

## **complaint**

Mr L complains that Provident Personal Credit Limited shouldn't have lent him money. He couldn't really afford to repay the loans and often had to borrow more money from Provident to repay an existing loan. Mr L's helped in his complaint by his daughter Miss L. She says her father didn't really understand what the terms and conditions of the loans were. English isn't his first language.

## **background**

This complaint is linked to another in the name of Mr L's wife. It's unusual for us to consider issues for two separate consumers – in this case Mr and Mrs L – together. But here they are so closely connected that it's right to look at the wider circumstances. So none of the parties will be surprised that there's quite a bit of overlap with – and references to – the other complaint.

Towards the end of 2015, Miss L discovered her father (and mother) had been taking out loans from Provident. There had been eight since the end of 2013. They initially started out as being for short periods of time – but increased in length as time went on. Miss L could see her father had struggled to fully repay the loans and often had to take out a new loan to do so. Miss L was trying to help Mr L but was struggling to do so, given her own commitments.

She complained to Provident but says she didn't get a proper response from it. A Provident agent started collecting money from her – but wouldn't accept payments by direct debit (due to them getting commission on payments collected). Miss L feels her father was taken advantage of – because English isn't his first language and he wouldn't really understand what he was letting himself in for. As she wasn't happy with how Provident was dealing with things, Miss L referred her father's case to us.

One of our adjudicators looked into Mr L's complaint (and the one for his wife). She was satisfied that – on the face of it – Mr L had enough disposable income to meet the repayments. But she considered that the pattern of lending was such that it was obvious the loans were being repaid – at least in part – by Mr L taking out another loan.

The adjudicator was satisfied Provident could rely on the information it'd got in respect of the first two loans it gave Mr L. So she said Provident didn't have to do anything about these.

But she recommended it refund all interest and charges on the other six loans, pay interest (at the statutory rate of 8%) on that refund and remove all reference to those loans from Mr L's credit record. The adjudicator noted there was still money owing on some of the loans – so the award she recommended should be first used to repay this.

Provident didn't agree with the adjudicator's view so Mr L's complaint's been passed to an ombudsman to review and issue a final decision on.

It made several points in response to the adjudicator's view. Initially it asked if the adjudicator had considered good industry practice in reaching her conclusions. She confirmed she had.

In summary, it said refinancing of loans was commonplace and that Mr L had built up a track record of making payments each week. Provident noted the adjudicator had commented it might not have been able to get a full picture of Mr L's pattern of borrowing. Provident wanted to know what the adjudicator would expect it to see – as the same agent agreed all the loans (for Mr L and his wife) so would have known what their position was.

### **my findings**

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

I have some sympathy with what Provident now says. But it isn't enough to make me disagree fundamentally with the recommended award. I'm not persuaded Provident should pay interest on the amount it refunds to Mr L. I think that'd be unduly harsh on Provident. I'll go on to explain why later.

The adjudicator's spent a long time thinking about this case – and she's set out the position thoroughly and clearly. I'm surprised Provident should think the adjudicator hadn't considered good industry practice when reaching her conclusions. That's what we're required to do – amongst other things – in reaching what we consider to be a fair and reasonable outcome.

The facts aren't really in dispute. I can see that – on the face of it – Mr L had enough disposable income to meet the loan repayments. But it's also very clear that he could only repay the loans by taking out more debt – and it seems often over a longer period (to keep the weekly payments down).

I understand the point Provident makes about what more it might be expected to know about Mr L's overall position. It points to all the loans being agreed by the same agent. And I rather suspect that's the problem here.

I have serious doubts whether the agent carried out the loan applications (as they're clearly not in Mr L's handwriting) to the standard I'd normally expect of somebody working for Provident. I think it's quite likely they didn't explain fully to Mr L what was involved in the loans. The agent no longer works for Provident – so we can't get their side of the story.

The loans were for reasonably large amounts and over many weeks – sometimes more than a year. Two of the last three loans were for at least £1,000. That makes them more than what are often described as 'payday' loans.

So I'd expect the consideration of what could be afforded to recognise that and be thorough. I don't think it is. It's just not realistic to assume the only expenditure Mr L had was his rent and (when he started taking them out) the loan repayments to Provident.

There's no allowance – or reference – for 'ordinary' living expenses such as energy, food and other household bills (for example council tax). This would then give a full (or true) picture of Mr L's financial position.

While I accept Provident's point that refinancing is a common feature in the finance industry – I wouldn't expect it to lend larger amounts that were clearly being used in part to repay an earlier loan. The only reason the later loans appeared affordable was because of the length of time they had to be repaid over. This would have been obvious to the agent.

And here, I can't ignore the fact the agent agreed loans – sometimes on the same day – to Mr L's wife. That strikes me somewhat as a 'device' to enable lending to take place that the agent probably knew wasn't sustainable.

But Mr L can't simply walk away from the money he borrowed. That wouldn't be fair to Provident. He borrowed the money and used it. So I agree with the adjudicator that he should only get a refund of interest and charges on some of the loans. And any refund should be used – in the first instance – to reduce the amount Mr L owes.

But I don't think Provident should have to add interest to the amount it refunds. I haven't seen any evidence of further financial loss or difficulty Mr L suffered as a result of not having access to the money he used to pay the interest on the loans. So I think it'd be unfair to make Provident pay this. The adjudicator's explained this to Miss L and she's confirmed her father accepts this point.

I'm satisfied just making Provident refund the interest and charges on the last six loans strikes the right balance in these circumstances. We do need to try and achieve an outcome that's fair and reasonable to both parties.

And, having concluded that Provident shouldn't have lent Mr L the last six loans, it's right that it removes all reference to them from Mr L's credit record.

I accept Mr L (and perhaps more so his daughter) may not be entirely happy with the outcome here. And I realise that Provident may well feel the same. But I think the actions of its former agent fall some way short of what I'd expect.

### **my final decision**

For the reasons I've given, my final decision is that Provident Personal Credit Limited should refund interest and charges on the last six loans given to Mr L and remove all reference to them from his credit record. Provident should use the refund to reduce or repay any remaining debt Mr L has. Any balance should be paid to Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 June 2016.

Andrew Davies  
**ombudsman**