

## **complaint**

Mr L complains that Provident Personal Credit Limited lent him money irresponsibly.

Mr L is represented by a relative who I'll call Mr M.

## **background**

The background to this complaint and my provisional findings are set out in my second provisional decision dated 19 September 2017 – a copy of is attached and this forms part of my final decision. In my second provisional decision I explained what I'd decided about this complaint and what I intended to do – subject to any further submissions from the parties.

Mr M is concerned that Mr L's debt seems to have been sold on again, but Mr L accepts the provision conclusions set out in my second provisional decision overall.

Provident says there's about £1,500 left to pay on Mr L's loans so the interest refund I've proposed isn't enough to clear his debt. As a gesture of goodwill, it offers to write off the total outstanding balance after it takes the last three loans back - in accordance with the award I've set out in my second provisional decision.

## **my findings**

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

I thank Mr M and Provident for their responses. Neither party seems to object to the outcome I've proposed in my second provisional decision. So, I see no reason to depart from the conclusions I reached in that decision - except to confirm I consider Provident's offer is fair and reasonable. So I find it should write off any monies left owing, in line with that offer.

## **my final decision**

For the reasons I've explained, I uphold this complaint. In full and final settlement, I order Provident Personal Credit Limited to

1. take back the last three loans;
2. refund interest on the last four loans taken out in September and October 2014 and February and March 2015;
3. pay interest on the refund referred to at 2 above at 8% simple a year from the date of payment to the date of settlement;
4. apply the refunds referred to at 2 and 3 above to reduce any capital outstanding;
5. write off any outstanding balance; and
6. remove any adverse information recorded about the last four loans from Mr L's credit file.

If Provident considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 November 2017.

Claire Jackson  
**ombudsman**

## **copy second provisional decision**

### **complaint**

Mr L complains that Provident Personal Credit Limited lent him money irresponsibly.

Mr L is represented by a relative who I'll call Mr M.

### **background**

Mr L took out nine loans with Provident between 2011 and 2015. Mr M says

- Mr L is a vulnerable adult with several conditions including Adult Attention Deficit Hyperactivity Disorder (ADHD) and Aspergers;
- Provident was wrong to lend to Mr L as he needs help managing his finances and has no concept of money;
- it was particularly irresponsible of Provident to continue to lend after Mr M paid off Mr L's fifth loan and told the local agent Mr L wasn't able to take on more debt;
- Provident was unsympathetic when Mr L had trouble repaying the last three loans. It wouldn't discuss the account with Mr M or other family members;
- it was wrong of Provident to sell debt on in the way that it did when Mr M was trying to sort things out; and
- Mr L's income is made up from disability benefits so he can't repay this money and Provident should write off the debt.

Provident says

- agents are trained to deal with customers who may have mental health issues;
- the agent here was satisfied Mr L seemed to be capable of agreeing to the loans;
- Mr L had a good repayment record – his first five loans were paid off on time;
- income and expenditure information suggested all of the loans were affordable;
- Mr M only asked the agent not to lend again after the last loan was provided;
- it couldn't speak to family members when Mr L had problems repaying the last three loans because there was no authority on the account at that time;
- it tried to help when Mr L experienced financial difficulties – by accepting reduced payments and referring him to free sources of debt advice; and
- it offered to consider putting Mr L on an exclusion list so he isn't given any more loans if evidence of vulnerability is provided.

At first our investigator considered Provident hadn't done enough checks for the last three loans and he recommended Provident should refund interest for the last two. Provident said it had checked affordability properly and Mr L only ran into trouble repaying the last three loans because he lost his job. There's evidence that Mr L told Provident he lost his job around this time. Our investigator thought this change in circumstances is likely to have caused Mr L's repayment difficulties so he issued a second view to say he didn't think the complaint should be upheld.

Mr M was unhappy and asked for an ombudsman to review the matter. He says the agent knew the family and she was aware Mr L needed help with his money. He met with her when he found out about the fifth loan in 2012 to pay it off and she agreed not to lend again. So it was wrong of Provident to give Mr L another four loans a few years later.

I issued my first provisional decision on 11 July 2017. I noted Provident accepts Mr M discussed Mr L's situation with the agent but it had no record of when. Mr L's fifth loan was paid off 14 days after he took it out in 2012 which is consistent with Mr M's recollection. And, on balance, I was minded to conclude that Mr M probably had met with the agent then.

