complaint

Mr W complains that Provident Personal Credit Limited was irresponsible when it provided a loan of £1,500 to him in November 2018.

background

Mr W took the loan of £1,500 from Provident on 26 November 2018. It was a home credit arrangement, due to be repaid over 104 weekly instalments of £34.50 (roughly £150 per month). The total amount repayable was therefore around £3,500.

Mr W repaid the Provident loan on 31 January 2019 and complained shortly after that. It doesn't agree that it acted irresponsibly. One of our adjudicators looked into Mr W's complaint and agreed with Provident - recommending that Mr W's complaint shouldn't be upheld. Mr W didn't accept our adjudicator's assessment and so, as the complaint wasn't resolved informally, it came to me – an ombudsman – to make a decision.

So, a few weeks ago, I looked into Mr W's complaint and provisionally concluded that it should be upheld. I issued a provisional decision in which I explained why I had reached that outcome. And I invited the parties to provide me with anything else they wanted me to look at before I reconsidered my decision. Mr W accepts my decision. So far as I'm aware Provident hasn't responded.

my findings

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

As Mr W accepts my provisional decision and I'm not aware of a response from Provident, I see no reason to depart from my provisional conclusions.

In my provisional decision I outlined some of the regulations applicable at the time Mr W took his loan as follows:

> "Provident provided the loan in question while it was authorised and regulated by the Financial Conduct Authority ("FCA").
>
> The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.
>
> The Consumer Credit sourcebook ("CONC") set out the rules and guidance which apply to credit providers like Provident when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.
>
> Section 5.2.A.4 R of CONC sets out what a lender needs to do before agreeing to give a borrower a loan saying:
>
>> *A firm must undertake a reasonable assessment of the creditworthiness of a customer before:*
>> *(1) entering into a regulated credit agreement……………*
>
> And at Section 5.2A.12 R:

The firm must consider the customer's ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;
(2) out of, or using, one or more of the following:
(a) the customer's income;
(b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or
(c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;
(3) without the customer having to borrow to meet the repayments;
(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and
(5) without the repayments having a significant adverse impact on the customer's financial situation.

CONC also includes guidance about 'proportionality of assessments". CONC 5.2.A.20 R saying:

The extent and scope of the creditworthiness assessment, and the steps that the firm must take to satisfy the requirement that the assessment is a reasonable one, based on sufficient information, are dependent upon, and proportionate to, the individual circumstances of each case.

It then outlines some things the firm must consider and some factors to which it must have regard for example:

- the type of credit;
- the amount of the credit or, where applicable, the credit limit;
- the duration (or likely duration) of the credit;
- the frequency of the repayments;
- the amounts of the repayments;
- the total amount payable;
- the total charge for credit;
- the annual percentage rate of charge;

CONC 5.2A.22 G adds

The firm should also have regard to information of which it is aware at the time the creditworthiness assessment is carried out that may indicate that:
(1) the customer is in, has recently experienced, or is likely to experience, financial difficulties; or
(2) the customer is particularly vulnerable, for example because the customer has mental health difficulties or mental capacity limitations

And under CONC 5.2A.23 G

The firm may have regard, where appropriate, to information obtained in the course of previous dealings with the customer………

Potential indicators that a level of affordability risk may be high include circumstances where the total value of the customer's outstanding debts relative to the customer's income is high or

> there is a high likelihood that the customer will not make the repayments under the agreement by their due days (CONC 5.2A.25 G)"

I also explained that, as an ombudsman, I'm required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice. And having taken account of the relevant rules, guidance, good industry practice and law, I thought there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr W's complaint. These questions are:

- Did Provident complete reasonable and proportionate checks to satisfy itself that Mr W would be able to repay this loan in a sustainable way?

- If so, did it make a fair lending decision? If not, would those checks have shown that Mr W would've been able to do so?

- Did Provident act unfairly or unreasonably in some other way?

In my provisional decision I then went on to explain how these things were relevant to Mr W's complaint as follows:

> "[Provident] had to carry out a reasonable and proportionate assessment of whether he could afford to repay it in a sustainable way.
>
> The checks Provident did, had to be proportionate to the specific circumstances of the loan in question. And what is proportionate will depend on a number of factors including things like the consumer's financial history and current situation as well as things such as the amount, type, and cost of the credit being sought.
>
> It is important to note that the FCA didn't, and doesn't, specify exactly how an assessment of affordability is to be carried out but the extent and scope and the types and sources of information to use needed to be enough to be able to reasonably assess the sustainability of the arrangement for the customer.
>
> In other words, the assessment needs to be consumer-focussed. It is not an assessment of the risk to the lender of not recovering the credit but of the risk to the consumer of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.
>
> As set out in CONC, the risk to the customer directly relates to the particulars of the lending and the circumstances of the customer. Therefore, a lender's assessment of creditworthiness would likely need to be flexible. That is to say, what is sufficient for one customer might not be for another, or indeed what might be sufficient for a customer in one circumstance might not be so for the same customer in different circumstances.
>
> Bearing the above in mind, I would expect an assessment of creditworthiness to vary. In general, I'd expect a lender to require more assurance, the greater the potential risk to the customer of not being able to repay the credit in a sustainable way.

> Certain factors might point to the fact that a lender should fairly and reasonably have done more to establish that any lending was sustainable for the customer. These factors include, but are not limited to:
>
> - 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 has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).
>
> So, in summary, Provident was required to establish whether Mr W could sustainably repay his loan – not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being affordable on this basis *might* be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because a customer needs to be able to make their repayments without undue difficulties and, in particular, they should be able to make repayments on time, whilst meeting other reasonable commitments; as well as without having to borrow to meet the repayments.
>
> I think that it therefore follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.
>
> And, although Mr W may have repaid his loan early, it doesn't automatically follow that he managed to repay it in a sustainable way".

