complaint

Miss F has complained that Provident Personal Credit Limited lent to her irresponsibly.

background

Miss F has taken out a total of 27 loans with Provident, the first being on 25 June 2012. Typically, she's had more than one loan active at a time, and some of each new loan has been used to pay off the previous one. She feels the loans were unaffordable, and she'd like the interest refunding, plus 8% a year simple statutory interest.

Our adjudicator looked at what had happened. But he didn't think the complaint should be upheld. In summary, he considered that Provident had carried out proportionate affordability checks for most of the loans, and these hadn't given any cause for concern. For some of the loans, he thought Provident should've carried out further checks. But he thought, based on what he'd seen, that the loans would still have appeared affordable.

Miss F disagreed. She said that she’d only been able to make the repayments because she never paid her other bills. She said she didn't understand why Provident had recorded her income as what it had, because she’d shown them all of the money she had coming in. She explained she's at a point where she can’t pay, and has got more and more into debt.

Our adjudicator considered this. He explained that income would include all income, including benefits. He didn't think there was enough information to show Miss F was routinely missing other payments in order to keep up with her Provident ones, and asked Miss F if she could provide further evidence.

Miss F didn't provide anything further, but asked that her complaint be passed to an ombudsman.

As I was minded to disagree in part with our adjudicator, I issued a provisional decision setting out my thinking, and invited any further comments from Miss F and Provident. I said the following.

First, I explained what I mean when I talk about ‘affordability’. Affordability isn’t just about whether the person pays the money back - although this can rightly be a good indicator. It’s also about whether the person is able to pay back the money without significant financial detriment.

I also explained that the checks a lender carries out should be proportionate. There’s no set ‘checklist’ of what this means - it will depend on the circumstances. But if checks are proportionate, and don’t give cause for concern, I won’t likely find that lending was irresponsible - even if it turns out to be unaffordable. And likewise, if checks weren't proportionate - but had they been, there still wouldn’t have been cause for concern - I won’t likely find lending was irresponsible in that situation either.

I bore these factors in mind when looking at what had happened here.

I looked at the first ten loans first, for which Provident has said it carried out the same checks - income and expenditure (I&E), up-to-date credit information, and repayment history (for every loan after the first). I didn’t think any of these checks would’ve given Provident cause for concern. Although in 2012 Miss F defaulted on three other accounts, and a further one in 2013, her monthly disposable income, based on her I&E, was between £750 and £1,300. I felt it was reasonable of Provident to rely on this at this point. If Miss F felt it wasn’t correct, I thought it would have been reasonable of her not to proceed unless it was corrected. As her repayments were between £45 and £247 a month, they would have seemed affordable. And she made all of them on time. I didn't think there was enough to alert Provident to any concerns that she may have been struggling to do so.

Following these first ten loans, the Financial Conduct Authority produced the Consumer Credit Sourcebook, known as 'CONC'. It sets out guidance on affordability checks, and expects them to be proportionate. But there are no 'set' checks that should necessarily be carried out. Provident has said it continued to check I&E, repayment history and credit data. It says its credit checks were more thorough from 2015.

During loans 11 to 15, monthly repayments increased to £395, with a disposable income recorded as £1,075. Repayments were kept up with. So it still seemed as if the loans were affordable. By loan 16, Miss F's disposable income dropped to £600, with repayments of £375. So again, although Miss F's situation had worsened, repayments still appeared affordable.

Between loans 17 and 23, Miss F's financial situation appeared to improve, as her disposable income increased to between £950 and £1,560. Monthly repayments peaked at £478, and were £317 at their lowest. Repayments continued, and there was no further negative information recorded on her credit file. So I was still satisfied that at this point, Provident wouldn't reasonably have had concerns about affordability.

But by loan 24, a further default had been added to Miss F's credit file, by another creditor. This was despite Miss F's recorded disposable income being over £1,300. So I thought at this point, Provident should have asked more questions - and stopped lending. Looking at Miss F's bank statements, it was difficult to see what was essential, and what was non-essential spending. But even so, I thought it should have been clear that despite seeming to have a good amount of disposable income, Miss F was continuing to have defaults applied, and was borrowing continuously. It was also at this point that Miss F started missing repayments. Further, the amounts of the loans had been increasing. So, even if bank statements may not have shown much, I thought Provident should have realised Miss F was relying on these loans, and was in a spiral of debt that she wasn't sustaining. So I thought it shouldn't have granted loans 24 to 27.

