Financial Ombudsman Service

complaint

Mr R says Provident Personal Credit Limited lent to him irresponsibly.

background

Mr R had 17 home credit loans with Provident. I've summarised some of the information Provident provided about the loans in the table below.

Loan no.	Amount (£)	Issued	Repaid
1	400	12/12/2010	15/03/2011
2	800	12/03/2011	13/09/2011
3	300	06/08/2011	21/02/2012
4	1,500	10/09/2011	26/06/2012
5	356.67	05/11/2011	23/10/2012
6	400	18/02/2012	28/08/2013
7	2,000	19/06/2012	16/07/2013
8	1,000	22/10/2012	16/07/2014
9	1,200	13/07/2013	29/04/2015
10	2,400	22/08/2013	18/11/2015
11	300	16/07/2015	05/10/2016
12	500	12/11/2015	12/04/2017
13	500	13/04/2016	10/05/2017
14	1,000	30/09/2016	*n/a*
15	2,000	09/05/2017	*n/a*
16	700	24/06/2017	*n/a*
17	800	21/12/2017	*n/a*

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 affordability - including all of the relevant rules, guidance and good industry practice - on our website.

Relevant rules and regulation include the Office of Fair Trading's Irresponsible Lending Guidance (ILG) until April 2014, at which time the Financial Conduct Authority (FCA) introduced its Consumer Credit Sourcebook (CONC). The content of the ILG and CONC at the times Provident lent to Mr R was broadly similar and made it clear what was expected of regulated consumer credit firms like Provident in terms of what constituted responsible and irresponsible lending.

The ILG set out examples of what might constitute irresponsible lending, including (bold emphasis as per source):

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

4.21 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 (when a borrower is self-employed) or benefit statements (when a borrower is not in employment).*

4.22 Failing to undertake an assessment of creditworthiness of a borrower on the basis of sufficient information obtained from the borrower where this is appropriate, and a credit reference agency where this is necessary, before a regulated consumer credit agreement, other than an excluded agreement, is made with the borrower, or the amount of credit provided by the creditor to the borrower is increased significantly, or the credit limit is increased significantly (in respect of an agreement for running account credit), in accordance with the requirements of section 55B of the Act.

4.23 Failing to take reasonable steps to assess (on the basis of information that the creditor is aware of at the time the credit is granted) whether a prospective borrower is likely to be able to meet repayments in a sustainable manner.

*4.27 **Inappropriately encouraging** borrowers to increase, aggregate or roll over existing debt to **unsustainable** levels.”*

The following are also listed in the ILG as deceptive and/or unfair practices:

*“6.25 Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term credit product in a way that is **unsustainable** or otherwise harmful.*
…
The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness in an unsustainable manner. The general purpose of short-term loans, such as 'payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.”

The language used in CONC in the relevant period was similar to the language used in ILG, for example (non-exhaustive):
“CONC 5.3.1G

(1) 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.
(2) 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.

…
CONC 6.7.22G

A firm should not allow a customer to enter into consecutive agreements with the firm for high-cost short-term credit if the cumulative effect of the agreements would be that the total amount payable by the customer is unsustainable."

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

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 Mr R 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:

- the *lower* a consumer'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 that it is important for me to start by saying that Provident was required to establish whether Mr R 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 relevant regulations define 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. And 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 R's complaint.

As there's been no ongoing dispute since the adjudicator's recommendation that loans 1 to 6 should not be upheld, I've not looked as closely at these loans in my decision. I do think that for loans 1 to 3 it's reasonable to say Provident's checks were proportionate. For loans 4 to 6, I do not think Provident carried out proportionate checks, but also do not think the pattern of lending at this stage suggested the lending had become unsustainable. I have no information to tell me whether proportionate checks at this time would've suggested these loans were unaffordable and so I do not uphold the complaint about loans 4 to 6.

I have also looked at the overall pattern of Provident's lending history with Mr R, 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 Mr R's case, I think that this point was reached by Loan 7 and I say this because:

- By the time Provident approved loan 7, Mr R had been approved for 6 loans in around 18 months – and the amount approved (individually and cumulatively) was the largest amount to date. It appears that loan 7 was likely used to refinance loan 4, which was previously Mr R's largest loan and loans 5 and 6 were still outstanding. From all of this, Provident ought to have realised Mr R wasn't likely simply in need of short-term cash[1] and that his indebtedness was increasing in a way which wasn't likely to be sustainable.
- Mr R didn't really make any inroads into the amount he owed Provident. Loans including and after loan 7 appear to have been used to refinance previous loans or were taken so soon after previous loans that the cumulative effect was also to extend Mr R's indebtedness in a way which wasn't sustainable. Loans 14 to 17 were for a total of £4,500 and represented a clear further increase in Mr R's overall borrowing.
- In total, Mr R borrowed from Provident, without any real breaks, for about seven years. Mr R had paid large amounts of interest to, in effect, service a debt to Provident over an extended period.

I think that Mr R lost out because Provident continued to provide borrowing from Loan 7 onwards because:

- these loans had the effect of unfairly prolonging Mr R's indebtedness by allowing him to take expensive credit use over an extended period.

- the sheer number of loans and deferrals was likely to have had negative implications on Mr R's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I am upholding the complaint about Loans 7 to 17 and Provident should put things right.

putting things right

Provident should not have given Mr R loans 7 to 17.

[1] I note Provident's product literature for its 'Handycash' loans says, "*"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."*

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 Mr R 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 Mr R which were considered as part of "A", calculated from the date Mr R 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 Mr R as though they had been repayments of the principal on all outstanding loans. If this results in Mr R 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 Mr R. However, if there is still an outstanding balance then it should try to agree an affordable repayment plan with Mr R. Provident shouldn't pursue outstanding balances made up of principal already written-off.

E) The overall pattern of Mr R's borrowing for Loans 7 to 17 means any information recorded about them is adverse, so Provident should remove these loans entirely from Mr R's credit file.

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

my final decision

I uphold Mr R's complaint in part. Provident Personal Credit Limited must put things right by taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 April 2020.

Matthew Bradford
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