I've again thought about what a reasonable and proportionate check should've looked like when Provident was in the process of approving the loan for Mr W. This is what I said in my provisional decision:

> "This loan was for a relatively high amount given that it was Mr W's first loan with Provident. It has shown me that it asked Mr W for details of his income and expenditure and it did a credit file check.
>
> Provident has provided a copy of the credit file information it obtained. From this I can see that Mr W had eight active accounts but there weren't any negative markers such as defaults recorded against him. In isolation and on the face of it, I don't think that there was anything overly concerning about these credit file results. But, according to Mr W, Provident had other information about his very recent credit history which means it shouldn't have lent to him. I will return to this below.
>
> As I've mentioned, Provident also asked Mr W about his income and expenses. For ease of reference I've referred to amounts on a monthly basis (as some were recorded in weekly terms) and I've rounded the figures involved.
>
> Mr W declared that his income was £2,125 and the Provident agent appears to have verified this with reference to a payslip. His stated financial commitments amounted to £960. And he declared some other monthly expenses such as council tax at £130, utilities at £200 and food at £150. In total the outgoings were declared to be around £1,770 per month.
>
> The Provident loan was due to cost Mr W approximately £150 per month. This meant that after Mr W had met his usual expenses - and the Provident loan repayments - he was going

> to be left with about £200 per month from which to meet all unusual or unexpected costs not factored into Provident's expenditure assessment.
>
> I do have some concerns that as this loan was to be repaid over two years, a proportionate check should more likely have involved a more thorough interrogation of Mr W's expenses and his credit commitments. But I accept that, on the face of the information gathered from Mr W, the loan was affordable on a pounds and pence basis".

I then explained that whilst Provident hadn't provided any earlier home credit loans to Mr W, he tells us that a different part of the company which also provides high-cost credit, called Satsuma - had provided him with a loan for £2,000 in late September 2018. This had been due to be repaid over a one-year term. I have seen some details about this loan from Provident. And the information it has provided about when the Satsuma loan was taken and repaid, broadly matches what Mr W has said.

Mr W says that he realised that the Satsuma was going to be very expensive and so he tried to cancel it. However, he wasn't in a position to make a one-off repayment of the whole amount. He says he told Satsuma that he was struggling financially and that he was suffering with ill-health. So, it was agreed that he would pay £1,116 on 1 November and £1,105 on 1 December. I have limited information about these payments. But from what I've seen Mr W notified Satsuma of his intent to withdraw from the loan on the 3 October 2018. He then made a payment of £1,116.38 towards the Satsuma loan on the 31 October 2018. And I understand he made a second repayment on 4 December of £1,105.80.

Mr W describes how he was struggling to find the funds to repay the Satsuma loan as he had so many debts to other lenders. He's provided a copy of an email he received on 22 November 2018 from Provident offering a loan of up to £1,710 (subject to affordability) saying "*Hi [Mr W] It wouldn't be Christmas without….".* On receipt of this email he opted to apply for the Provident loan to help him with his other debts including the second repayment on the Satsuma loan.

Mr W acknowledges that he had got himself into a situation where he says he had been borrowing from multiple high-cost lenders to repay earlier credit and his wages were "swallowed up" by his overdraft and repaying debts. He thinks this encouragement – through the email from a company which already knew he was struggling - added to his difficulties. And he describes himself as being "ashamed" of the situation he got into in late 2018.

I don't know whether Provident was aware of Mr W's ill health. But I do find it surprising that Provident – aware of Mr W's arrangement to repay his Satsuma loan (and that he was still due to repay over £1,100 at the start of December) – sent him this email, encouraging him to borrow more in the run up to Christmas. Given his income, it was unlikely he'd be able to make this second repayment on his Satsuma loan from sustainable means. And this email appears to have dropped into his in-box at a moment in time when he could see no other option but to take the Provident loan to make the second repayment on the Satsuma loan.

With all this in mind – whilst I accept that the income and expenditure information provided by Mr W may have suggested that the Provident loan was affordable on a pounds and pence calculation - Provident was in possession of enough information to conclude that it was unlikely he'd be able to repay the loan sustainably. Indeed, it seems that he did go on to use most of the proceeds of the Provident loan to make the second and final repayment on his Satsuma loan. This effectively meant that he was due to spend the next two years making repayments on a loan – taken to repay off the Satsuma loan.

I also accept that the agent dealing with Mr W's Provident home credit loan application may not have had all the information about the Satsuma loan to hand. But Provident – the company – did have that information. And as such it couldn't fairly close its eyes and ignore it.

Having thought about all of this again I remain of the view that Provident didn't act responsibly when it provided its home credit loan to Mr W. I think it treated him unfairly and he lost out as a result. So, I'm upholding his complaint.

putting things right

I'm not persuaded that Provident acted responsibly when it provided the home credit loan to Mr W in November 2018. So, I require it to do what I've set out below.

A. Add together the total of the repayments made by Mr W towards interest, fees and charges on his loan.
B. Calculate 8% simple interest* on the individual payments made by Mr W which were considered as part of "A", calculated from the date he originally made the payments, to the date the complaint is settled.
C. Pay Mr W the total of "A" plus "B".
D. Remove any adverse information Provident has recorded on Mr W's credit file in relation to the loan.

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

my final decision

For the reasons outlined above and in my provisional decision I uphold Mr W's complaint and require Provident Personal Credit Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 January 2020.

EJ Forbes
ombudsman