complaint

Mrs S complains about four instalment loans that she took out with Provident Personal Credit Limited, trading as Satsuma Loans, ("SL"), which she said were unaffordable.

background

Mrs S was given four instalment loans by SL from February 2014 to May 2018. A summary of the loans taken out by Mrs S is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Repayment amounts
1	24/2/14	23/4/14	£150	13 weekly repayments of £16.15
2	23/4/14	27/10/14	£300	26 weekly repayments of £19.38
3	8/7/15	18/4/16	£600	39 weekly repayments of £27.69
4	28/5/18	Unpaid	£500	6 monthly repayments of £158.00

SL said that it had carried out a credit check before each loan and asked Mrs S for details of her income and expenditure. And before Loans 3 and 4 SL also applied extra safeguards and buffers to Mrs S's declared expenses to reflect the information it obtained from its credit and internal checks.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. He noted that Mrs S was struggling financially. But he didn't think it would have been proportionate for SL to ask Mrs S for the amount of information needed to show the lending was unsustainable.

Mrs S disagreed. She said that SL's final response letter didn't include any information about her rent and other expenditure before Loan 4. So she queried what SL had based its lending criteria on. Mrs S also referred to the entries on her bank statements which she said included amounts which shouldn't be included as her income. Mrs S also referred to another complaint with this service which had been upheld.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs S and to SL on 10 May 2018. I summarise my findings:

I'd noted that Mrs S had said that another complaint she'd made with another lender had been upheld. But I said that we treated each complaint on its own merits. And it wasn't always appropriate to compare the outcomes of complaints without a detailed understanding of the specific facts of each complaint.

I explained that when SL first lent to Mrs S the regulator was the Office of Fair Trading (OFT) and relevant guidance had included its guidance on irresponsible lending (ILG). From 1 April 2014 onwards the regulator was the FCA and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The ILG and CONC contained similar guidance for lenders about responsible lending.

SL needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this meant that it should have carried out proportionate checks to make sure Mrs S 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 Mrs S's income and expenditure. With this in mind, in the early stages of a lending relationship, I thought less thorough checks might have been reasonable and proportionate.

But certain factors might have pointed to the fact that SL should fairly and reasonably have done more to establish that any lending was sustainable for Mrs S. These factors included:

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

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

I thought that it was important for me to say that SL was required to establish whether Mrs S 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 didn't automatically follow this was the case. This was because the ILG and later the CONC defined 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 followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to make their repayments sustainably if they were unlikely to be able to make their repayments without borrowing further.

I'd carefully considered all of the arguments, evidence and information provided in this context and what this all meant for Mrs S's complaint.

SL had made a number of checks before it lent to Mrs S. It had asked her for details of her income and expenditure. Mrs S had declared her monthly income as £1,500 and her expenditure as £624 before Loans 1 and 2. She'd declared her monthly income as £1,400 and expenditure as £600 before Loan 3 and her income as £1,200 and her expenditure as £90 before Loan 4.

I'd also noted that SL had checked Mrs S's credit file before agreeing to the loans. SL had provided this service with a summary of its credit checks. But SL's credit checks didn't appear to show any specific information before Loans 1 and 2. They referred to "no matching agreement". The checks before Loans 3 and 4 showed no active credit accounts in arrears, no county court judgements, no bankruptcy, no debt management plans and no county court judgements. And before Loan 4 the checks showed no payday loans taken in the previous three months. But the checks before Loan 4 did appear to show a defaulted account before Loan 4.

Mrs S had provided this service with a copy of her credit report. I could see there were defaults in the 12 months before Loan 1, one of which was less than two months before Loan 1. The report also showed a default around three months before Loan 4.

But I was also aware that when a lender carried out a credit check, the information it saw didn't usually provide the same level of detail that a consumer's credit report would and it wasn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders reported to the same credit reference agencies. So, this might explain any differences between the information provided by SL's credit check and Mrs S's actual situation.

I could see that Loan 1 was for £150 repayable by 13 weekly repayments of £16.15. I'd noted that Mrs S's declared monthly disposable income was £876.

I thought that the checks SL carried out before agreeing Loan 1 were proportionate. The repayments that Mrs S needed to make on Loan 1 were relatively modest compared to the income that she'd declared to SL. And I didn't think the repayments were so large that it was obvious they would've caused Mrs S financial difficulty.

So given Mrs S's repayment amounts, what was apparent about her circumstances at the time, and that this was her first loan with the lender, I didn't think it would've been proportionate for SL to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Mrs S had provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think SL was wrong to give Loan 1 to Mrs S.

