

## **complaint**

Mr O complains that an early settlement figure he was given by Provident Personal Credit Limited's representative on the telephone in August 2018 is binding but Provident says that it is not.

## **background**

I issued a Provisional Decision with detailed findings and it is attached and forms part of this decision. In it were a series of directions as to how I planned to resolve this complaint.

Both parties were given until 14 September 2020 to reply and send me anything further. We heard from Mr O who wished to have the planned redress directions explained to him. But apart from that, we have heard nothing more from either party.

This complaint has been unresolved for some time and so in the interests of all parties I am proceeding to issue my Final Decision.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In the absence of any further arguments or evidence sent to me over the past month, then I have no reasons to alter my provisional findings.

The loan agreements were not varied by the telephone calls in August 2018. But Provident has conceded that it's operative did make mistakes and I agree. But the redress Provident has carried out to date has not been enough for Mr O.

In order to resolve the complaint my decision is that this is what Provident should do:

- pay Mr O directly a sum of £400 for distress and inconvenience; and
- reconfigure the Loan 2 outstanding balance to be the same reduced balance of £996 offered to him in August 2018 and treat that as if it was the working balance for Loan 2. Any intervening payments (since August 2018) by Mr O to pay down Loan 2 since mid-August 2018 are to be accounted for to reduce the balance with £996 as the starting point. If there is a balance still outstanding then Mr O will need to pay it.

As I am directing that this Loan 2 figure be treated as if it were an ESB, then in fairness to Provident, Mr O ought to repay that outstanding balance to Loan 2 within 28 days of his acceptance of my final decision – if he does accept it; and

- Provident should correct Mr O's personal credit file since mid-August 2018 for both Loan 1 and Loan 2 to reflect that where payments have been made, albeit a reduced amount, that they were paid and they are not recorded as late.

**my final decision**

My final decision is that I uphold Mr O's complaint in part and direct that Provident Personal Credit Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 21 October 2020.

Rachael Williams  
**ombudsman**

***my provisional decision appears on the next page***

## ***my provisional decision dated 14 August 2020***

### **Background**

Mr O took two loans - he may have taken more but for the purposes of this complaint I have been informed about two. One was a cash home-credit loan for £2,100 in March 2017. When the interest and charges were added to it then the balance to repay was £4,804.80. This had a loan reference ending \*258 and I will refer to it as Loan 1.

The second loan was taken out in December 2017 for a cash home credit loan of £1,400 and with the interest and charges the amount to repay was £3,348.80. This had a loan reference ending \*345 and I will refer to it as Loan 2. Mr O still had an outstanding balance of around £3,470 on Loan 1 when he took Loan 2.

In August 2018 Mr O repaid large sums to pay down each loan: around £940 on Loan 1 (leaving a balance of £1,472.73) and around £650 on Loan 2 (leaving a balance of £1,953.47). In August 2018 Mr O's total balance still due to Provident was around £3,426.

Later that same month on 17 August 2018, having made no additional repayments, Mr O called Provident to ask for an early settlement figure. Mr O says that he was told by Provident's telephone representative that the balance was £1,953.47 and if he settled that day then he would receive a *refund* of £996.22. Later the telephone representative said that the amount *to pay* was £996.22. Mr O was transferred to the payment line at which point he was informed that the early settlement figure would be over £2,000. The figure given earlier of £996.22 was the early settlement figure for Loan 2 only.

Mr O is adamant that the figure offered of £996.22 was, and remains, a legally binding contract for all of his indebtedness with Provident and he says that Provident should stick to that. Mr O complained.

Provident's final response letter (FRL) dated 13 September 2018 concedes that a mistake had been made and upheld his complaint and said it had reduced Mr O's balance on his Loan 2 by £50 to apologise for the upset. I can see from the account details given to us by Provident that £50 was credited to Loan 2 on 14 September 2018. Fresh early settlement balances (ESB) were given for each loan in the FRL.

Mr O brought his complaint to us. Our adjudicator looked at the complaint and thought that Provident did not need to do more: it had accepted the mistake, upheld his complaint and she felt that the £50 apology sum credited to Loan 2 to reduce the balance was fair.

Mr O disagreed and the complaint remained unresolved and was passed to me for a decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have considered the law and good practice.

Provident has sent to me the recorded calls of the conversations Mr O had with three people at Provident on the same day: the man dealing with the early settlement figures; the lady who was ready to take payment and the manager. I have listened to them all.

It does appear to have been the case that the first Provident operative dealing with the settlement figures had to put Mr O on hold and check things and got facts muddled right from the start. Initially he quoted £236.13 as a settlement figure and Mr O realised that was incorrect. Then the figures changed and as I have said in the 'background' part of this decision, even that was unclear. Listening to that call it is clear to me that he was not very confident in what he was saying. He seemed to be confused whether it was a rebate to Mr O or a payment to be made by Mr O to achieve the early settlement figures.

The second lady who was due to take payment from Mr O instantly recognised that there had been a mistake quoting the £996 figure, and she explained that the first operative had quoted the early settlement figure for just one agreement ending \*345 (Loan 2). And from what I can see on the statement of accounts that figure of about £996 was likely correct at that date.

I have listened to the calls to identify whether Mr O was asking for an ESB for both or one account. And I conclude that he started by asking about '*his account*' in the singular, and then asked for the amount to pay to '*clear off and finish all I've got with you*' and to be '*done with you guys*'. These parts of the conversation do demonstrate to me that Mr O wanted the overall final figure for his total indebtedness and was willing to pay. And the first operative confirmed again that the £996 figure would clear it.

