

complaint

Mr A and his representative complain that he was mis-sold two loans by Provident Personal Credit Limited.

background

Provident is seeking repayment of the outstanding balances on two home credit loans it says Mr A took out with it. Mr A disputes he owes any money. In summary he has said he did not sign one of the loan agreements and Provident did not carry out affordability checks as it should have done. He wants the debt to be written off.

Our adjudicator recommended that the complaint should not be upheld. In summary she considered that:

- Provident says that it carried out checks in line with its lending criteria and would grant credit on that basis. It was reasonable for it to take into account the information given by Mr A about his employment and finances (which he confirmed was true) when granting the first loan. He had also successfully paid off five previous loans. She was satisfied that Provident had carried out affordability checks on granting the first loan. Although she has nothing to show it did so for the second loan that alone does not warrant a settlement given his successful settlement of five previous loans.
- Mr A would have been familiar with Provident's loan agreements which say he could withdraw from them in a 14 day period. But he did not do so. She is not persuaded that Mr A was pressurised into entering into any agreement or that they were mis-sold to him. Signed copies of the agreements have been provided and it was more likely than not that Mr A did take out the loans.
- Mr A has said he never saw one agreement, that the signature on it did not match his own and he did not sign it. But on the available evidence she is unable to conclude that documents provided by Provident '*are not a true version of events*' or '*legitimate documents*' as Mr A suggests. Having examined the available examples of Mr A's signature it is more likely than not that the signatures are the same and it is likely Mr A did enter into the agreement.
- Statements sent by Provident establish that Mr A owes an outstanding balance. Mr A became unwell some months after the agreements were taken out but he did not make Provident aware of this at the time. It is not reasonable to expect it to be positive and sympathetic if it is not aware of his circumstances. But it was reasonable for it to pursue him for the debt. Since it has become aware of his circumstances Provident has said it is willing to assist him in repaying the balance due. Mr A has had the benefit of the money and the debt outstanding is money that he owes, and there are no grounds to require Provident to write it off.

Mr A and his representative do not agree and have asked for an ombudsman review. In summary they say that Mr A did not sign one of the agreements. As Mr A was not making regular payments he should not have been given the second loan. He was also not given the appropriate documentation by Provident as legally required including by the Consumer Credit Act 1974.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr A's representative has provided detailed submissions to support his complaint, which I have read and considered individually in their entirety. But my findings are expressed in considerably less detail and focus on what I consider to be the central issues.

Mr A's representative has raised arguments about the adequacy and/or lack of documentation provided by Provident – including whether it has complied with various statutory and legal requirements set out in the Consumer Credit Act 1974 and elsewhere - and the effect this may have on Mr A's debt.

But this service is designed to be informal and to resolve problems arising between consumers and their financial services providers and my role, as an ombudsman, is to consider the individual complaint and decide whether something has gone wrong. I am required to reach a decision on a complaint that is fair and reasonable in all the circumstances, taking into account – but not necessarily being bound by – any relevant law (amongst other things).

Having considered matters, on balance, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

I am satisfied that Provident did carry out an affordability assessment before lending to Mr A and it took into account his history of successfully paying off five previous loans and the information Mr A had supplied. Although Mr A and his representative may not agree with Provident's decision to lend money to Mr A this is an example of it exercising its legitimate commercial judgement as it is entitled to do. It is also a matter of Provident exercising its commercial judgement in deciding what its lending criteria are.

Overall, I am not persuaded that the two loans were mis-sold to Mr A or that he was pressured into taking them out as he has suggested. As such I see no compelling reason to change the proposed outcome in this case.

Furthermore, and in any event, Mr A has also disputed that he signed one of the agreements and raised the issue of possible fraud. I consider that any issues relating to the authenticity of signatures on the agreements – possibly including evidence from forensic experts – and evidence given by the various parties about them is better suited to being considered by the courts. We cannot, for example, interview witnesses or cross examine them on oath to determine the extent and veracity of their evidence or the weight to be attached to it.

My role as an ombudsman is to consider the individual complaint and decide whether something has gone wrong. But a court may take a different view of the situation. Should Mr A not accept my final decision then any rights he may have to take action in the courts against Provident are unaffected and he will be free to pursue his and his representative's arguments – including those as to the authenticity of his signatures and the Consumer Credit Act 1974 - in any court action that may arise, if he so wishes.

I would also remind Provident of its continuing obligation to treat Mr A positively and sympathetically whilst he remains in financial difficulty.

my final decision

My final decision is that I do not uphold this complaint.

Stephen Cooper
ombudsman