Mrs S repaid Loan 1 around a month early. But on the date of repayment she took out Loan 2 which was for double the amount of Loan 1. And although the weekly repayments had increased slightly to £19.38, they were to be repaid over 26 weeks. So she was committing to making those repayments over a far longer period than her previous loan. Nevertheless as Mrs S's declared monthly disposable income was still £876, I thought that the checks SL carried out before agreeing Loan 2 were proportionate. The repayments that Mrs S needed to make on Loan 2 were still relatively modest compared to the income that she'd declared to SL. And again I didn't think the repayments were so large that it was obvious they would've caused Mrs S financial difficulty.

So given Mrs S's repayment amounts and what was apparent about her circumstances at the time, I didn't think it would've been proportionate for SL to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Mrs S provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think SL was wrong to give Loan 2 to Mrs S.

Loan 2 was repaid on the due date. Loan 3 was taken out almost nine months later. I thought it was reasonable for SL to treat Mrs S as a new customer before Loan 3. Loan 3 was for £600 to be repaid by 39 weekly repayments of £27.69. I could also see that SL had added an additional amount to Mrs S's declared expenses as a result of what it had seen on its credit checks and its expected level of expenditure based on Mrs S's circumstances. So it had adjusted Mrs S's disposable income to £421.42.

Overall, I thought that the checks SL had carried out before agreeing Loan 3 were proportionate. The repayments that Mrs S needed to make on Loan 3 were relatively modest compared to the income that she'd declared to SL.

So given Mrs S's repayment amounts, and what was apparent about her circumstances at the time, I didn't think it would've been proportionate for SL to have asked her for the amount of information that would have been needed to show the lending was unsustainable.

And there wasn't anything in the information Mrs S provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what she was saying. So I didn't think SL was wrong to give Loan 3 to Mrs S.

I'd noted that there was a gap of around 25 months between Mrs S repaying Loan 3 and taking out Loan 4. I'd thought it was reasonable for SL to consider that gap in lending as an indication that Mrs S wasn't reliant on its loans.

The loan amount was £500 and was repayable by six monthly payments of £158. SL's credit check before Loan 4 had shown a defaulted account on her credit file. I thought this might have suggested that Mrs S was facing financial problems and should have caused SL some concerns.

I'd also noted that the information SL had provided to this service about Mrs S's declared expenditure didn't include an amount for her housing costs or other expenditure. SL had said that Mrs S had only declared total expenditure of £90 before Loan 4. But for previous loans Mrs S had declared total expenditure ranging from £600 to £624. I could see that SL had added a total additional amount of £498.13 in respect of safeguards and buffers to Mrs S's declared expenses as a result of what it had seen on its credit checks and its expected level of expenditure based on Mrs S's circumstances. But I'd noted that this amount didn't include an amount for housing costs.

I'd noted that Mrs S's declared expenditure information showed rent of £600 paid before Loans 1 and 2, and rent of £450 paid before Loan 3. I'd also noted that Mrs S's address had remained the same during all her borrowing from SL. So I thought that SL should have gathered more information from Mrs S about her housing costs before Loan 4. And in view of the minimal expenditure declared by Mrs S in comparison with her previous declared expenditure and the recent default shown in SL's credit check, I'd thought it would have been proportionate for SL to have gathered a more comprehensive view of Mrs S's circumstances and sought some independent verification of this.

If it had done so, it would have seen, as I had seen from Mrs S's bank statements, that her monthly income was around £1,012 which was rather less than the £1,200 income declared by Mrs S. She was also still paying monthly rent of £600. So taking into account the amount of SL's own safeguards and buffers here for Mrs S's other expenditure, I didn't think SL should have decided that it was likely that Mrs S would be able to sustainably meet her repayments.

So subject to any further representations by Mrs S or SL my provisional decision was that I intended to uphold this complaint in part. I intended to order SL to put things right as follows.

putting things right – what SL needed to do

- with regard to Loan 4, refund all the interest and charges that Mrs S had paid on Loan 4, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
- write off any unpaid interest and charges from Loan 4;
- apply the refunds referred to above to reduce any capital outstanding on Loan 4 and pay any balance to Mrs S; and
- remove all adverse entries about Loan 4 from Mrs S's credit file.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mrs S a certificate showing how much tax it's taken off if she asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Mrs S responded to my provisional decision to say that she accepted it and had no further information to add.

SL responded to my provisional decision to say that it agreed with my recommendation.

my findings

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

Given that both Mrs S and SL have accepted my provisional decision and given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require SL to pay Mrs S some compensation and take the steps set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint I order Provident Personal Credit Limited, trading as Satsuma Loans, to:

1. With regard to Loan 4, refund all the interest and charges that Mrs S had paid on Loan 4, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
2. Write off any unpaid interest and charges from Loan 4;
3. Apply the refunds referred to above to reduce any capital outstanding on Loan 4 and pay any balance to Mrs S; and

4. Remove all adverse entries about Loan 4 from Mrs S's credit file.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mrs S a certificate showing how much tax it's taken off if she asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 13 January 2020.

Roslyn Rawson
ombudsman