

Complaint

Mr P complains that Provident Personal Credit Limited (trading as “Satsuma”) unfairly charged him too much to settle a high-cost short term credit instalment loan in April 2019.

Background

Mr P was provided with a high-cost short-term credit instalment loan for £500 in October 2018. This loan was due to be repaid in 9 monthly instalments of £111. In January 2019, Mr P made a payment of £222 in addition to his scheduled monthly payment. Mr P then contacted Satsuma in April 2019 to request a settlement figure in order to repay his loan in full. Satsuma told Mr P that he needed to pay £252.43 to settle his balance in full. Although unhappy with the settlement figure quoted, Mr P repaid his loan and then complained to Satsuma.

Satsuma didn't uphold Mr P's complaint. It said that it calculated Mr P's settlement figure using a formula based on the outstanding capital and the remaining loan term. And this was in line with how the Consumer Credit (Early Settlement) Regulations 2004 (“the regs”) set out how a lender should calculate a settlement figure – on a regulated credit agreement - where a consumer wanted to repay a loan early.

One of our adjudicators looked at Mr P's complaint and thought that it should be upheld. He thought that Satsuma failed to provide Mr P with clear enough information on how any early settlement payment would be calculated.

And although he thought that clear enough information on this matter wouldn't have affected Mr P decision to take this loan in the first place he did in any event lose out as a result of Satsuma's failure to treat Mr P's additional payment in January 2019 as a partial early settlement. Satsuma disagreed with our adjudicator and asked for an ombudsman's decision.

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 carefully considered everything provided, it doesn't appear to be in dispute that Satsuma calculated Mr P's settlement figure in line with the formula set out in the regs. But the regs set out a formula for working out the maximum a lender can charge in the event that a consumer wishes to settle a regulated agreement early. It isn't an absolute standard. And what I'm required to do here is decide what's fair and reasonable in the circumstances of Mr P's case not just whether Satsuma has acted in accordance with the regs.

In deciding whether Satsuma acted fairly and reasonably towards Mr P, I'm mindful that CONC 4.2.5R requires a lender to provide an adequate explanation of an agreement in order to place the consumer in a position to assess whether the agreement is right for their needs and financial situation. The matters to take into account include the features of the agreement which may make it unsuitable for a particular type of use and the features of the agreement which would have a significant adverse effect on the customer in a way which they're unlikely to foresee.

CONC 4.2.7G also lists factors a lender should take into account when deciding the level and extent of an explanation. These factors, amongst other things, include the type of credit, the amount and duration and the actual and potential costs. In this case, there isn't any dispute Satsuma provided Mr P with a very expensive loan. It says that the interest was frontloaded – rather than added on a daily basis – because it offers a fully-fixed cost product which incurs no additional fees.

It's important to note that all loans – irrespective of whether interest is added upfront or on a daily basis - are based on an amortisation schedule where each instalment is made up of some of the interest and charges and some of the capital advanced. And on more expensive loans – such as Mr P's - the higher interest rate usually means that even though a monthly payment may appear relatively large - in proportion to the amount borrowed - a smaller proportion of this payment goes to repaying the capital in the early stages.

So many consumers in Mr P's position may believe that they've paid off more of their loan than they have due to the cash amount of the total payments made, because they're unaware that their monthly payments were amortised and a large proportion of the early payments were going towards the interest. And on top of this Mr P faced additional interest at an APR approaching 550% being added to an unexpectedly larger outstanding capital balance.

Given all of this, I think that the information on how an early settlement figure would be calculated was important information and it should have been brought to Mr P's attention in a clear, fair and not misleading way.

So I think that the key question I need to consider in order to fairly and reasonably decide Mr P's complaint is, did Satsuma adequately explain to Mr P, in a clear fair and not misleading way how it'd calculate what he'd need to pay should he want to settle his loan early?

Did Satsuma adequately explain to Mr P, in a clear fair and not misleading way how it'd calculate what he'd need to pay if he wanted to settle his loan early?

Satsuma says that Mr P was made aware of the terms and conditions in relation to early repayment in the pre-contract information provided as well as the credit agreement he agreed to. It relies on this information as evidence of it having met its obligations to adequately explain in a clear fair and not misleading way the terms and conditions in relation to early settlement.

I've carefully thought about what Satsuma has said.

I want to start by saying that whether the information Satsuma has referred to ought reasonably to have led Mr P to understand he may still have had to pay a substantial amount of interest even if repaying his loan early, depends not only on the content of the information, but when it was provided and its prominence within the overall documentation given to him.

Satsuma has relied on extracts from two separate documents but it hasn't provided all of the information presented at the time. So I don't know how prominent the segments of information Satsuma has referred to were within the plethora of documentation put before Mr P. And I don't know whether Mr P actually had to read all of this information before confirming acceptance to being bound to them either. This is especially the case bearing in mind the speed at which this whole process is likely to have taken place.

In any event, leaving aside my concerns about whether the information referred to was prominent enough, I don't think that it sets out the position as clearly as Satsuma believes either. It does tell Mr P that if he wishes to settle the loan early he will have to pay interest to cover the 28 day period his quote is valid. And the agreement itself says nothing at all about an additional payment being treated as an advance payment in the event the borrower doesn't explicitly state that it's a partial early settlement.

I've seen what Satsuma says about this notification being made clear in the pre-contract information. But I don't think that it's fair and reasonable to expect a consumer to go rooting through various segments of a number of documents to piece together their obligations under an agreement. Especially as it's the lender's responsibility to provide an adequate explanation of these matters.

So while I've thought about what Satsuma has said, I don't think that Satsuma did adequately explain the early settlement terms and conditions to Mr P, in a clear fair and not misleading way, or just how much of the interest not yet due he'd have to pay if he decided he wished to pay his loan early.

