Financial Ombudsman Service

complaint

Mr S complains about five instalment loans that he took out with Provident Personal Credit Limited, trading as Satsuma Loans, ("SL"), which he said were unaffordable.

background

Mr S was given five instalment loans by SL from July 2016 to August 2017. A summary of the loans taken out by Mr S is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Repayment amounts
1.	9/7/16	14/10/16	£100	13 weekly repayments of £11.01
2.	8/9/16	15/6/17	£100	52 weekly repayments of £3.83
3.	18/3/17	25/6/17	£100	3 monthly repayments of £49.20
4.	24/6/17	25/9/17	£100	3 monthly repayments of £49.20
5.	3/8/17	Unpaid	£1,000	12 monthly repayments of £166

SL said that it had carried out a credit check before each loan and asked Mr S for details of his income and expenditure. SL also applied extra safeguards and buffers to Mr S's declared expenses to reflect the information it obtained from its credit check. It said that its credit checks didn't demonstrate that the loans weren't affordable or sustainable at the point of application.

our adjudicator's view

The adjudicator recommended that Loans 2 to 5 should be upheld. She said that proportionate checks would have shown Mr S was having problems managing his money and he had borrowed from other payday lenders.

SL disagreed and said that its credit checks showed that at worst Mr S only had one other agreement outstanding and no arrears were identified. It also said that it didn't use bank statements in its checks. It didn't agree that Mr S was struggling financially.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to SL on 26 September 2019. I summarise my findings:

I noted that when SL lent to Mr S 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 Mr S 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 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 Mr S could sustainably repay his 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 this basis might be an indication a consumer could sustainably make their repayments. But it didn't automatically follow this 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 Mr S's complaint.

I could see that SL had made a number of checks before it lent to Mr S. It had asked him for details of his income and expenditure. Mr S had declared his monthly income as £950 and his expenditure as £350 before Loans 1 and 2, his income as £1,665 with expenditure of £350 before Loans 3 and 4, and income of £1,170 and expenditure of £475 before Loan 5. And SL had increased Mr S's declared expenditure in its assessments of Loans 1 to 5 to reflect what it had seen in its credit checks and internal models.

I'd also noted that SL had checked Mr S's credit file before agreeing to the loans. SL had provided this service with a summary of its credit checks. I could see that before Loans 1, 3 and 4 it said that there had been one payday loan account opened in the previous three months (but not in the previous month). It also said that one credit account had just been opened before each loan but there were no active credit accounts with payments in arrears in the previous six months before the loans. I didn't think that SL should have been unduly concerned by these entries. And otherwise, I couldn't see any adverse information on SL's credit checks that I thought should have caused additional concerns to SL.

Mr S had provided this service with a copy of his credit report. I could see there were numerous other short term loans shown on this report.

But I was also aware that when a lender carried out a credit check, the information it saw didn't usually provide the same level of detail that a consumer's credit report would and it wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders reported to the same credit reference agencies. So, this might have explained any differences between the information provided by SL's credit check and Mr S's actual situation.

I could see that Loan 1 was for £100 repayable by 13 weekly repayments of £11.01. I'd noted that Mr S's monthly disposable income after SL had applied its safeguards was £234.66

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

So given Mr S's repayment amounts, what was apparent about his circumstances at the time, and that this was his first loan with the lender, I didn't think it would've been proportionate for SL to have asked him for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Mr S had provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying. So I didn't think SL was wrong to give Loan 1 to Mr S.

But I'd noted from SL's notes that Mr S had missed a couple of repayments in the second month of his loan. He'd said that they were missed due to his bank. But it appeared that he'd settled the missed payments very quickly and had repaid the loan around the due date. So I didn't think any concerns which might have arisen due to the two missed payments should have reached the point where further more detailed checks for Loan 2 were proportionate because of these.

