

complaint

Ms C complains that Provident Personal Credit Limited was irresponsible when it provided her with 18 loans between June 2006 and December 2014.

background

The 18 loans Provident provided to Ms C were home-collected loans. This meant that a Provident agent engaged with Ms C at her home during the approval process and to collect the repayments. This table contains some of the information Provident has provided to us about Ms C's loans:

loan number	loan date	amount	date repaid	term (weeks)	weekly amount	highest weekly amount
1	24/06/2006	£250	14/07/2007	55	£7.50	£7.50
2	03/02/2007	£150	19/01/2008	55	£4.50	£12.00
3	21/07/2007	£250	08/07/2008*	55	£7.50	£12.00
4	17/03/2008	£300	02/12/2008*	56	£9.00	£16.50
5	07/07/2008	£350	02/12/2008*	56	£10.50	£19.50
6	01/12/2008	£1,100	14/12/2010	106	£22.00	£22.00
7	19/10/2009	£600	19/10/2010	52	£21.00	£43.00
8	08/11/2010	£600	15/11/2011	52	£21.00	£43.00
9	08/08/2011	£900	01/05/2012*	50	£31.50	£52.50
10	28/11/2011	£300	01/05/2012*	50	£10.50	£42.00
11	30/04/2012	£300	01/05/2012	60	£9.00	£43.00
12	30/04/2012	£1,700	04/12/2013	106	£34.00	
13	26/11/2012	£400	04/07/2013*	52	£14.00	£48.00
14	29/04/2013	£500	04/12/2013	52	£17.50	£65.50
15	02/07/2013	£750	08/10/2014	52	£26.25	£77.75
16	16/12/2013	£500	05/11/2014*	52	£17.50	£43.75
17	03/11/2014	£900		52	£31.50	£31.50
18	08/12/2014	£500		63	£15.00	£46.50

*these loans were repaid shortly after later loans were taken. It's likely that the later loan was used to repay them so I haven't included the weekly instalments due on those loans in the "highest weekly amount" column for the later loans.

Our adjudicator issued her assessment explaining why this Service wasn't able to look at Loans 1 and 2. And she also told Provident why she thought we could look at Loans 3 to 12 even though it thought Ms C had complained about them too late.

The adjudicator recommended that Ms C's complaint be upheld from the point she took Loan 4 and that Provident should put things right. It hasn't responded to her view. As the complaint hasn't been resolved informally, it has come to me – an ombudsman – for a final decision. If Ms C accepts my decision it will be binding on the parties.

my findings

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

This Service doesn't have jurisdiction to look at complaints about home collected credit loans provided by Provident before April 2007 (Loans 1 and 2).

Additionally Provident says that this Service shouldn't consider Ms C's complaint about Loans 3 to 12. This is because – it says – she complained too late.

The rules say that this Service cannot consider a complaint if a complainant refers it to us more than six years after the date of the event being complained of - or, if later – more than three years from the date on which the complainant became aware or ought reasonably have become aware that they had cause for complaint (unless Provident consents or there were exceptional circumstances).

Our adjudicator explained in her assessment of Ms C's complaint that she thought Ms C complained within three years of when she knew or she ought reasonably to have known she had cause to complain. And Provident hasn't provided a response to that assessment. In these circumstances and having reviewed this matter myself, I'm satisfied that Ms C complained about loans 3 to 12 in time. So I am making a decision about all the loans taken since April 2007. And although I cannot make a finding on those first two loans I am able to take the existence of them into account so far as my consideration of Ms C's broader borrowing relationship with Provident is concerned.

At the time Provident provided the loans to Ms C it was licensed by the Office of Fair Trading (OFT). There is no doubt that businesses like Provident had a duty not to act irresponsibly. And over the years the regulations and guidance have evolved. In the earlier part of this lending relationship, broader good practice dictated that lenders should ensure that all loan applications went through sound and proper credit assessments and that the interests of the borrowers should be taken into full account. In January 2008 the OFT issued the Consumer Credit Licensing – General Guidance for Licensees and Applicants on Fitness and Requirements – clarifying some of the regulator's thoughts on what it considered to be irresponsible lending.