Would an adequate clear, fair and not misleading explanation of the early settlement terms made a difference to Mr P's decision to take out this loan in the first place?

Even though I think Satsuma didn't adequately explain the early settlement terms to Mr P, in a clear, fair and not misleading way, it doesn't automatically follow Mr P's complaint should be upheld. That's because I still need to consider whether Mr P lost out as a result of Satsuma's failure to provide adequate information to him. In other words, I need to consider whether Mr P would have acted differently if Satsuma had met its obligations to him.

I've carefully considered what I think would more likely than not have happened – if Satsuma had met its obligations to Mr P.

In deciding this matter I've referred to Mr P's repayment history with Satsuma as well as his overall borrowing history. As I understand it, this was Mr P's first loan with Satsuma. I haven't seen anything to suggest that that early settlement was in Mr P's contemplation when applying for this loan either. So I don't think that the amount he'd have to pay, to settle the loan early, was more likely than not an important factor to him at the time of his application.

As this this is the case, I'm not persuaded that Mr P would have decided against taking this loan in the first place had the early settlement terms been made clear to him. So I'm satisfied that it isn't unfair for Satsuma to have added 28 days interest to the outstanding balance when providing an early settlement figure. However, for reasons I'll go on to explain in the next section, I don't think that it was fair and reasonable for Satsuma to have added 28 days interest to the outstanding capital balance that it did.

Would an adequate clear, fair and not misleading explanation of the early settlement terms made a difference to Mr P's decision to make an additional payment in January 2019?

It isn't in dispute that Mr P made an additional payment of £222 in January 2019. Satsuma says that this additional payment was treated as an advance payment - as customers often make advance payments where they anticipate not being able to make a scheduled payment on time - rather than as an early partial settlement. It says the terms and conditions of the

agreement permit it to do this and there was nothing in the content of the conversation Mr P had with its helpline operative to indicate that he wished this payment to be treated as an early partial settlement.

I've considered Satsuma's argument. I've already explained why I don't think that Satsuma adequately explained in a clear, fair and not misleading way how additional payments would be applied. I also find that the argument it has made – in relation to why it considered Mr P's payment to be an advance payment – to be somewhat implausible. I say this because on the one hand it says that it makes it clear that all of the interest, fees and charges on a loan are added at the outset as it provides a fixed-fee product and a consumer won't then incur any additional fees such as late payment fees. It will also be aware that the APR on Mr P's loan was approaching 550%.

So, in these circumstances, I think it is stretching the bounds of credulity to conclude that Mr P's substantial additional payment (representing almost half of the amount he was initially lent) was an advance payment. I say this bearing in mind the potential interest savings an early partial settlement would bring Mr P and the fact that the terms of the agreement meant that he stood to make no financial gain from an advance payment as there were no financial penalties for a late payment.

For the sake of completeness, I'd also point out that even if I were to accept there were grounds to believe that the January 2019 payment was an advance payment, for the avoidance of doubt I wish to make it clear that I don't accept this is the case, there was no reasonable basis for concluding this once Mr P made his February 2019 payment.

I'm also mindful that Satsuma could have avoided any ambiguity over the status of this payment and ensured that Mr P was treated fairly and reasonably by simply asking him how he wanted his additional payment to be treated. Some might argue that it suited Satsuma not to ask Mr P any questions as this was the way it could extract the most interest. Although that's not a finding I make here.

In any event, what I do find is that as the regulated firm Satsuma was the expert in this matter. And instead of doing what was fair and reasonable in the circumstances and asking Mr P how we wanted his payment to be treated, Satsuma instead chose to stay silent on this matter. It then chose to rely on an explanation, which I consider to be inadequate bearing in mind it wasn't clearly highlighted on the signed loan agreement, buried amongst the gamut of pre-contract information and which may or may not have had to be read before being accepted.

Bearing in mind all the circumstances, I think that Mr P would have confirmed that his additional payment was an early partial settlement of his loan had the early settlement terms been properly explained to him. And as Satsuma's failure to treat Mr P's additional payment as an early partial settlement caused Mr P to pay more interest, it follows that I think that he lost out because of what Satsuma did wrong. So I think that Satsuma needs to put things right.

Fair compensation – what Satsuma needs to do to put things right for Mr P

I think that Satsuma should as far as practicable place Mr P in the position that he'd now be in had it met its obligations. While I accept that Mr P might not have expected to have to pay 28 days additional interest when he requested his settlement figure, I've explained why I'm satisfied that he would still taken this loan even if this had been fairly and reasonably highlighted to him at the outset. So I'm satisfied that it is fair and reasonable for Satsuma to add 28 days interest from the date Mr P requested a settlement figure.

This leaves the question of what the outstanding capital amount Mr P owed should have been in April 2019. As I've explained, I think that if Satsuma had met its obligations to Mr P he would have said he wished his January 2019 additional payment to be treated as an early partial settlement. And I think that the amount he had to pay to settle his loan in April 2019 should reflect this.

So I think that in order to put matters right in a fair and reasonable way for Mr P, Satsuma should refund the difference between what Mr P actually paid to settle his loan in April 2019; and what he would have paid if the £222 additional payment he made in January 2019 had been treated as an early partial settlement. Satsuma should then add interest at 8% simple per annum to the amount being refunded from the date that Mr P paid it to the date of settlement*.

*HM Revenue & Customs requires Satsuma to take off tax from this interest. It must give Mr P a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons set out above, I'm upholding Mr P's complaint. Provident Personal Credit Limited should pay Mr P compensation in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 May 2020.

Jeshen Narayanan
Ombudsman