

## complaint

Mr G complains that Provident Personal Credit Limited was irresponsible when it provided three loans to him between 2006 and 2010.

## background

Mr G took three home collected credit loans with Provident between November 2006 and November 2010. This means that a Provident agent attended at Mr G's home to arrange the loans and receive repayments.

This table shows some of the information Provident has provided to us about Mr G's loans.

loan number	loan date	amount	date repaid	term (weeks)	weekly amount	total repayable	total interest payable
1	07/11/06	£300	04/12/07	55	£9	£495	£195
2	26/10/09	£500	08/11/10	52	£17.50	£910	£410
3	05/11/10	£1,000	29/11/11	50	£35	£1,750	£750

One of our adjudicators has recommended that Mr G's complaint about Loans 2 and 3 should be upheld. Provident hasn't responded to that assessment. As the complaint hasn't been resolved informally it has come to me – an ombudsman – for a decision. If Mr G accepts this final decision it will be binding on the parties.

## my findings

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

This Service doesn't have jurisdiction to look at complaints about home collected credit loans provided by Provident before April 2007. So I'm not able to make a decision about Loan 1.

At the point Provident provided Loans 2 and 3 to Mr G it was licensed by the Office of Fair Trading (OFT). There is no doubt that businesses like Provident had a duty not to act irresponsibly. And over the years the regulations and guidance have evolved. Broad, good practice dictated that lenders should ensure that all loan applications went through sound and proper credit assessments and that the interests of the borrowers should be taken into full account.

And in January 2008 the OFT issued the Consumer Credit Licensing – General Guidance for Licensees and Applicants on Fitness and Requirements – clarifying some of the regulator's thoughts on what it considered to be irresponsible lending.

The guidance explained that the aim of the OFT was to ensure that an appropriate standard of consumer protection was in place and that it would focus on a several things when assessing fitness of applicants for licenses. One of those considerations was integrity, adding that "*The way you operate any aspect of a business may well be relevant to your fitness to hold a consumer credit licence.*" It went on to provide examples of the kind of evidence that may involve integrity issues. The final example stated – "*evidence of business practices that appear to the OFT to be deceitful or oppressive or otherwise unfair or*

*improper whether unlawful or not and whether arising in relation to the licensed business or otherwise with particular regard to any breaches of OFT guidance. This could include evidence of irresponsible lending”.*

The avoidance of unfair practices that may result in detriment to consumers was central to the OFT's guidance. When granting licences, the OFT had regard to whether businesses were being run with integrity with particular concern around whether licence holders were engaging in unfair business practices of which irresponsible lending was an example. Businesses had to take reasonable care to consider the risk to the borrower and take full account of the borrower's interests.

So before granting credit to Mr G in 2009, Provident had to carry out reasonable enquiries. These had to take account of the type of credit, the amounts involved, the nature of the lender's relationship with the borrower, and the degree of risk to the borrower. Given the amount of time which has passed, Provident isn't able to provide the details of the assessments it did when it approved loans for Mr G. But Mr G's representative has provided some evidence relating to his health and financial situation.

It seems that Mr G had a very serious medical issue from 2008. This meant that he had to undergo surgery and according to his representative this has left him with “severe mental health problems” which in turn have meant that he was unwell and unemployed at the time he took these loans.

As I've mentioned above, I've seen various documents which relate to Mr G's health, income and ability to work from 2008 to 2011. These include information about the surgery he underwent, notes from his doctors signing him off work for 3 months at a time, details of outpatient's appointments and notices of benefit payment entitlements.

I'm satisfied that at the point Mr G took Loan 2, his very limited income meant that the repayments on Loan 2 of £17.50 per week – which accounted for a significant proportion of Mr G's income – were unaffordable. Additionally, I think it's reasonable to conclude – given Mr G's health issues - that the agent who called at his home to arrange this loan, was aware of his potential vulnerabilities. With all of this in mind, I'm persuaded that Provident failed to take account of Mr G's interests when it provided him with Loan 2.

In the first few months of having Loan 2, Mr G did miss some of his weekly repayments. On occasion he paid a larger amount in what seems to have been attempt to catch-up. But these missed payments did mean that by October 2010 – by which time he should've repaid Loan 2, he was behind. I can see that in the first week of November 2010 Mr G repaid a total of £70.50 and settled Loan 2. But three days before he did settle it, he took Loan 3. I'm satisfied that it's likely that Mr G used some of the proceeds of Loan 3 to pay-off Loan 2.

Loan 3 was for double the amount of Loan 2 – and the repayments were now £35 per week – around £151 per month. Just three weeks before he took this relatively high loan, Mr G was again signed off work by his doctor for three months.

By the time Loan 3 was issued the OFT had published further guidance for licensed lenders – the “*Irresponsible Lending Guidance*” (ILG). In this the OFT provided greater clarity for businesses as to what it considered might constitute irresponsible lending practices. And it outlined its general principles for fair business practice which included - amongst other things - making a reasonable assessment of whether a borrower could afford to meet repayments in a sustainable manner.

It added that in the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the lender was aware of at the time the credit was granted.

'Assessing affordability', was described as a 'borrower-focussed test' which involved a lender assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

With this in mind – together with the broader circumstances and history I've outlined, I'm satisfied that it was irresponsible of Provident to provide Loan 3. It wasn't reasonable for it to conclude that Mr G would be able to afford to repay Loan 3 in a sustainable way.

So, in summary, I'm upholding Mr G's complaint about Loans 2 and 3.

### **putting things right**

Provident shouldn't have provided Loans 2 and 3 to Mr G and should put things right as follows:

- a) Add together the total of the repayments made by Mr G towards interest, fees and charges on these loans
- b) Calculate 8% simple interest\* on the individual payments made by Mr G which were considered as part of a), calculated from the date he originally made the payments, to the date the complaint is settled.
- c) Pay Mr G the total of a) plus b).
- d) Remove any adverse information Provident has recorded on Mr G's credit file in relation to Loans 2 and 3.

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

### **my final decision**

For the reasons outlined above I uphold Mr G's complaint about Loans 2 and 3 and require Provident Personal Credit Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 April 2020.

EJ Forbes  
**ombudsman**