I thought it was likely Mr M had asked Provident not to give Mr L any more loans at that point. I considered a responsible lender would have done more to assess Mr L's circumstances before lending again in 2014. But, I didn't have enough evidence to show that Provident should reasonably have declined to lend - even if proper checks had been done. So I wasn't minded to uphold the complaint.

Both parties were sent my provisional findings and asked for their comments. Provident had nothing to add but Mr M provided a quite detailed response. He has supplied additional documents including Mr L's bank statements and says, in summary:-

- when he met the agent in 2012 he told her Mr L had accrued over £7,000 in problem debt, gambling was problem, Mr L didn't manage his own finances and family intervened to pay off earlier debts so his apparently good repayment history wasn't accurate;
- the agent wasn't properly trained to deal with vulnerable customers because she didn't take appropriate action on receiving this information;
- if Provident had looked at Mr L's situation properly in 2014 it would have realised he couldn't manage these loans and declined to lend;
- Mr L has never had regular employment. He had a "work trial" arranged by his disability employment officer. But that didn't last long and just showed he's unfit for work. Mr L continued to receive benefits during the work trial. He didn't get a salary, so his repayment difficulties had nothing to do with reduced income or losing his job;
- Mr L borrowed from friends to keep up with his weekly payments initially but that was unsustainable; and
- Provident was provided with a letter of authority but it still refused to deal with Mr M and never offered to put Mr L on an exclusion list.

### **my provisional findings**

I've considered all the evidence and arguments available so far to decide what's fair and reasonable in the circumstances of this complaint. Some of the evidence Mr M supplied means I'm minded to reach a outcome that's different to the one I set out in my initial provisional findings. So I'm issuing this second provisional decision to explain why and give the parties the chance to comment, before I make my final decision.

Some of the evidence here is incomplete, inconclusive or contradictory. When it is, I reach my decision on the balance of probabilities – in other words, what I think is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr M has gone to some trouble to provide a detailed response to my provisional findings. I want to assure him that I've thought about what he's said carefully. I think I've addressed some of the points he makes in my first provisional decision. So, if I don't cover each one again here, it's because I've concentrated on what I consider to be key to the complaint.

I think I should just clarify two points

- I accept Mr M sent Provident the authority needed to discuss Mr L's account. But, I'm satisfied this was received after Provident had taken steps to sell on the debt
- Provident told our investigator it would consider putting Mr L on an exclusion list. He passed that information on to Mr M during the course of his investigation but I don't suggest Provident offered to put Mr L on an exclusion list before that.

I've explained already why I can't safely find Provident had reason to believe Mr L lacked the capacity to agree to these loans at the outset. Provident was entitled to presume that Mr L was able to manage his finances unless it had reason to think otherwise. I'm satisfied Mr M probably met with the agent in 2012 to repay Mr L's fifth loan. I don't think he's likely to have done that without explaining why he felt Provident shouldn't lend again. And I'd expect a responsible lender to take that information into account when Mr L asked to borrow more money.

Mr L got another four loans from Provident after that, as follows:-

September 2014 £200 - pay back £320 at £10 a week over 32 weeks  
October 2014 £300 - pay back £567 at £9 a week over 63 weeks  
February 2015 £600 - pay back £1,092 at £21 a week 52 weeks  
March 2015 £300 - pay back £480 at £15 a week for 32 weeks.

Mr L dealt with the same Provident agent throughout. The agent says she took extra care to ensure Mr L understood the obligations he was taking on before providing each loans. I think it would have been reasonable to take extra care when deciding if it was responsible to lend as well. So, I find it disappointing that Mr L seems to have been given another four loans without any additional checks or particular consideration of his specific circumstances.

Provident agents visit customers in their homes and regularly request sight of personal documents to verify individual circumstances. I don't think it would have too difficult or disproportionate for the agent to take a closer look at Mr L's situation here. And I consider it would have been reasonable to do some additional checks to find out how Mr L's condition affected his ability to manage money and what, if any, support he received, in these particular circumstances.

