

complaint

Mr M complains about instalment loans that he took out with Provident Personal Credit Limited, trading as Satsuma Loans, ("SL"), which he said were unaffordable. The complaint was brought to this service on Mr M's behalf by a claims management company. But for ease, I shall refer below to all actions being taken by Mr M.

background

Mr M was given five instalment loans by SL between September 2015 and September 2017. At the time SL gave us its business file, Loans 4 and 5 hadn't been repaid. All the loans except Loan 2 were due to be repaid by 52 weekly instalments. Loan 2 was repayable by 26 weekly instalments. A summary of the loans taken out by Mr M is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Weekly instalment amounts
1.	17/9/15	16/9/16	£830	52 instalments of £30.33
2.	14/3/16	16/9/16	£150	26 instalments of £11.05
3.	16/9/16	15/9/17	£300	52 instalments of £11.48
4.	23/2/17	Unpaid?	£290	52 instalments of £11.10
5.	24/9/17	Unpaid?	£400	52 instalments of £15.31

SL said that it had carried out a credit check before each loan and asked Mr M for details of his income and expenditure. SL also applied extra safeguards and buffers to Mr M's declared expenses to reflect the information it obtained from its credit check.

our adjudicator's view

The adjudicator concluded that SL shouldn't have lent any of the loans to Mr M. He said that SL would have seen from its own credit checks that Mr M had a significant number of short term loans before Loan 1 and his subsequent loans.

SL disagreed and responded to say that its credit checks didn't indicate that Mr M was having money problems. It provided this service with a copy of its credit checks. SL also said that on two of the loans, Mr M had missed one to two payments which wasn't uncommon. But its loans were subject to affordability checks to ensure that they were sustainable. SL also said that unexpected expenses meant that some consumers needed to borrow again before existing loans were repaid.

The adjudicator asked SL to provide more detail of its credit checks.

SL responded to say that it hadn't provided a summary of its checks. It had provided the data it received from the credit bureau at the time of the credit check. SL said that the data confirms details such as number of payday loans and the worst status found for any active accounts.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to SL on 2 September 2019. I summarise my findings:

I noted that when SL lent to Mr M the regulator was the Financial Conduct Authority (FCA) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

I said that 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 Mr M 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 Mr M's income and expenditure. With this in mind, in the early stages of a lending relationship, I thought less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that SL should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. 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 may 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 it was important to say that SL was required to establish whether Mr M could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

I explained that 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 CONC defined sustainable as being without undue difficulties and in particular the consumer should be able to make repayments, 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 Mr M's complaint.

I noted that SL had made a number of checks before it lent to Mr M. It had asked him for details of his income and expenditure. And SL had amended Mr M's declared expenditure in its assessment to reflect what it had seen in its checks. I could see that for some of the loans it had added an amount for other credit commitments and other expenditure. I could also see that SL had checked Mr M's housing status. From the information SL gathered, I could see that Mr M was an owner occupier.

SL had also checked Mr M's credit file before agreeing to the loans. SL has provided this service with a record of its credit checks. I could see that there were two active credit accounts with payments in arrears in the previous six months before Loan 2 and one account in arrears in the previous six months before Loan 4. There was no information about other payday loans even though SL had told us this was shown on its credit checks. As, I had expected to see information on SL's credit checks about these, I had asked the adjudicator to ask SL for this information. It hadn't provided a response.

Otherwise, I hadn't seen any adverse information on SL's checks that I thought should have caused additional concerns to SL. Mr M had also provided this service with a copy of his credit report and I referred to this in my provisional decision.

I could see that Loan 1 was for £830 repayable by 52 weekly repayments of £30.33. SL's credit check had shown that a new credit account had been opened but no active accounts were in arrears. SL also said that Mr M had a disposable income of £457 before Loan 1 after its buffers had been applied to Mr M's expenses.

Mr M had applied for Loan 2 whilst Loan 1 was being repaid. I could see from SL's contact notes that Mr M had missed two repayments on Loan 1 in October and November 2015. But Mr M had said that these were missed because he had a new debit card and the missed repayments seemed to have been made soon after. Mr M had then applied for Loan 2 around four months after he'd had repayment issues. SL's credit check before Loan 2 had shown that there were two active credit accounts with payments in arrears in the previous six months. I could also see that SL had said that it had added an additional £1,088.55 of safeguards to Mr M's declared expenses. And that Mr M had a disposable income of £151 before Loan 2 after SL's buffers had been applied to Mr M's expenses, and taking into account the repayments for Loan 2.

On balance, I thought that the checks SL carried out before agreeing Loans 1 and 2 were proportionate. The repayments that Mr M needed to make on Loans 1 and 2 were relatively modest compared to the income that he'd declared to SL. And I didn't think the repayments were so large that it's obvious they would've caused Mr M financial difficulty.

So given Mr M's repayment amounts, what was apparent about his circumstances at the time, and his history with the lender, I didn't think it would've been proportionate for SL to have asked him for the amount of information that would be needed to show the lending was unsustainable.

