

complaint

Mr T's complaint is bought by a representative on his behalf. His representative claims Mr T has been given loans by Provident Personal Credit Limited, but shouldn't have been because of his mental health issues.

The representative also complains on behalf of another claimant, which raises similar issues but has been considered separately.

background

Mr T's representative complains that Provident miss sold loans to Mr T over a lengthy period of time. It shouldn't have done this as Mr T has mental health issues and does not understand the financial implications. His representative believes Provident deliberately targeted Mr T as he is a vulnerable individual. Provident agreed to write off any outstanding debt. This was not accepted by Mr T's representative.

The adjudicator originally upheld the complaint and recommended Mr T be given a refund of all interest on the loans as it should never have lent to him. Provident did not agree. Mr T's representative also told the adjudicator that Mr T had been borrowing from Provident since 1998. This was far longer than originally understood. In light of this new information the adjudicator asked Provident for details of all borrowing since 2007.

In light of this new information, which demonstrated that no mental health issues had been raised or repayment problems throughout the longstanding relationship, she revised her opinion. She no longer felt it should not have lent to him. She didn't feel it should have acted any differently as it was not aware of his impairments until recently. She felt Provident only needed to act differently when it knew of his impairments. She felt it fair and reasonable for Provident to write off the outstanding balance which it already offered to do. She also felt £100 should be paid for distress and inconvenience. Provident agreed.

Mr T's representative was unhappy with this change of view and says in summary that Mr T did not have any relationship with Provident, he borrowed to pay earlier debts, he had no capacity to understand and Provident representatives would have known he had limited capacity when it dealt with him.

my findings

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

Having done so, I agree with the adjudicator's second opinion.

Mr T has been borrowing from Provident for over 10 years. Over this time, all loans issued were repaid in full. Records indicate that his repayment history was excellent. Provident says it checked with its local office who were not aware that Mr T had any disability that would prevent him understanding the terms and conditions of a loan. No issues appear to have been raised about a lack of capacity until Mr T's representative raised issues in 2014. I appreciate that this was because no-one was looking after his financial affairs, but from the information provided and the way the account was handled, I find Provident could not have reasonably been aware of his condition. As it was not aware of his condition and from the way the account was run, it had no indication there were problems until his representative

raised them, I do not find that Provident has acted unreasonably. Mr T's representative has said it is obvious Mr T has problems, but Provident has to ensure it does not discriminate because someone appears different or has a disability. It does need to take steps if it knows, or should reasonably have known that the person has a disability that affects their ability to make financial decisions. There is no reason why Provident should have been alerted to a possible mental health and capacity issue from the information it had. It was not aware of his issues until this was raised by his representative.

Provident has agreed to pay £100 compensation for any distress and inconvenience and write off the remaining balance. In the circumstances, I find this is fair and reasonable.

I understand this will be disappointing to Mr T and his representative and I would urge the representative to obtain a financial power of attorney so that Mr T's affairs can be protected going forward.

my final decision

My final decision is that I uphold this complaint in part and require Provident Personal Credit Limited to;

- Pay Mr T £100 compensation for distress and inconvenience
- Write off any remaining outstanding balance on any loans as previously agreed

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 January 2016.

Clare Hockney
ombudsman