

complaint

Miss E complains about three instalment loans that she took out with Provident Personal Credit Limited, trading as Satsuma Loans, ("SL"), which she said were unaffordable.

background

Miss E was given three instalment loans by SL from March 2015 to July 2016. A summary of the loans taken out by Miss E is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Repayment amounts
1.	12/3/15	31/7/15	£100	13 weekly repayments of £10.77 (around £46.67 per month)
2.	2/8/15	Unpaid?	£110	17 weekly repayments of £9.66 (around £41.86 per month)
3.	17/7/16	Unpaid?	£150	13 weekly repayments of £13.81 (around £59.84 per month)

SL said that it had carried out a credit check before each loan and asked Miss E for details of her income and expenditure. SL also applied extra safeguards and buffers to Miss E's declared expenses to reflect the information it obtained from its credit check.

our adjudicator's findings

The adjudicator recommended that Loan 3 should be upheld.

SL disagreed and said that the adjudicator hadn't considered the consumer's individual circumstances, but had only considered the number of loans. SL said that it didn't feel that sustained or sequential borrowing was irresponsible or conclusive that Miss E was reliant on its loans. SL said that it considered sustainability when it completed the initial income and expenses checks.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss E and to SL on 20 September 2019. I summarise my findings:

I noted that when SL lent to Miss E the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

I said that SL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Miss E could repay the loans in a sustainable manner. Those checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I thought less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that SL should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors included:

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

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

I thought it was important to say that SL was required to establish whether Miss E could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

I explained that the loan payments being affordable on that basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow that was the case. This was because the CONC defined sustainable as being without undue difficulties and in particular the consumer should be able to make repayments, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Miss E's complaint.

I could see that SL had made a number of checks before it lent to Miss E. It had asked her for details of her income and expenditure. Miss E had declared her monthly income as £980 and her expenditure as £150 before Loan 1, her income as £1,300 with expenditure of £470 before Loan 2, and income of £1,300 and expenditure of £850 before Loan 3. And SL had increased Miss E's declared expenditure in its assessments of Loans 1 to 3 to reflect what it had seen in its credit checks and internal models.

I'd also noted that SL had checked Miss E's credit file before agreeing to the loans. SL had provided this service with a summary of its credit checks. I could see that there were three active credit accounts with payments in arrears in the previous six months before Loan 2 and two accounts in arrears in the previous six months before Loan 3. There were no other payday loans shown in the previous three months before each of the loans. Otherwise, I couldn't see any adverse information on SL's credit checks that I thought should have caused additional concerns to SL. Miss E hadn't provided this service with a copy of her credit report, although this had been requested in September 2018. So I wasn't aware of any adverse information on Miss E's credit report that I thought should have caused additional concerns to SL.

I could see that Loan 1 was for £100 repayable by 13 weekly repayments of £10.77. SL's credit check showed that Miss E had no active accounts which were in arrears. SL said that Miss E had a disposable income of £404.02 before Loan 1 after its safeguards and buffers had been applied to Miss E's expenses.

On balance, I thought that the checks SL carried out before agreeing Loan 1 were proportionate. The repayments that Miss E needed to make on Loan 1 were relatively modest compared to the income that she declared to SL. And I didn't think the repayments were so large that it was obvious they would've caused Miss E financial difficulty.

So given Miss E's repayment amounts, what was apparent about her circumstances at the time, and her history with the lender, I didn't think it would've been proportionate for SL to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Miss E provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think SL was wrong to have given Loan 1 to Miss E.

But I could see from SL's contact notes that Miss E had missed repayments on Loan 1 in May and June 2015 and she had repaid the loan around seven weeks after the due date on 31 July 2015. SL's contact notes showed Miss E had said that these were missed for various reasons. Miss E had said that she couldn't commit to contractual payments due to the need to check with her bank before payments were made. On another occasion Miss E had said that another company was taking funds from her account. And at another time she said that she'd had fraud on her account and funds had gone missing. Miss E had then set up a repayment arrangement to repay some of the arrears. I thought that these missed repayments and the various causes might have suggested that Miss E was facing financial problems and should have caused some concerns to SL about Miss E's finances.

Miss E had then applied for Loan 2 two days after Loan 1 had been repaid. The loan amount was slightly higher and the repayments were to be made over a longer period. But the weekly repayments were around a pound less.

SL's credit check before Loan 2 showed that there were three active credit accounts with payments in arrears in the previous six months. I could also see that SL had added an additional amount of around £365 of safeguards to Miss E's declared expenses. So it was aware that Miss E wasn't declaring all her commitments.

I thought it was clear from Miss E's repayment history for Loan 1 that she'd had various difficulties making the repayments and she'd needed to set up a repayment arrangement. The loan was repaid around seven weeks late. Loan 2 was taken out just two days after Loan 1 was repaid. The loan amount and repayment term had increased. I thought that should have suggested to SL that it was likely Miss E had to borrow further to cover the hole repaying her previous loan was leaving in her finances. As Miss E had already had difficulties repaying her previous loan, I thought this should have suggested that it was less likely that she'd be able to sustainably repay Loan 2. And SL was also aware from its credit check that Miss E had recent arrears on other credit accounts.