I've looked at Mr L's bank statements because I think they're likely to provide some evidence of the way Mr L dealt with his finances on a day to day basis. Mr M says this was Mr L's only account. The money coming in consists of regular cash payments. There's no sign of benefits or wages and there's very little in the way of regular spending. This seems to support Mr M's explanation that he managed Mr L's money at the relevant time.

Mr L made a few regular payments from the account. He seems to have missed at least one a month, incurring bank charges of £15 a time. Mr L's only regular commitment is a payment of about £100 a month to a third party lender. Mr M says this is for a guarantor loan he co-signed to pay off Mr L's earlier debts and it had to be paid from Mr L's account.

I can see Provident asked Mr L about other loans specifically in its application form but he didn't mention this payment. This might have been because Mr L didn't understand what Provident was asking about - or Mr L may not have known what he spent his money on exactly. Whatever the reason, I think it's unlikely that the expenditure figures Mr L gave Provident were accurate. And Provident would probably have realised that if it had done some more checks.

There's some evidence in the statements that Mr L was gambling online at this time as well. I can't say the amounts are large but I consider these were relatively substantial amounts for someone like Mr L, on a fixed and limited income. And I'm minded to find this is significant because Mr M says he told the agent Mr L had a problem with gambling in the past. I note the amount Mr L spent gambling online seems to have more than doubled in October 2014, after Provident provided the sixth loan. And I think there's a good chance Mr L may have been gambling elsewhere as well.

Mr L told Provident he was unemployed on each of the last four loan applications. His declared weekly income ranged from £112 to £142. He didn't declare any loan repayments aside from Provident loans. I accept it looked as if he had disposable income ranging between about £50 and £70 a week.

But, for the reasons I've explained above, I'm not persuaded Mr L was in a position to provide Provident with a reliable assessment of his financial circumstances. I think Provident was put on notice that might be the case in 2012. And, if it had carried out a reasonable and proportionate assessment of Mr L's situation when he asked to borrow again, it's not likely to have concluded it would be appropriate to lend.

Provident says Mr L's repayment problems only started after he lost his job - and his repayment history was satisfactory before that. I can see from Provident's customer contact notes that Mr L told

Provident he'd lost his job when he was chased for payment. But Mr M says Mr L has never had a proper job - he undertook a short unsuccessful work trial around this time, which didn't affect his benefits.

I've seen nothing in Mr L's bank statements to suggest he was paid a wage or show there was a significant change in his circumstances in May 2015. Medical evidence Mr M supplied seems to support what he says about Mr L's unsuitability for work. And I think Provident must have had some concerns about Mr L's payment history before May 2015 – as I can see the district manager contacted Mr L in November 2014 about arrears.

On balance overall, I think it is likely Mr L wasn't in a position to manage the last four loans when he got them. I don't think Provident did enough checks before providing the loans, given the information it received from Mr M in 2012. I am not satisfied Provident is likely to have concluded it would be appropriate to lend if it had done proper checks. And I'm inclined to find it was wrong of Provident to give Mr L loans in September and October 2014 and February and March 2015 - and require it to put things right, as far as that's possible now.

Provident no longer owns the last three loans. I think it should take those back and refund the interest paid on all four loans, plus interest. I say this because Mr L had the benefit of the money he borrowed, but he wouldn't have had to pay interest if Provident hadn't provided the last four loans irresponsibly. The refund should be applied to reduce any principal sums still owed and any surplus paid to Mr L. If there's a balance outstanding Provident should take appropriate steps to put in place an affordable repayment plan.

I invite both parties to let me have any further submissions by 3 October 2017 when I'll reconsider the complaint before I reach my final decision.

#### **my provisional decision**

For the reasons I've explained, subject to any further submissions I may receive from Mr L or Provident by 3 October 2017, I am minded to uphold this complaint. I intend to order Provident Personal Credit Limited to

- 1 take back the last three loans;
- 2 refund interest on the last four loans taken out in September and October 2014 and February and March 2015;
- 3 pay interest on the refund referred to at 2 above at 8% simple a year from the date of payment to the date of settlement;
- 4 apply the refunds referred to at 2 and 3 above to reduce any capital outstanding;
- 5 pay any money left over to Mr L or put in place an affordable repayment arrangement if there's money still owed; and
- 6 remove any adverse information recorded about the last four loans from Mr L's credit file.