complaint

Ms E says Provident Personal Credit Limited irresponsibly lent to her. She says that if the correct checks had been made then Provident wouldn't have approved the loans.

background

Our adjudicator thought the complaint should be partially upheld. Provident disagreed with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Ms E's complaint should be upheld in part. A copy of the background to the complaint and my provisional findings, are attached and form part of this final decision.

Provident, and Ms E, confirmed that they had received my provisional decision. And no one had anything to add after they'd seen it.

my findings

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

Provident and Ms E didn't raise any new points after receiving my provisional decision. So I've reached the same conclusions I reached before, for the same reasons.

putting things right – what Provident needs to do

- refund all interest and charges Ms E paid on loans 5 to 13;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- the number of loans taken from 5 onwards means any information recorded about them is adverse. So all entries about loans 5 to 13 should be removed from Ms E's credit file.

*HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Ms E a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons I've explained, I partly uphold Ms E's complaint.

Provident Personal Credit Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms E to accept or reject my decision before 5 September 2019.

Andy Burlinson
ombudsman

an extract from my provisional decision

This complaint is about 13 home credit loans Provident provided to Ms E between November 2010 and March 2016. Ms E's lending history is as follows:

loan number	date started	amount borrowed (£)	term weeks
1	19/11/2010	300	52
2	17/06/2011	500	50
3	11/11/2011	250	50
4	28/10/2011	400	61
5	30/07/2012	1100	81
6	28/12/2012	300	52
7	19/04/2013	150	52
8	09/08/2013	750	52
9	21/02/2014	1200	110
10	15/01/2015	300	52
11	09/06/2015	1500	110
12	08/09/2015	800	63
13	01/03/2016	700	84

From the information Provident has provided I can see that there was a break in the lending between loans 4 and 5 of about 4 weeks. But there were no other gaps. And Ms E, at times, took new loans to repay the balance she had on existing loans. And when she did this the overall amount she owed increased.

Our adjudicator upheld Ms E's complaint. He thought the loans 12 and 13 shouldn't have been given. Provident disagreed and the complaint was passed to me.

my provisional findings

I've considered all the available evidence and arguments to provisionally decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short term and high cost credit - including all of the relevant rules, guidance and good industry practice - on our website.

Provident needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms E 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 think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Provident should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Provident was required to establish whether Ms E could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Ms E's complaint.

Provident didn't think that the financial Ombudsman Service should look at loans 1 to 4 as it said that Ms E had brought them outside of our time limits. After some correspondence Ms E withdrew her complaint about these loans. So I haven't looked at loans 1 to 4 as they are no longer part of this dispute.

And I haven't recreated individual, proportionate affordability checks for loans 5 to 13 because I don't think that it is necessary to do so. I've looked at the overall pattern of Provident's lending history with Ms E, with a view to seeing if there was a point at which Provident should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Provident should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Ms E's case, I think that this point was reached by loan 5. I say this because:

- By the time Ms E took loan 5 she'd had a lending relationship with Provident for around 20 months. And from loan 5 onwards Ms E was provided with new loans without a break from the previous ones.
- The amounts Ms E was borrowing were generally increasing. And loan 5 was for a much larger amount than the previous borrowing. And it looks like some of the new loans were to replace outstanding loans.
- So Provident ought to have realised it was more likely than not that Ms E was having to borrow further to cover the hole repaying her previous loans were leaving in her finances and that Ms E's indebtedness was increasing unsustainably.
- And this seems to have been borne out by the outstanding balance amounts which are shown on Provident's payment history. Overall, this generally increases over time until the end of the lending relationship.
- Ms E wasn't making any real inroads to the amount she owed Provident. Loan 13 was taken out over five years after Ms E's first. I can see that towards the end of the lending Ms E owed between three to four thousand pounds to Provident at times. So Ms E had paid large amounts of interest to, in effect, service a debt to Provident over an extended period.

I think that Ms E lost out because Provident continued to provide borrowing from loan four onwards because:

- these loans had the effect of unfairly prolonging Ms E's indebtedness by allowing her to take expensive credit over an extended period of time.
- the number of loans, and the time she was indebted, was likely to have had negative implications on Ms E's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So I'm planning to uphold Ms E's complaint about loans 5 to 13 and Provident should put things right.