Mr S had again borrowed £100 on Loan 2 but the weekly repayment amounts were much smaller, although repayable over 52 weeks. So he was committing to making those repayments over a far longer period. Mr S had also had around a month's repayments left on Loan 1 at the time he'd taken out Loan 2. SL had said that Mr S had a disposable income of £235.49 before Loan 2 after its safeguards had been applied to Mr S's expenses. And I'd noted SL's credit checks didn't show any other payday loans in the previous three months.

Overall, I thought that the checks SL carried out before agreeing Loan 2 were proportionate. The repayments that Mr S needed to make on Loan 2 were very modest compared to the income that he'd declared to SL.

So given Mr S's repayment amounts, and what was apparent about his circumstances at the time, I didn't think it would've been proportionate for SL to have asked him for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Mr S provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying. So I didn't think SL was wrong to give Loan 2 to Mr S.

But despite the relatively small amount of Mr S's weekly repayments on Loan 2, it appeared he'd missed around seven weekly repayments before he'd taken out Loan 3. All the missed repayments appeared to have been repaid within three weeks of their due date. Mr S had referred to having problems with his bank, having another bill to be repaid, a need to transfer funds into his bank and at other times he didn't know why his repayments had been missed. I thought that behaviour might have caused SL serious concerns about Mr S's finances. And whilst he was still repaying Loan 2, Mr S had applied for Loan 3. This was again for £100 to be repaid by three monthly repayments of £49.20.

I'd looked at the overall pattern of SL's lending history with Mr S, 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 Mr S's case, I'd thought that point was reached by Loan 3. I'd said this because:

- Mr S had applied for Loan 3 whilst he still had Loan 2 outstanding and he had already missed around seven repayments on Loan 2 for various reasons. This suggested that he was having difficulty repaying Loan 2.
- Mr S had taken out a loan of £100 over eight months earlier and he was now asking for a loan of the same amount without any break in his borrowing since then. He hadn't made any inroads into his debt over this time and had paid large amounts of interest to, in effect, service a debt to SL over an extended period.

I thought that Mr S had lost out because:

- these loans had the effect of unfairly prolonging Mr S's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.

- the length of time that Mr S had been taking out short term loans was likely to have had negative implications on Mr S's ability to access mainstream credit and so had kept him in the market for these high-cost loans.

I'd noted that SL had said that it didn't agree that Mr S was struggling financially. But I thought that Mr S's repayment record on Loan 2 and his need to borrow whilst he still had a prior loan outstanding suggested that he had significant difficulties managing his money. I'd also noted that SL had said that its credit check didn't demonstrate that Mr S's loans were unaffordable. But I'd said that SL would have known 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 Mr F or SL my provisional decision was that I intended to uphold this complaint about Loans 3 to 5 and that SL should put things right as follows.

putting things right – what SL needs to do

- with regard to Loans 3 to 5, refund all the interest and charges that Mr S has paid on these loans;
- pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
- write off any unpaid interest and charges from Loan 5;
- apply the refunds referred to above to reduce any capital outstanding on Loan 5 and pay any balance to Mr S;
- remove all entries about Loans 3 and 4 from Mr S's credit file; and
- remove all entries about Loan 5 from Mr S's credit file once it has been repaid.

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

Mr S responded to my provisional decision to say that he agreed with it. He also asked whether he could add two loans taken out with SL since Loan 5 to this complaint.

SL hasn't provided a response to my provisional decision.

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.

With regard to Mr S's request to add his two recent loans to his complaint, I have asked the adjudicator to tell Mr S that he will need to raise a new complaint with SL about these loans.

Given that Mr S has otherwise agreed with my provisional decision and 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 Mr S 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. With regard to Loans 3 to 5, refund all the interest and charges that Mr S has paid on these loans;

2. Pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;

3. Write off any unpaid interest and charges from Loan 5;

4. Apply the refunds referred to above to reduce any capital outstanding on Loan 5 and pay any balance to Mr S;

5. Remove all entries about Loans 3 and 4 from Mr S's credit file; and

6. Remove all entries about Loan 5 from Mr S's credit file once it has been repaid.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 December 2019.

Roslyn Rawson
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