complaint

Mr H makes several complaints about loans he took out with Provident Personal Credit Limited. In short, he complains that Provident is guilty of irresponsible lending, maladministration of his account, poor complaint handling and poor customer service.

background

Mr H took out seven Provident loans between March 2010 and April 2012. Whilst the early loans were used to settle previous loans, this did not happen with the later loans and, as a result, Mr H's debt increased from an initial £700 to almost £5,000. His weekly repayments increased from £14 to £93 during the same period.

Mr H complains that the loans were unaffordable and that Provident should not have given them to him. He also complains that Provident took advantage of his age and health problems, was unable to reconcile the payments he made with the payments it received, did not properly explain the account to him, did not deal adequately with his complaint and harassed him for repayment.

Our adjudicator upheld the complaint in part. She concluded that Provident acted irresponsibly by approving the loans and allowing Mr H's debt to increase so significantly.

Whilst she was satisfied that all Mr H's payments had been applied to his account and that the outstanding balance was correct, she found that Provident could have done more to address Mr H's concerns. She recommended that Provident cap the amount Mr H should repay at £2,716.29 (ie the initial loan, plus interest, plus the cash received 'in hand' from subsequent loans) and pay Mr H £300 to reflect the distress this matter has caused him.

However, she did not agree that Provident had taken advantage of his age or ill health, fail to administer the account correctly or harass him for payment.

Neither party accepted those findings – Provident did not accept that it had lent irresponsibly; Mr H did not consider the proposed compensation enough to reflect the distress he had suffered – so the matter was referred to me for review.

my findings

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

Mr H took out seven Provident loans between March 2010 and April 2012, totalling £5,050. With interest, Mr H would have to repay over £9,500. However, over half of the money Mr H received was used to pay off previous loans and his debt increased significantly, as set out in the table below:

loan	start date	amount borrowed	term (weeks)	weekly repay-ment	total amount to repay	amount used to repay previous loans	amount received 'in hand'	early settlement rebate	account balance
1	22/3/10	£400	50	£14	£700	-	£400	-	£700
2	10/3/11	£500	50	£17.50	£875	£265 (loan 1)	£235	£22.14	£875
3	9/9/11	£650	50	£22.75	£1,137.50	£383.42 (2)	£266.58	£281.99	£1,137.50

4	2/12/11	£200	50	£7	£350	£93.91 (2)	£106.09	n/a	£2,100
5	2/12/11	£1,000	50	£35	£1,750	£575.51 (3)	£424.49	n/a	£2,100
6	5/3/12	£1,800	106	£36	£3,816	£1033.65 (5)	£766.35	n/a	£3,816
7	30/4/12	£500	60	£15	£900	£282.52 (4&5)	£217.78	n/a	£4,839.83
		£5,050			**£9,528.50**	**£2,633.71**	**£2,416.29**	**£303.13**	

Provident does not accept that it acted irresponsibly by approving these loans. It believes it was reasonable to allow Mr H to repay existing loans with funds from new loans and says the Competition Commission's 2006 review of home credit "*acknowledged that for customers on low or fixed incomes a renewal loan (refinance) is an attractive product*".

Provident also says that "*in* [Mr H]*'s case it would have significantly increased his immediate weekly outgoings had we issued a parallel loan rather than a refinance*".

I do not entirely agree with these points. The Competition Commission's November 2006 report actually said that "*the smoother repayment profile associated with a renewal loan is likely to be attractive to some customers*". A smooth repayment profile can only happen where the renewal is used either to pay off the initial loan in full or leave just a few outstanding repayments. In other words, renewal loans can be attractive where the customer repays broadly the same amount each week, avoiding any significant increase to his or her weekly repayments.

Whilst Mr H's first three loans were settled in full by each subsequent renewal, this didn't happen with the later loans. Mr H's weekly repayments increased from £14 in March 2010 (loan 1) to £42 in December 2011 (loans 4 and 5) and finally £93 in April 2012 (loan 7). This does not constitute a smooth repayment profile. And it also means that Mr H's weekly outgoings were already significantly increasing with the renewal loans.

The Competition Commission's report highlights two other characteristics of renewal loans:

charges to the customer are generally higher than under a parallel loan (so renewal loans are typically more profitable to the lender) and agents might be incentivised to offer them (to earn more commission). So, notwithstanding the requirements of the Consumer Credit Act, Provident should carry out adequate affordability checks to ensure it does not put its own interests before those of its customers.

