Financial Ombudsman Service

complaint

Ms B says Provident Personal Credit Limited ("Provident") irresponsibly lent to her.

background

This complaint is about five instalment loans Provident provided to Ms B between July 2017 and November 2018. Ms B's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments (in weeks)	Amount	Max Repayment
1	24/07/2017	01/09/2018	12	£550.00	£91.30
2	04/11/2017	04/10/2018	12	£500.00	£174.30
3	19/04/2018	04/10/2018	12	£800.00	£307.10
4	17/10/2018	active	52	£260.00	£49.75
5	22/11/2018	active	12	£950.00	£207.45

Our adjudicator partially upheld Ms B's complaint and thought the loans from loan 3 onwards shouldn't have been given as they thought the pattern of borrowing indicated Ms B was reliant on short-term loans. Provident didn't respond to the assessment.

As the complaint couldn't be resolved informally, it was passed to me.

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 short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Provident needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms B could repay the loans in a sustainable manner. These checks could consider several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Provident should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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 clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Provident was required to establish whether Ms B could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, 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 the relevant regulations define sustainable as being without undue difficulties and the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it 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.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Ms B's complaint. Having done so, I'm partially upholding the complaint. I'll explain why.

Our adjudicator didn't think Provident needed to do more when it approved loans 1 and 2. Ms B didn't respond to the view. As there appears to no longer be a dispute about these loans, I won be making further findings on them.

Provident says it carried out adequate checks before it lent loan 3 to Ms B. These checks included verifying what she had told Provident about her income and outgoings. But as this was Ms B's third loan in nine months – and for the largest amount to date – I think Provident should have been looking to build a clearer picture about Ms B's finances before lending her this loan.

I say this because at the time of loan 3, Ms B had been in debt with Provident continuingly during this period and she still had two outstanding loans with Provident. The combined repayments for all three of these loans was increasing her monthly outgoings. And had Provident carried out proportionate checks before lending this loan, it's likely to have found that Ms B was borrowing from other short-term lenders. This borrowing was further increasing her monthly outgoings and was most likely an indication that she was in a cycle of debt and was taking out more loans to cover the hole that repaying her previous loans was leaving in her finances.

I've also looked at the overall pattern of Provident's lending history with Ms B, with a view to seeing if there was a point at which Provident should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Provident should have realised that it shouldn't have provided any further loans.

Given the circumstances of Ms B's case, I think that this point was reached by loan 5. I say this because:

- At this point Provident ought to have realised Ms B was not managing to repay her loans sustainably. Ms B had taken out five loans in 16 months. So Provident ought to have realised it was more likely than not Ms B was having to borrow further to cover the hole repaying her previous loan was leaving in her finances and that Ms B's indebtedness was increasing unsustainably.

- Ms B's first loan was for £550 and loan 5 was for £950. At this point Provident ought to have known that it was unlikely Ms B was borrowing to meet a temporary shortfall in her income but more to meet an ongoing need.

- Ms B wasn't making any real inroads to the amount she owed Provident. As mentioned above loan 5 was taken out nearly a year and half after Ms B's first. So, in effect Ms B had paid large amounts of interest to service a debt to Provident over an extended period.

I think that Ms B lost out because Provident continued to provide borrowing for loan 5 because:

- these loans had the effect of unfairly prolonging Ms B's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.

- the number of loans and the length of time over which Ms B borrowed was likely to have had negative implications on Ms B's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I'm upholding Ms B's complaint about loans 3 to 5.

putting things right – what Provident Personal Credit Limited needs to do

If Provident has sold the outstanding debts Provident should buy these back if Provident is able to do so and then take the following steps. If Provident can't buy the debts back, then Provident 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 B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Provident has already refunded.

B) Provident should calculate 8% simple interest* on the individual payments made by Ms B which were considered as part of "A", calculated from the date Ms B originally made the payments, to the date the complaint is settled.

C) Provident should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Ms B as though they had been repayments of the principal on all outstanding loans. If this results in Ms B 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 then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Ms B. However, if there is still an outstanding balance then Provident should try to agree an affordable repayment plan with Ms B. Provident shouldn't pursue outstanding balances made up of principal Provident has already written-off.

E) Provident should remove any adverse information recorded on Ms B's credit file in relation to loans 3 and 4. The overall pattern of Ms B's borrowing at loan 5 means any information recorded about this loan is adverse, so Provident should remove this loan entirely from Ms B's credit file. Provident does not have to remove the loan from Ms B's credit file until it's been repaid, but Provident should still remove any adverse information recorded about the loan.

† HM Revenue & Customs requires Provident to take off tax from this interest. Provident Personal Credit Limited must give Ms B a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons given above, I'm partially upholding Ms B's complaint. Provident Personal Credit Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 May 2020.

Claire Marchant-Williams
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