

## **complaint**

Ms B complains that Provident Personal Credit Limited ("PPCL") should not have provided loans to her, as she did not have the mental capacity to understand the loan agreements, nor could she afford to repay the loans. The complaint is brought on Ms B's behalf by an adviser. But for ease, I shall refer below to all actions being taken by Ms B, except where I have stated otherwise.

## **background**

Ms B suffers from a mental health condition and alcohol issues. Her mental condition affects her ability to make informed decisions. She was also made bankrupt in March 2013. Her income consists of sickness benefit, and she has never been employed. Despite these factors, PPCL granted her six loans between September 2012 and December 2013 as follows:-

- 27 September 2012, £1,000;
- 12 December 2012, £2,000;
- 4 June 2013, £400;
- 18 September 2013, £900;
- 18 September 2013, £1,000;
- 5 December 2013, £700.

The total lending was for £6,000 before interest was applied. Ms B cannot afford to meet the weekly repayments for the loans, and the debt is causing her distress. She would like the debt to be written off. She said that she was friendly with PPCL's agent who was aware of her personal situation and her bankruptcy.

PPCL was unable to conclude that irresponsible lending had taken place. It said that the information provided about Ms B's health by her representative was not sufficient to show that Ms B would not have understood the terms of the loan at the point of lending. It also said that the agent who dealt with Ms B no longer worked for it.

The adjudicator considered that Ms B's medical conditions meant that it was unlikely that she would be in a position to repay the amount still owed as it was unlikely she would be in a position to gain employment. She also considered that the amount of the six loans was excessive for home credit, and noted that two of the loans were opened on the same day for significant amounts, which she did not think was beneficial to Ms B. She noted that the lending appeared to be outside PPCL's normal lending policy in which smaller amounts for shorter terms was evident. She was not persuaded that PPCL's agent, who had approved the six loans, took Ms B's personal circumstances into account. She considered that there were several indicators which should have alerted the agent to complete thorough, and if appropriate, further checks based on Ms B's living arrangements alone. But she did not consider that PPCL had done so in this case.

The adjudicator concluded that PPCL should write off the remaining balance owed to PPCL by Ms B. Whilst she would normally recommend awarding compensation in circumstances such as these, she considered that Ms B had benefitted from the use of the funds, so that writing off the balance was a fair and reasonable alternative resolution to the complaint.

PPCL has not provided a response to the adjudicator's recommendations, so this matter has been referred to me for final determination.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ms B's adviser explained that Ms B suffers from a psychotic illness which affects her ability to make informed decisions. Ms B has never been employed and has lived on sickness benefits for the last 13 years. She requires assistance with budgeting from her support worker. Ms B said that she was friendly with PPCL's agent. So, in view of Ms B's circumstances, I consider that it was more likely than not that PPCL's agent should have known that Ms B had health issues, especially as she visited her in her home every week to collect the loan repayments. I note that the agent is no longer with PPCL, so it has been unable to obtain evidence from her.

There is guidance for creditors to assist them in dealing with mental capacity. At the relevant times in this case, the Office of Fair Trading's guidance applied. The rules did not automatically preclude lending to people with mental capacity or mental health problems, but they did expect creditors to take considerable care in their lending decisions where they were aware of any problems. The rules required a creditor to take account of a borrower's circumstances at the time each loan application was made. They also said that an understanding or suspicion that the borrower had a mental health condition could act as a trigger for the creditor to consider specific steps it might need to take to assess the credit application. They also said that if a borrower did not have sufficient mental capacity, it would expect a creditor to apply a stringent affordability assessment and not to place an overreliance on the information provided by a borrower. It also suggested that a creditor could verify the accuracy of self declared income.

PPCL has provided details of its customer details form for Ms B's loans. Whilst Ms B's complaint form showed her weekly income as just over £100, PPCL's form showed it as fluctuating between £315 and £255 within the period of just over a year. Such fluctuation is unusual for benefits, the amounts of which usually remain stable. There is no evidence of enquiry into this or a request for verification. Ms B's weekly outgoings are also shown to fluctuate between £60 and £90 in this period (excluding loan repayments). Again, there is no evidence that PPCL's agent had asked for further information about these. In Ms B's circumstances, I would have reasonably expected PPCL's agent to have undertaken a more stringent affordability assessment, and not just to have relied on the information provided by Ms B in the form.

PPCL said that it did not know that Ms B had been made bankrupt. But if it had carried out credit reference agency searches for the loans, this would have been revealed. In Ms B's circumstances, it might have been appropriate for a credit reference agency search to be carried out as part of a more stringent affordability assessment.

PPCL said that it had acted in line with its lending criteria but it has not provided a copy of this to this service, despite request. Whilst PPCL said that it lends small amounts, I agree with the adjudicator that the provision of six loans totalling £6,000 plus interest in just over a year appears to be inappropriate in these circumstances.

PPCL would also have been expected to have considered whether Ms B appeared to be able to afford to make repayments in a sustainable manner without adverse consequences to her financial circumstances. I note that two of the above loans were made in 2012, but that Ms B became bankrupt in March 2013. It is more likely than not that the 2012 loans

helped to adversely affect Ms B's financial circumstances, and so caused her to become bankrupt shortly after. I also note that Ms B's actual income is marginally more than the required loan repayments, so I cannot see that the loans were affordable.

I also note that Ms B's support worker said in a letter dated April 2014 that Ms B had been extremely distressed about the loans situation.

Having considered all of the circumstances in this complaint, I agree with the adjudicator that PPCL did not act appropriately in providing the loans to Ms B, and that it is fair and reasonable that PPCL write off the remaining balance owed to it by Ms B.

**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 to write off the remaining balance owed to PPCL by Ms B.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms B to accept or reject my decision before 13 April 2015.

Roslyn Rawson  
**ombudsman**