Financial Ombudsman Service

## complaint

Mr D has complained about loans granted to him by Provident Personal Credit Limited ("Provident" or "the lender"). Mr D says that the loans were not affordable and should not have been agreed.

Mr D has brought his complaint to this Service via a claims management company. For simplicity, I will refer to Mr D throughout this decision.

## background

Provident agreed eight loans for Mr D from December 2009 to April 2014. The loan terms varied from 14 to 63 weeks and some of the loans ran concurrently. The below table sets out some of the information Provident provided about these loans (with numbers rounded to the nearest pound).

| Loan number | Start | End | Principal (£) | Total to pay (£) | Term (weeks) | Rate (£) |
|---|---|---|---|---|---|---|
| 1 | 03/12/2009 | 10/08/2010 | 200 | 336 | 48 | 7 |
| 2 | 24/05/2012 | 18/09/2012 | 350 | 630 | 60 | 11 |
| 3 | 12/11/2012 | 03/09/2013 | 450 | 632 | 52 | 12 |
| 4 | 01/07/2013 | 18/04/2014 | 500 | 910 | 52 | 18 |
| 5 | 24/09/2013 | 24/12/2013 | 100 | 140 | 14 | 10 |
| 6 | 02/10/2013 | 12/03/2014 | 300 | 480 | 32 | 15 |
| 7 | 05/03/2014 | - | 750 | 1,365 | 52 | 26 |
| 8 | 17/04/2014 | - | 1,100 | 2,079 | 63 | 33 |

I understand Mr D didn't completely repay his final two loans and the records provided by Provident show that these were written off in 2014.

One of our adjudicators looked into Mr D's complaint and found that Provident should not have agreed to Mr D's final two loans taken out in 2014. Neither party has responded to this adjudication and so the complaint has come to me, as an ombudsman, for review and final decision.

## 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 these types of loans - including the relevant rules, guidance and good industry practice - on our website. And I've followed this approach.

Having done so, I plan to uphold Mr D's complaint in part. I appreciate this will be disappointing for Provident, and to some extent for Mr D also, and I hope my explanation below makes it clear why I have come to this conclusion.

The Office of Fair Trading was the regulator for consumer credit during the time Provident agreed loans for Mr D, apart from his final loan which was agreed just after the Financial Conduct Authority became the regulator. Under both regulators, in order to lend responsibly, Provident needed to make a reasonable assessment as to whether or not Mr D could afford to meet its loan repayments in a sustainable manner. Neither the law nor the regulators specified exactly how the assessment was to be carried out but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for Mr D.

It's important to note that this means the assessment needed to be consumer-focussed. It was not an assessment of the risk to Provident of recouping its money, but of the risk to Mr D in having difficulty meeting his repayments, experiencing adverse consequences or incurring or increasing problem indebtedness. The assessment needed to be proportionate to both the circumstances of the lending and the circumstances of the consumer. Therefore, a lender might need to be flexible in its approach to making such an assessment – what was reasonable for one consumer might not be so for another, or indeed what might be reasonable for a consumer in one circumstance might not be so for the same consumer in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- the lower a consumer'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 demonstrates that the lending was unsustainable.

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

Mr D said that he was in financial difficulties when he borrowed from Provident. He explained that he had defaulted on some of his debts, which had been sold on to debt collectors throughout 2012 to 2014. I don't doubt that things were difficult for Mr D financially however, he hasn't been able to provide this Service with any further evidence about his financial circumstances at the time beyond what he has told us through his representative.

Mr D first borrowed from Provident in late 2009. The loan was for £200 with a weekly repayment of £7. It seems from the customer records provided that Mr D repaid his first loan on time and with few problems. I note that there was a gap of over 18 months between Mr D repaying his first loan in 2010 and borrowing again from Provident in 2012. His second loan was for £350 and was repaid early. And there was a gap of about two months then before Mr D took out his third loan.

The information Provident provided to this Service included Mr D's loan agreements and a copy of the application forms for some of his loans. The lender also provided a summary of the information it gathered from a credit reference agency about Mr D's finances from his fourth loan onwards.