Mr H's account shows that he had not been making regular weekly repayments to the loans.

In fact, his repayments were hugely irregular from the start: he repaid different amounts each week, missed payments and had cheques returned unpaid. This might reasonably have indicated that Mr H was struggling to afford repayments and prompt Provident to assess his ability to repay before it approved future loans. Provident has provided no evidence to show that it did this.

Whilst Provident says Mr H understood the terms and conditions of the loans and signed documents confirming they were affordable to him, the Office of Fair Trading (OFT)'s irresponsible lending guidance requires it to do much more than simply ask its customers if they can afford to repay their loans. For example, lenders should "*make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*".

In the circumstances, I find that Provident allowed Mr H’s outstanding debt to build significantly without carrying out reasonable assessments of whether he could afford to repay it.

I have reviewed Mr H’s bank statements from July to December 2011. These show that his income was approximately £760 per month (or £175 per week) for that period. Given the inconsistent repayment history, and Mr H’s desire to increase his level of debt from an initial £700 to over £2,000, I consider that Provident might reasonably have reviewed whether the two loans in December 2011 (loans 4 and 5) were affordable. It should certainly have done so when approving a further loan of £1,800 just three months later, particularly when that loan did not settle the outstanding debt and almost doubled his weekly repayments. When Provident approved Mr H’s final loan in April 2012, the outstanding balance on the account rose to almost £5,000 and his repayments to £93 per week. I am not persuaded that Provident could have been satisfied that this level of debt or the weekly repayments were affordable to Mr H.

On balance, I am not persuaded that Provident fulfilled the requirements of the OFT’s irresponsible lending guidance. As a result, I do not consider it reasonable for Provident to ask Mr H to repay the full amount of over £9,500 (including interest). I agree with our adjudicator’s recommendation that Mr H should repay the initial loan, plus interest, and the subsequent cash amounts he received ‘in hand’ (ie not including interest or the proportion of renewal loans used to pay off previous loans). I realise that Mr H received early settlement rebates for loans 2 and 3 amounting to just over £300 but do not intend to ask Mr H to repay this. It follows that Provident should cap Mr H’s debt at £2,716.29 and refund any payments Mr H has made in excess of this, plus interest.

This leaves the question of an award to reflect the distress this matter has caused Mr H.

I understand that Mr H has a history of medical problems. However, there is no suggestion that these problems affected Mr H’s ability to understand the loan agreements and I do not consider these to be relevant. Equally, I find no evidence that Provident administered Mr H’s account poorly or harassed him for repayment. And I agree that Provident made some attempt to help Mr H better understand his account.

However, I find that Provident failed to carry out an adequate affordability assessment before approving the later loans and this contributed to Mr H accruing such a significant debt, causing him a certain amount of distress. As such, I consider an additional award to be appropriate in this case.

Our adjudicator's recommendation to award £300 is less than Mr H believes he should receive. He estimates his expenses alone – time spent dealing with this plus postage and other costs – at approximately £320. He says our adjudicator did not take sufficient account of the “*mental distress*” he has suffered and has made several submissions highlighting punitive damages and damages for mental distress awarded by the English courts. Mr H believes he should receive between £6,000 and £18,000, in line with a 2010 Employment Appeal Tribunal ruling.

As our adjudicator has explained, this Service is neither a regulator nor a court and I do not have powers to fine Provident or award punitive damages against it. Having considered the general levels of awards this Service makes in this area, I am satisfied that an award of £300 is appropriate.

I appreciate Mr H will consider my award to be inadequate and I understand this. However, my decision is final. Mr H is under no obligation to accept this; if he does not, he remains free to pursue the matter in other ways, such as through the courts.

my final decision

My final decision is that I uphold the complaint and order Provident Personal Credit Limited to:

- cap the total amount Mr H must repay at £2,716.29;
- refund any payments Mr H has made in excess of this, plus interest calculated at 8% simple per year from the date each payment was made to the date of settlement; and
- pay Mr H £300 to reflect the distress this matter has caused him.

If Provident considers that tax should be deducted from any interest element of my award, it should provide Mr H with the appropriate tax deduction certificate so that he is able to claim a refund if appropriate.

Simon Begley
ombudsman