This meant I thought Provident should refund/remove all interest and charges in respect of loans 24 to 27, adding 8% simple interest a year to any parts of the repayments towards these that constituted interest and charges, from the date of each repayment to the date of settlement. It may first apply any refund to any outstanding debt. If there's a balance left over, this should be paid directly to Miss F. Any negative entries relating to these loans should be removed from Miss F's credit file(s).

As Miss F now appears to be in financial difficulties, I thought Provident must now contact her to arrange a realistic repayment plan if there's any outstanding debt.

I also thought Miss F may find it useful to speak to Stepchange Debt Charity, which offers free advice: https://www.stepchange.org/.

Provident said it would agree with my provisional decision, as a gesture of goodwill.

Miss F disagreed. In summary, she said:

- she was in a debt management plan from 28 February 2013, and her Provident agent was aware of that – but said she wouldn't record it on her I&E. She was paying £50 a week towards the plan, and had over £8,000 of debt, which the agent and a manager were also aware of;

- despite being aware of this and seeming shocked by it, Provident suggested she take out another loan to help pay other debts – this was her last loan in June 2017;
- she always borrowed a lot more than she wanted, in order to pay off previous loans, and the amounts kept increasing;
- she doesn't know how Provident calculated her I&E, as she was on benefits and had shown it how much she was getting. She was also self-employed, and again had shown Provident what she was earning. She told Provident what her outgoings were, to the penny, and some weeks she only had £50 maximum to spare. But she was still granted numerous loans;
- she knows she always paid her loans on time, but she was worried that if she missed a payment it would affect her credit rating. As she was in a debt management plan, she was getting her debts sorted out and trying to build her credit score. To make the repayments she had to miss paying other bills, and had to majorly cut back, for example cancelling some of her son's activities. She also took out a credit card to help pay the loans, but also struggled to pay that back; and
- she's now suffering financial hardship and struggling to get by week to week.

my findings

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

First, I'm very sorry for the position Miss F is in. I know it must be very stressful, and I'm particularly sorry to hear she had to cancel her son's activities. I know Miss F takes her finances seriously and is doing her best to get everything back on track. If she'd find it helpful, I'd urge her to contact Stepchange using the details I gave above. But what I need to do is look at whether I think Provident did anything wrong.

As I explained in my provisional decision, I don't think Provident should have lent to Miss F as regards loans 24 to 27 inclusive. I've considered what she's said, but I'm afraid it hasn't changed my mind – that means I don't think it was wrong to give her the other loans. I'll explain why.

I've considered what Miss F has said about Provident being aware of her debt management plan, but not recording it on her I&E. I've also thought about what she's said about not thinking her I&E was recorded properly as it didn't reflect her situation. I can't know for certain what Miss F said to Provident, or what it knew. But as I explained in my provisional decision, if she felt her I&E was incorrect, I think it would have been reasonable for her not to proceed until it was put right. And even if I take the debt management plan payments into account, it seemed, from the recorded I&E, that the repayments were still affordable – albeit for some months it would have been quite tight. As regards her comments about the last loan, I said in my provisional decision that I didn't think it should have been given (or the previous three). I still think that and for the same reasons, so I don't think I need to comment on this loan further.

I accept that to make repayments it was likely necessary to make some cutbacks. But taking on additional financial responsibilities often means cutting back in other areas. I can't see that Miss F was routinely missing paying bills and, as I've explained, the repayments appeared affordable (until the last four loans).

As I understand it, once interest and charges for the last four loans are refunded/removed, there will still be some outstanding debt. I think it right that Provident contacts Miss F to arrange a realistic repayment plan for this.

Miss F has also said she's experiencing financial difficulty. Given this, I'd expect Provident to discuss matters with her, and respond positively and sympathetically.

my final decision

For the reasons given above, it's my final decision to uphold this complaint in part. I require Provident Personal Credit Limited to:

- refund/remove all interest and charges in respect of loans 24 to 27 inclusive, adding 8% simple interest a year to any parts of the repayments towards these that constituted interest and charges, from the date of each repayment to the date of settlement. It may apply any refund to the outstanding debt;
- remove any negative entries relating to these loans (24 to 27 inclusive) from Miss F's credit file(s); and
- contact her to arrange a realistic repayment plan for the outstanding debt.

It must also respond positively and sympathetically to Miss F's situation, if she's in financial difficulty.

If Provident Personal Credit Limited considers that it's required by HM Revenue & Customs (HMRC) to withhold income tax from those parts of the award constituting the 8% interest, it should tell Miss F how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

Miss F should refer back to Provident Personal Credit Limited if she's unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 25 October 2018.

Elspeth Wood
ombudsman