I appreciated that SL had asked Miss E for information about her income and expenditure and had applied safeguards and buffers to Miss E's expenses. But I thought that Miss E's poor repayment history on Loan 1 and the recent arrears on three of her other credit accounts should have caused SL to carefully consider whether it was likely that Miss E would be able to meet her repayments for Loan 2 in a sustainable manner. I'd seen no evidence that SL performed that assessment. And I thought SL should have decided that it was unlikely that Miss E would be able to sustainably meet her repayments. So I didn't think SL should have given Miss E loan 2.

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

Given the particular circumstances of Miss E's case, I thought that this point was reached by Loan 3. I said this because:

- Miss E had applied for Loan 3 whilst she still had Loan 2 outstanding. Loan 2 was £162.22 in arrears and the loan balance had been written off. The arrears were transferred to a debt collection agency in January 2016. Miss E had made two payments of a pound in February 2016 but no more since then. This suggested that Miss E was having serious difficulties managing her money.
- Miss E had taken out a loan of £100 16 months previously and she then asked for a loan of £150 without there having been any real break in her borrowing. She hadn't made any inroads into her debt over that time and had paid large amounts of interest to, in effect, service a debt to SL over an extended period.

I thought that Miss E lost out because:

- these loans had the effect of unfairly prolonging Miss E's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time.
- the length of time that Miss E had been taking out short term loans was likely to have had negative implications on Miss E's ability to access mainstream credit and so had kept her in the market for these high-cost loans.

I'd noted that SL had said that the adjudicator hadn't considered Miss E's individual circumstances. But I had considered these in some detail. I thought it was clear that Miss E had serious difficulties managing her money and that sustained borrowing was irresponsible in her circumstances.

I'd noted that SL had said that sustainability was considered when it completed its income and expenses checks. But SL was required to establish whether Miss E could sustainably repay her loans – not just whether the loan repayments were affordable on a strict pounds and pence calculation. And SL knew from previous decisions (as well as what was set out on our website) that there were cases where this service considered the overall lending pattern and not just the affordability of each loan.

When a consumer borrowed numerous loans over a long period of time, it was most likely that the loans weren't being used for their intended purpose of temporary cash flow problems. As SL knew, the FCA made it clear in a recent letter to CEOs of high cost lending firms that "a high volume of relending.....might be symptomatic of unsustainable lending patterns". And I thought that was the case here.

Subject to any further representations by Miss E or SL my provisional decision was that I intended to uphold this complaint in part. I'd said that my redress was drafted on the basis that Loans 2 and 3 hadn't been repaid and that it would be helpful if SL could provide up to date information on the balances of those loans in its response to my provisional decision.

putting things right – what SL needs to do

1. Refund all interest and charges Miss E paid on Loans 2 and 3 and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement.
2. Remove all adverse entries about Loan 2 from Miss E's credit file; and
3. Remove all entries about Loan 3 from Miss E's credit file once it had been repaid.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Miss E a certificate showing how much tax it has taken off if she asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

I noted that Miss E hadn't repaid Loans 2 and 3 to SL. Those debts had been sold to a third party. I didn't know whether Miss E had repaid any of those debts to the third party.

I'd said that it seemed reasonable that if Miss E still owed some of the capital she'd borrowed that the refund due to her should be used to reduce that debt. But to do so SL must first take the debts back into its own books and reduce them to reflect just the capital that Miss E borrowed less any repayments she had made. I'd said that if SL was unable, or unwilling, to do this it must ensure that its interest and charges, and any other interest and charges added by the third party, were refunded to Miss E so she could choose whether to use the compensation to settle her debt directly.

Miss E responded to my provisional decision by sending this service two documents she referred to as statements from the lender.

SL responded to my provisional decision to say that it accepted my proposals. It also referred to a total amount outstanding after it had written off the interest on Loans 2 and 3.

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.

I note that the documents Miss E sent to this service were letters referring to the amount of the arrears on each of the loans as at August and September 2019 respectively. These confirm that the loans haven't been repaid but don't otherwise affect my provisional decision.

And given that SL has given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require SL to pay Miss E some compensation as set out below.

my final decision

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

1. Refund all interest and charges Miss E paid on Loans 2 and 3 and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement.
2. Remove all adverse entries about Loan 2 from Miss E's credit file; and
3. Remove all entries about Loan 3 from Miss E's credit file once it had been repaid.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Miss E a certificate showing how much tax it has taken off if she asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

I note that Miss E hadn't repaid Loans 2 and 3 to SL. Those debts have been sold to a third party. It seems reasonable that if Miss E still owes some of the capital she'd borrowed that the refund due to her should be used to reduce that debt. But to do so SL must first take the debts back into its own books and reduce them to reflect just the capital that Miss E borrowed less any repayments she has made. If SL is unable, or unwilling, to do this it must ensure that its interest and charges, and any other interest and charges added by the third party, are refunded to Miss E so she can choose whether to use the compensation to settle her debt directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 4 December 2019.

Roslyn Rawson
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