

## **complaint**

Miss C says loans provided by Provident Personal Credit Limited were unaffordable, so its decision to lend to her was irresponsible.

## **background**

### facts

From 2007 to 2011, Miss C had 10 loans from Provident. In November 2014, it sold the outstanding debt to a third party.

In November 2015, Miss C complained to Provident about its decision to lend, saying it hadn't carried out proper checks, and that the loans had been unaffordable. Provident said loans predating November 2009 couldn't be considered by this service, as they were out of jurisdiction. But the loans taken out after that date were considered as part of the complaint. Provident said it hadn't done anything wrong when lending to Miss C.

Our adjudicator didn't feel the complaint should be upheld. She was satisfied Provident had shown it carried out adequate affordability checks.

Miss C didn't agree, so her complaint was passed to me to issue a decision.

### my provisional decision

I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I was minded to uphold in favour of Miss C, and explained why.

### *jurisdiction*

As part of its submissions, Provident has referred to the dispute resolution rules (known as the 'DISP' rules, and which form part of the FCA's handbook). The rules state complaints can be raised no more than six years after an event or, if later, no more than three years after the complainant ought to have been reasonably aware of the cause(s) to complain.

In this instance, Miss C complained in November 2015 after she'd heard about irresponsible lending trends in the media. On this basis I was satisfied Provident is correct in saying loans provided prior to November 2009 are out of jurisdiction, as I felt Miss C would likely have realised she couldn't afford them, before hearing about it in the press. This meant I'd only be considering the loans taken out after that date.

### *Provident's decision to lend*

To begin with, Miss C was able to meet her repayments with Provident. But later on, as she borrowed more money from other lenders, she fell into arrears and Provident passed her accounts to debt collectors. This brings into focus Provident's decision to lend. In other words, what checks did it do to show the loans were affordable and was its decision to lend responsible?

Provident says it checks loan applications by collating consumer declarations against an internal scoring system. If this is successful, its agent will visit consumers at their homes to

go through the paperwork. This appears to be mostly compliant with the relevant guidance from the Office of Fair Trading at the time.

But businesses must still act fairly. In this case, I also thought reference to her credit file would've provided more meaningful information for Provident to assess, given the not inconsiderable size of the loans. Had Provident done so, it would've seen that two defaults were added to her file in March and April 2010.

These occurred just before she borrowed £1,500 across two loans on the same day in May 2010. Provident says lending this way isn't uncommon, as it allows consumers more flexibility when repaying loans. But this doesn't mean the loans were affordable. Had Provident made checks outside of its own internal checking procedures, I was satisfied it would've been more aware of Miss C's wider circumstances. For example, she was committed to an individual voluntary arrangement from October 2006 to July 2009. This ought to have served as an indication that, historically, Miss C had difficulties repaying her creditors. I accepted she was no longer in the arrangement, so on its own it wouldn't cause me concern, but - taken along with everything else - this could have been an indicator.

But of more concern to me was that I hadn't seen any evidence of income and expenditure checks conducted on any of the loans. To my mind this was an important omission, because Provident appears to have provided large loans based upon minimal declarations without clarifying what Miss C's existing outgoings were.

Even though Provident's checks appear to have met its own lending criteria, I wasn't persuaded the information it gathered was sufficient for it to safely conclude the loans were affordable for Miss C. On balance it seemed the loans were unaffordable. Miss C's struggle to repay and heavy use of payday lending is further evidence of this – in essence, a spiral of unsustainable debt.

It follows that I didn't think Provident lent responsibly to her, so should refund all interest and charges in respect of these loans. It should also remove all reference to them from her credit file(s).

However, as she has had the benefit of the loans, she should still have to pay back the principal amounts borrowed.

#### summary

It was my provisional decision to uphold this complaint. I was minded to require Provident Personal Credit Limited to:

- buy back the debt from the third party;
- refund all interest and charges on the loans set out above, adding 8% simple interest a year to any amounts of these interest and charges that Miss C paid back (if she did), from the date of repayment to the date of settlement. It may use this refund to reduce the outstanding balance; and
- remove any entries in respect of these loans from Miss C's credit file(s).

If it's unable to buy the debt back, it should refund Miss C directly, so she can pay the third party herself.

#### responses to my provisional decision

Provident had nothing to add to its previous submissions. But it maintained that the complaint had been brought out of time.

Miss C agreed with my decision. But she clarified that she has now fully repaid the debt to the third party in May 2016.

### **my findings**

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

Provident had nothing further to add, but reiterated its position regarding the complaint being brought out of time. I had already addressed that in my provisional decision. But for clarity, I explained that I wouldn't be looking at the affordability of loans prior to November 2009. This means my decision refers only to loans taken out from then. These are within jurisdiction, as they fall within the six year rule. So I don't think Provident has added anything to make me change my mind.

This leaves the issue of Miss C now having paid back the debt to the third party. This means there's no need for Provident to try to buy it back, and there's no outstanding balance. Accordingly, my award should be paid directly to Miss C. It also means that she did pay back all interest and charges (unless there was an agreement for some of the debt to be written off, of which I'm not aware, in which case only the interest and charges repaid need to have the 8% interest added).

### **my final decision**

It's my final decision to uphold this complaint. I require Provident Personal Credit Limited to:

- refund all interest and charges on the loans set out above (*ie* those from November 2009), adding 8% simple interest a year from the date of the repayments of these to the date of settlement; and
- remove any entries in respect of these loans from Miss C's credit file(s).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 11 July 2016.

Elsbeth Wood  
**ombudsman**