The application forms Provident provided show that when Mr D applied for his second, third and fourth loans he declared a weekly income of £200 to £300, with weekly outgoings of

£100 to about £200. I note that he said at the time of his second loan that he'd been in his current job for four years. I've seen nothing to suggest that Mr D's income and expenditure was very different to this for his first loan, or indeed his fifth and sixth loans taken out within a few months of his fourth.

This might suggest that Mr D could afford to meet his loan repayments for loans 1 to 6 in a sustainable manner. Bearing in mind the length of time these loans were scheduled to run for – in other words, that Mr D would need to meet his repayments not just once but over many weeks and months - I think Provident should have independently verified what he'd told it about his income and expenditure to be able to reasonably assess whether or not he could sustainably meet his repayments. However, with the limited information available to me, it's difficult to come to a view as to what the lender might have found out about Mr D's circumstances, had it carried out more comprehensive checks. The credit reports provided by Provident from the time of loans 4, 5 and 6 show that Mr D had two historic defaults and had a satisfied or discharged public information record but this information alone doesn't persuade me that Mr D had such serious current problems managing his money that Provident was irresponsible to have agreed to lend to him.

That said, I can see that Mr D took out loan 4 just before he repaid loan 3. And he took out loan 6 just a week after taking out loan 5. So I think Provident ought to have been concerned about whether or not Mr D was becoming reliant on its loans. And, in considering this complaint, I've kept in mind the overall pattern of Provident's lending history with Mr D, with a view to seeing if there was a point at which the lender should reasonably have seen that further lending was unsustainable and so should not have provided any further loans.

Given the particular circumstances of Mr D's case, I think that this point was reached by loan 7. At this point Mr D had been indebted to Provident almost continuously for about two years. He started this period by borrowing £350 and was now asking for an amount of £750, with a loan still outstanding. This increased his account balance from a few hundred pounds to over £1,300 and potentially committed him to being indebted to Provident for another year. I think it should have been clear to Provident at this point that Mr D wasn't managing to repay his loans sustainably and that his indebtedness was continuing and increasing.

Provident agreed another loan for Mr D a month later. This had a term of over a year and took his total debt to over £3,000. The customer records show that Mr D didn't fully repay these loans.

I think that Mr D lost out because these two loans had the effect of unfairly prolonging his indebtedness by allowing him to take expensive credit over an extended period of time. The number of loans and the length of time over which he was indebted to Provident was likely to have been seen negatively by other lenders and so potentially kept him in the market for these high-cost loans. And, as was foreseeable, he was unable to repay them.

Our usual approach in putting things right in matters of irresponsible lending is that the borrower shouldn't repay more than the principal amount borrowed. Our approach also usually considers it fair that a lender recovers the principal amount given, because the borrower has had the use of these funds. I appreciate that this will be disappointing for Mr D but I don't see any reason to depart from our approach here.

**what Provident needs to do to put things right**

I've concluded that Provident shouldn't have provided loans 7 and 8 to Mr D, taken out in March and April 2014 respectively. In order to put this right Provident should:

1) Remove any interest and charges which form part of the remaining balances (which I understand were written off in 2014).
2) Treat any payments made by Mr D towards these loans as payments towards the original capital amounts.
3) If this means Mr D has made payments over and above the capital balances then it needs to refund these payments to him, along with 8% simple interest from when the overpayment originated to the date the complaint is settled. (From the account records provided it seems unlikely that this was the case.)
4) Alternatively, if this means there is still a capital balance outstanding Provident needs to treat Mr D fairly and sympathetically which may mean agreeing an affordable repayment plan with him.

If either of these loans has been sold on, then Provident should seek to buy this debts back or work with the new owner to achieve steps 1 to 4.

5) The overall pattern of Mr D's borrowing for these loans means any information recorded about them is adverse, so if they still appear on his credit file Provident should remove them entirely, or work with a third party to do so, once the debts have been settled.

*HM Revenue & Customs requires Provident to deduct tax from this interest. It should give Mr D a certificate showing how much tax it has deducted, if he asks for one.

**my final decision**

For the reasons I've given, I'm upholding Mr D's complaint in part and require Provident Personal Credit Limited to put things right for him as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 May 2020.

Michelle Boundy
**ombudsman**