The guidance explained that the aim of the OFT was to ensure that an appropriate standard of consumer protection was in place and that it would focus on a several things when assessing fitness of applicants for licenses. One of those considerations was integrity, adding that *"The way you operate any aspect of a business may well be relevant to your fitness to hold a consumer credit licence."* It went on to provide examples of the kind of evidence that may involve integrity issues. The final example stated – *"evidence of business practices that appear to the OFT to be deceitful or oppressive or otherwise unfair or improper whether unlawful or not and whether arising in relation to the licensed business or otherwise with particular regard to any breaches of OFT guidance. This could include evidence of irresponsible lending"*.

The guidance added that “*Lenders may take different approaches to responsible lending in line with variations between the needs of different sectors of the market. However, lenders should always take reasonable care in making loans or advancing lines of credit and should take full account of the interests of consumers in doing so. They should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement. The checks should be proportionate, taking account of the type of agreement, the amounts involved, the nature of the lender's relationship with the consumer, and the degree of risk to the consumer.*” So, it seems that the avoidance of unfair practices that may result in detriment to consumers was central to the OFT's guidance. And this was emphasised in the annex in the guidance. It listed a number of practices that the OFT deemed unlawful and/or considered unfair or improper. The final one of these was as follows:

Irresponsible lending

Lending irresponsibly contrary to the provisions of section 25(2B) of the Consumer Credit Act 1974, by failing to take reasonable care in making loans or advancing lines of credit, including making only limited or no enquiries about consumers' income before offering loans, and failing to take full account of the interests of consumers in doing so.

In summary, when granting licences, the OFT had regard to whether businesses were being run with integrity with particular concern around whether licence holders were engaging in unfair business practices of which irresponsible lending was an example. Businesses had to take reasonable care to consider the risk to the borrower and take full account of the borrower's interests.

So before granting credit to Ms C, Provident had to carry out reasonable enquiries. These had to take account of the type of credit, the amounts involved, the nature of the lender's relationship with the borrower, and the degree of risk to the borrower. As I don't know what information it obtained about Ms C, I'm not able to say whether its enquiries went far enough. But I'm also - at this late stage - unable to say what any such enquiries would've shown. In these circumstances I don't think I can safely conclude that Provident was irresponsible when it provided Loan 3. I accept that this was Ms C's third loan but it had been over a year since she'd taken Loan 1 (which had been repaid earlier in July 2007) and the amount hadn't increased since Loan 1. Her repayments for Loans 2 and 3 had been similar (as both overlapped with the previous loan). I have some concerns about the pattern which was developing but on balance I've decided not to uphold Ms C's complaint about Loan 3.

However, with the over-arching obligation on Provident not to act irresponsibly in mind, I'm not persuaded that it did so from the point it approved Loan 4 for Ms C. I don't think that Provident was taking full account of her interests when it continued to lend to her in this way - from the point she took Loan 4 and thereafter.

By the time Ms C took Loan 4 she had been borrowing from Provident for 21 months. She had taken Loan 2 whilst Loan 1 was still live. And a week after repaying Loan 1 she took Loan 3. Loan 4 was for the highest amount yet - £300 – and Loan 3 was still live – meaning that her weekly repayments were also increased - to £16.50. This equated to around £70 per month – which was more than double the amount she'd initially had to repay with Loan 1. Ms C took Loan 5 (higher again - £350) the day before she repaid Loan 3 – suggesting she used Loan 5 to repay Loan 3. And Loan 4 was still live.

On 1 December 2008 Ms C borrowed £1,100 (Loan 6). This was around three times the amount she'd previously been borrowing. And now she was taking it over a term of more than two years whereas previously her loans had been taken over around a year. She repaid Loans 4 and 5 on the following day – no doubt from the Loan 6 advance. And although she now only had one live loan the weekly repayments were £22 – around £95 per month and as I've mentioned – due to last over two years. Less than a year later Ms C was approved for Loan 7 - £600. This meant that Ms C's repayments amounted to £43 per week (around £186 per month).

At the point Ms C took Loan 8 (November 2010), Loan 6 was still outstanding and she'd been indebted to Provident for over four years with no breaks.

And in 2010 the OFT issued its new guidance – the “Irresponsible Lending Guidance” (ILG). In this the OFT sought to expand on its definition of irresponsible lending, which I covered above, and also provide greater clarity for businesses as to what it considered might constitute irresponsible lending practices. And it outlined its general principles for fair business practice which included - amongst other things - making a reasonable assessment of whether a borrower could afford to meet repayments in a sustainable manner. It added that in the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the lender was aware of at the time the credit was granted.

