

complaint

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

background

This complaint is linked to another in the name of Mrs L's husband. 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 mother (and father) had been taking out loans from Provident. There had been seven 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 mother 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 Mrs 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 mother was taken advantage of – because English isn't her first language and she wouldn't really understand what she was letting herself in for. As she wasn't happy with how Provident was dealing with things, Miss L referred her mother's case to us.

One of our adjudicators looked into Mrs L's complaint (and the one for her husband). She wasn't satisfied that Mrs L always had enough disposable income to meet the repayments. There were gaps in the information collected by Provident's agent about Mrs L's financial position. So it was hard to see that Provident had carried out proper affordability assessments. And the adjudicator considered that the pattern of lending was such that it was obvious the loans were being repaid – at least in part – by Mrs L taking out another loan.

So she recommended it refund all interest and charges on all seven loans, pay interest (at the statutory rate of 8%) on that refund and remove all reference to those loans from Mrs 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 Mrs 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 Mrs L had built up a track record of making payments each week. Refinancing of loans often led to early settlement rebates being applied to the earlier loans paid off. Provident said it didn't have any specific evidence of affordability checks being carried out for one loan. But, equally, there wasn't anything to say they hadn't been done.

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've noted what Provident now says. A few of its points are relevant. But they aren'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 Mrs 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.

I understand the point Provident makes about the benefits of refinancing – in terms of settlement rebates being given. That's what I'd expect any lender to do. But, like the adjudicator, I'm not persuaded Mrs L really had enough disposable income to meet the loan repayments. It seems clear that she 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'm aware all the loans were 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 Mrs 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 Mrs 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 loans were for £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. In the case of the second loan, there's no information about rent. And from the third loan, this information changed considerably. If the first amount of rent was correct, this would mean later loans clearly weren't affordable. I accept it might be wrong – but I'd expect there to be some record of discussions about this in Provident's records.

There's perhaps an argument that the information for the first loan is enough to warrant Provident lending the money. It wouldn't have anything else to go on. So I could find this loan was 'affordable'. But – reflecting the particular circumstances here – I don't think that's the case.

I say this because no other outgoings were shown at the time of the first two loans. It's just not realistic to assume the only expenditure Mrs L had was her rent and (when she 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). Even when something is included for these later on, Mrs L's net disposable income is low.

I accept Provident's point that refinancing is a common feature in the finance industry. But 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 Mrs L's husband. That strikes me somewhat as a 'device' to enable lending to take place that the agent probably knew wasn't sustainable.

But Mrs L can't simply walk away from the money she borrowed. That wouldn't be fair to Provident. She borrowed the money and used it. So I agree with the adjudicator that she should only get a refund of interest and charges on the loans. And any refund should be used – in the first instance – to reduce the amount Mrs 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 Mrs L suffered as a result of not having access to the money she 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 mother accepts this point.

I'm satisfied just making Provident refund the interest and charges on the 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 given Mrs L the loans, it is right that it removes all reference to them from her credit record.

I realise that Provident may well may not be happy with the outcome here. 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 seven loans given to Mrs L and remove all reference to them from her credit record. Provident should use the refund to reduce or repay any remaining debt Mrs L has. Any balance should be paid to Mrs L.

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

Andrew Davies
ombudsman