinge on a business’ ability to successfully apply for a consumer credit licence if the OFT found evidence of such practices.

And para 2.14 of the OFT969 document contained interim guidance on the test for irresponsible lending ahead of a public consultation on full guidance on this test. It says: *‘...lenders should always take reasonable care in making loans...They should undertake proper and appropriate checks on the potential borrower’s creditworthiness and ability to repay the loan...The checks should be proportionate, taking account of the type of agreement, the amounts involved, the nature of the lender’s relationship with the consumer, and the degree of risk to the consumer.’*

The OFT Guide to Irresponsible Lending (ILG) was published in March 2010 (updated in February 2011) and OFT969 was one of its foundations.

In addition to taking into account the OFT969 document, the Lending Code 2006 (“the Code”) was published by a trade body which I have used to give me further insight into the approach lenders were expected to take around that time. Whether or not Provident was a member of that trade body in 2008 is somewhat irrelevant: I am able to think about these publications as being an indication of market practice at the time.

The Code does cover personal loans and it refers to some key commitments. Some of these were to:

- *act fairly, reasonably and responsibly ...*
- *help you when you need information and guidance, including explaining how the products will affect your finances*
- *consider cases of financial difficulty sympathetically and positively.*

In April 2014, the Financial Conduct Authority introduced its Consumer Credit Sourcebook rules when it took over as regulator. This is referred to as CONC and reading the earlier versions of CONC there are clear references back to the specific ILG paragraphs. This demonstrates a continuity of the same concept of lending responsibly.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs N's complaint. I am not reviewing Loans 2 and 3.

Provident needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs N 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 Provident should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include: where a customer's income is particularly low; where the repayments are particularly high; and/or where the frequency of the loans and the length of time over which a customer has been given loans need to be looked at: repeated refinancing could 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.

Provident was required to establish whether Mrs N could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 OFT ILG defined 'sustainable' as being the ability to repay without undue difficulties. In particular the customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments. Later, CONC built on those same concepts enshrined in the OFT ILG.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further in order to do that.

Mrs N's representative has explained that she was ill for a long time and had a major operation in April 2016. Most of these years she was in receipt of benefits and he has said:

*'Provident did not act as a responsible lender and my reassigning [sic] for this are, when my mother was in arrears her collector continued to offer further loans (£40 pw to £80 pw repayments) which put her more and more to debt and unable to break this continuous cycle.'*

Loan 4 was approved for Mrs N when she was still some way off repaying Loan 3, and the Loan 4 weekly repayments were due to increase from £3 to £14. Loan 4 was approved when Provident's agent knew that Mrs N's reason for taking Loan 3 was to pay off what she owed up to that point (June 2009). Mrs N had a poor repayment history when she applied for Loan 4 with Loan 3 still outstanding. So I do not think that this was the right decision to approve that loan for her. I uphold her complaint for Loan 4.

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

Given the particular circumstances of Mrs N's case, I think that this point was reached by Loan 5 and I say this because:

- from Loan 5 onwards Mrs N was provided with a new loan often to refinance the previous one and sometimes more than one at once. So Provident ought to have realised it was more likely than not Mrs N was having to borrow further to cover the earlier loan and to carry on borrowing. I think it would have been apparent that her indebtedness was increasing unsustainably;
- by Loan 5 she had been in debt to Provident for several years. Plus, loan 5 was double the amount approved for Loan 4 and the weekly repayments were twice the previous repayments. Mrs N continued to increase the size of her loans from here;
- Mrs N wasn't making any real inroads to the amount she owed Provident. Loan 13 was for £1,700 plus interest and was more than four times the principal sum taken in May 2011 – six and a half years earlier. Mrs N had paid large amounts of interest to, in effect, service a debt to Provident over an extended period;
- earlier loans were refinanced into later ones and Loans 9 and 10 were in arrears and yet additional loans were given after those.

I think that Mrs N lost out because Provident continued to provide borrowing from Loan 5 onwards because:

- these loans had the effect of unfairly prolonging Mrs N's indebtedness by allowing her to take expensive credit use over an extended period.
- the sheer number of loans and deferrals was likely to have had negative implications on Mrs N's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I am upholding the complaint about Loans 5 to 13 and Provident should put things right.

### **putting things right**

Provident should not have given Mrs N loans 4 to 13.

If Provident has sold the outstanding debts, it should buy these back if able to do so and then take the following steps. If Provident is not able to buy the debts back, then it should liaise with the new debt owner to achieve the results outlined below.

Provident should:

A) add together the total of the repayments made by Mrs N towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything already refunded.

B) calculate 8% simple interest\* on the individual payments made by Mrs N which were considered as part of "A", calculated from the date Mrs N originally made the payments, to the date the complaint is settled.

C) remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs N as though they had been repayments of the principal on all outstanding loans. If this results in Mrs N having made overpayments then Provident should refund these overpayments with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. It should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans and any principal Provident may already have written-off. If this results in a surplus, then the surplus should be paid to Mrs N. However, if there is still an outstanding balance then it should try to agree an affordable repayment plan with Mrs N. Provident shouldn't pursue outstanding balances made up of principal already written-off.

E) remove any adverse payment information recorded on Mrs N's credit file in relation to Loan 4. The overall pattern of Mrs N's borrowing for Loans 5 to 13 means any information recorded about them is adverse, so Provident should remove these loans entirely from Mrs N's credit file.

\*HM Revenue & Customs requires Provident to deduct tax from this interest. It needs to give Mrs N a certificate showing how much tax it has deducted, if she asks for one.

### **my final decision**

My final decision is that I uphold Mrs N's complaint in part and direct that Provident Personal Credit Limited does as I have set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 26 April 2020.

Rachael Williams  
**ombudsman**