And there wasn't anything in the information Mr M provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying. So I didn't think SL was wrong to give Loans 1 and 2 to Mr M.

Loan 3 was taken out on the date Loans 1 and 2 were repaid. I'd thought the fact that Mr M was taking out a new loan so soon after repaying his previous loans should have caused SL some concerns. But the loan repayments were less than Mr M had been repaying for Loans 1 and 2. And there had been no repayment issues since Loan 2 had been taken out. In addition SL's credit check showed no adverse information. I also noted that SL had assessed Mr M's disposable income to be £514 after it had increased Mr M's expenses following its credit check. I could see that the monthly repayments on Loan 3 were sustainably within what SL's checks showed Mr M's disposable income to be.

But I'd also seen on Mr M's credit check that there were three defaulted accounts in the six months before Loan 3. So I'd asked the adjudicator to ask SL if the defaults appeared on its credit check. It didn't provide a response to this request. But if the defaults had been shown and SL was then prompted to ask Mr M about his other short term lending, I could see from Mr M's credit report that he had two other short term loans with monthly repayments totalling around £82. On balance, I didn't think these suggested that Mr M was having significant difficulties managing his money. So I couldn't safely say that SL shouldn't have given Loan 3 to Mr M.

I'd also looked at the overall pattern of SL's lending history with Mr M, with a view to seeing if there was a point at which the lender should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so SL should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr M's case, I thought that this point was reached by Loan 4. I said this because:

- Mr M had applied for Loan 4 whilst he still had Loan 3 outstanding and he had already missed two repayments on Loan 3. This suggested that he was having difficulty repaying Loan 3.
- Mr M had taken out a loan of £150 11 months previously and he'd then asked for a loan of £290 without any break in his borrowing. He hadn't made any inroads into his debt over this time and paid large amounts of interest to, in effect, service a debt to SL over an extended period.

I thought that Mr M had lost out because:

- these loans had the effect of unfairly prolonging Mr M's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the length of time that Mr M had been taking out short term loans was likely to have had negative implications on Mr M's ability to access mainstream credit and so had kept him in the market for these high-cost loans.

I'd noted that SL had said that the loans were subject to an affordability check to ensure they were sustainable. But I'd said that SL was required to establish whether Mr M could sustainably repay his loans – not just whether the loan repayments were affordable on a strict pounds and pence calculation. And SL would know from previous decisions (as well as what's set out on our website) that there were cases where this service considered the overall lending pattern and not just the affordability of each loan. When a consumer borrowed numerous loans over a long period of time, it was most likely that the loans weren't being used for their intended purpose of temporary cash flow problems. As SL would know, the FCA made it clear in a recent letter to CEOs of high cost lending firms that "a high volume of relending.....might be symptomatic of unsustainable lending patterns". And I thought that was the case here.

Subject to any further representations by Mr M or SL my provisional decision was that I intended to uphold this complaint in part. My redress was drafted on the basis that Loans 4 and 5 hadn't been repaid. I'd said that it would be helpful if SL could provide up to date information on the loans' balances in its response to my provisional decision. I intended to order SL to:

- with regard to Loans 4 and 5, refund all the interest and charges that Mr M has paid on these loans, 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 Loans 4 and 5;
- apply the refunds referred to above to reduce any capital outstanding on Loans 4 and 5 and pay any balance to Mr M; and
- remove all entries about Loans 4 and 5 from Mr M's credit file once they've been repaid.

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

Mr M responded to say that he accepted my provisional decision.

SL responded by providing further detail of its credit checks to show the number of payday loans taken in the previous month and previous three months. It also said that Loans 4 and 5 hadn't yet been repaid with a total outstanding balance of £553.84.

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.

I note SL's further version of its credit checks sent with its response to my provisional decision. This included information about whether Mr M had taken out any payday loans in the previous month and previous three months before his loans. I note that the checks show that Mr M had taken out two payday loans in the three months before Loan 1. But the checks showed no other payday loans being taken in these periods for any of the other loans.

I don't think that this additional information affects my decision about Loan 1. I still think that the checks SL carried out before agreeing Loan 1 were proportionate. I don't think the two payday loans shown on SL's credit checks meant that it would have been proportionate at that stage for SL to start verifying what he was saying. And the repayments that Mr M needed to make on Loan 1 were relatively modest compared to the income that he'd declared to SL. So I still don't think SL was wrong to give Loan 1 to Mr M.

And the absence of other payday loans on SL's checks doesn't affect my decision regarding the other loans. I still think that Loans 4 and 5 should be upheld for the reasons given above.

So, overall 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 Mr M some compensation as 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 Loans 4 and 5, refund all the interest and charges that Mr M has paid on these loans, 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 Loans 4 and 5;
3. Apply the refunds referred to above to reduce any capital outstanding on Loans 4 and 5 and pay any balance to Mr M; and
4. Remove all entries about Loans 4 and 5 from Mr M's credit file once they've been repaid.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mr M a certificate showing how much tax it's taken off if he 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 Mr M to accept or reject my decision 7 November 2019.

Roslyn Rawson
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