'Assessing affordability', was described as a 'borrower-focussed test' which involved a lender assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences.

And the ILG added that whatever means and sources of information lenders employed as part of an assessment of affordability they should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. It said *“In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question. We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, lenders should take reasonable steps to assess a borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner”*.

The OFT clarified that *'in a sustainable manner'* meant that could be repaid by the borrower:

- without undue difficulty – in particular without incurring or increasing problem indebtedness
- over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time
- out of income and/or available savings, without having to realise security or assets.

“Undue difficulty” was further clarified as meaning that a borrower should be able to make repayments:

- while also meeting other debt repayments and other normal/reasonable outgoings and
- without having to borrow further to meet these repayments.

I think that last bullet point is of particular relevance in Ms C's case in light of the section in the ILG which states that a lender would be lending irresponsibly if it granted a loan if it was known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

By Loan 8 Ms C had been borrowing from Provident for over four years without any breaks in her indebtedness – and eight of those loans were provided even though the OFT had issued more guidance to lenders - through the ILG - about their responsibilities and its expectation of the fair treatment of borrowers by licensed credit providers.

The pattern of Ms C's borrowing was clearly indicative of someone borrowing to repay earlier credit. And the amounts she was borrowing meant that her indebtedness was growing. More and more of her income was having to be used to repay Provident. And this doesn't even take into account that some loans were repaid 'early' with funds from later Provident loans causing the interest from the earlier loan to roll into the later one. Provident lending in this way led Ms C to pay truly enormous amounts of interest when the funds she actually received is taken into account. So the true cost to Ms C was higher than the – already very high – Annual Percentage Rates set out on her agreements.

I think that Ms C lost out because Provident continued to provide her with credit from Loan 4 onwards. She took a further 13 loans over the following six and a half years. And from what I can see, there was never a period during which Ms C wasn't indebted to Provident in that time. On occasion she had three live loans and I can see that she often took new loans at the point she repaid earlier ones - all indicating that she was borrowing to repay earlier loans. I note from her complaint form that Ms C says she recalls "*Whilst still paying off the loans I would be contacted by the collector saying I was eligible for another loan and I could pay off the previous loan by doing this. When you are in a difficult situation financially this seems an easy option and a short term solution*". This wasn't a sustainable solution and I think that it was irresponsible for Provident to continue to lend to her in this way.

Ms C's indebtedness was unfairly prolonged and the sheer number of loans was likely to have had negative implications on her ability to access mainstream (and cheaper) credit and so kept her in the market for these expensive loans.

So I'm upholding Ms C's complaint about Loans 4 to 18.

putting things right

Provident shouldn't have provided Loans 4 to 18 to Ms C – in other words it shouldn't have provided her with any of the loans taken from (and including) March 2008. I understand that there may be a balance outstanding on Loans 17 and 18. If Provident has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Provident is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

- a) Provident should add together the total of the repayments made by Ms C towards interest, fees and charges on Loans 4 to 16
- b) It should calculate 8% simple interest* on the individual payments made by Ms C which were considered as part of a), calculated from the date she originally made the payments, to the date the complaint is settled.

- c) Provident should remove all interest, fees and charges from the outstanding balance on Loans 17 and 18, and treat any repayments made by Ms C as though they had been repayments of the principal on those outstanding loans. If this results in Ms C having made overpayments then Provident should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

Provident should then refund the amounts calculated in a) and b) and move to step e)

- d) If there is still an outstanding balance after the steps at c) have been completed, then the amounts calculated in a) and b) should be used to repay any balance remaining on the outstanding loans

If this results in a surplus then the surplus should be paid to Ms C. However, if there is still an outstanding balance then Provident should agree an affordable repayment plan with her. It shouldn't pursue outstanding balances made up of principal it has already written-off.

- e) The number of loans being upheld means that any information recorded about them is adverse, so if they still appear on Ms C's credit file, Provident should remove them entirely.

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

my final decision

For the reasons outlined above I uphold Ms C's complaint in part 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 Ms C to accept or reject my decision before 27 April 2020.

EJ Forbes
ombudsman