Provident has accepted that it did something wrong and so I need not address that aspect in too much detail. And the issue remains as to whether this was binding on Provident. Mr O is placing a lot of emphasis on the fact that the calls were recorded. His argument is that Provident should honour that figure to clear both his accounts. The recording of the calls has provided me with clear evidence of exactly what was said and how it was said in August 2018 and I have weighed it all up carefully.

Overall, I am satisfied that these conversations did not result in a binding contract in relation to both accounts. And that is what my provisional decision is.

The contracts for the loan had been in place for some time and Mr O called Provident in order to reduce his debt. For there to be a variation of those loan contracts the ingredients of a contract had to have existed and I do not think they did. Those ingredients include an actual agreement, certainty of the terms, consideration (which is a legal term I refer to later), an intention to create legal relations and for some types of contract a required formality. Rather than analyse all the parts, I am focussing on the elements I think are missing.

The first Provident operator was not at all confident or clear on what he was explaining to Mr O and got it very obviously wrong at first when he said that the ESB would be about £236. After that, as I said earlier in this decision, he was very unsure, placed Mr O on hold more than once, and vacillated between telling Mr O it was an amount to pay and it was a rebate. These are two quite different things and so the terms of any variation were not at all clear.

Secondly, there was no consideration by Mr O or Provident in order to make it binding. 'Consideration' is an involved element of contract law and I do not intend to say more than I have satisfied myself that there was no consideration by either party and it is an essential ingredient of any contract.

And thirdly, the whole basis of the conversations was founded on a mistake and one I think that Mr O suspected may have been 'too good to be true' as his reaction was a very positive one when he thought that the £996 figure cleared his overall balance of over £3,400. It is likely that Mr O would have known that his overall balance was much higher than the £996 being quoted to him and not least because he had just repaid some earlier that same month and he was calling in to make overpayments again.

That mistake was corrected by the second lady within minutes of Mr O's first call and so even if it had been a valid variation of the loan contracts (which I do not think it was) I think it was voidable and the evidence to point to it being avoided is the swift understanding and explanation of the mistake to Mr O in the second call. Provident's explanation had a logical basis which was that the £996 figure was the ESB for Loan 2 only.

That second call does confirm to me that Provident would have been willing to accept the £996 figure in relation to Loan 2 which had an outstanding balance of around £1,953 at the time. And looking at all the evidence, I have provisionally decided that one of the consequences of this mistake by the first operative is that Mr O has lost out on the opportunity to reduce his balance and save interest on Loan 2. Mr O has told me that the current balance on that Loan 2 account is about £1,793. So, I am planning to direct that this is put right.

I am not satisfied that Mr O has been adequately compensated for the mistake that Provident has accepted took place. I have asked Mr O for additional details and I think that he has experienced distress and poor customer service and has experienced inconvenience.

I know that Provident has already made amends with a £50 'payment', but the money to apologise ought to have been cash to Mr O directly and not a reduction of his loan balance. And I think that it may have been an adequate amount at the time it was offered, but there have been additional consequences flowing from this mistake which have caused stress and inconvenience to Mr O and I plan to make an award to him.

Mr O has explained to me that he entered into a £25 monthly repayment arrangement while this complaint was being resolved and he has had many visits to his home by Provident representatives (debt collectors) to demand payment. He has explained the impact that has had on him. In addition, Provident has reported to the credit bureaus that his payments are 'late' which has affected his credit file.

Mr O was subjected to a Provident employee's mistake which has had consequences and Mr O was entitled to bring the complaint as he was sure that the basis of it was sound: that the amount he owed was substantially less than the original agreements due to the ESB figure he was given. Even though I have made a provisional decision that this has not radically altered his two loan contracts and that in essence it was a mistake by that operative, Mr O did not need to have the additional pressure and credit file issues which flow from Provident's mistake.

I can see from the history of these accounts that Mr O had been a regular payer up until this August 2018 conversation and in fact had repaid large amounts just three weeks earlier and was telephoning Provident to pay another large sum to reduce his balance as well. The copies of his personal credit file show that he has lots of green ticks to show 'OK' payment entries for almost all the months on both accounts for the periods leading up to August 2018. After that date there are a lot of entries to show late payment. So, I do think that Mr O has been subjected to more upset and trouble than he deserved and for that I plan to award him £400. The original £50 reduction of the balance for Loan 2 should remain.

I have discretion to direct what I think is fair and reasonable and I think that the loan account for Loan 2 should be reworked to reflect that ESB given to Mr O in August 2018 and any repayments paid towards the account since then would be to go towards that reduction from the starting balance of £996. In fairness to Provident, I think that Mr O ought to repay now any balance which remains of that £996 after the intervening payments have been taken into account. And if Mr O is not able to repay that balance now then it ought to be within 28 days of Mr O accepting the final decision (once issued) after this provisional decision, if he does accept it.

I plan to direct that the late payments indicators on Mr O's credit file are corrected as I understand that although he has been paying a reduced amount, he has been paying.

In summary – I am planning to direct that Provident does as follows:

- pay Mr O directly a sum of £400 for distress and inconvenience; and
- that the reduced balance of £996 is the working balance for Loan 2 and that any intervening payments by Mr O to Loan 2 since mid-August 2018 are accounted for, and that in fairness, Mr O pays any further outstanding balance to Loan 2 within 28 days of Mr O's acceptance of any final decision of this complaint when it is issued and if it is accepted;
- correct Mr O's personal credit file since mid-August 2018 for both Loan 1 and Loan 2 to reflect that where payments have been made, albeit a reduced amount, that they were paid and they are not recorded as late.

As this is a provisional decision, then both parties can come back to me with any additional points or evidence and these need to reach me within a month.