complaint

Mrs R complains that Provident Personal Credit Limited was irresponsible when it provided her with four loans.

background

Mrs R took four home credit loans with Provident. This table shows some of the information Provident has provided about Mrs R's loans.

	date taken	principal amount	term (weeks)	instalment (weekly)	current situation
Loan 1	08/07/06	£1,000	80	£22.50	balance written off 2/6/09
Loan 2	02/09/11	£300	52	£10.50	outstanding balance sold to debt collections agency 4/9/14
Loan 3	21/10/11	£200	50	£7.00	
Loan 4	22/12/11	£200	52	£7.00	

As the first loan was taken in 2006 this Service has no authority to consider Mrs R's complaint about it. But the later loans do fall within our jurisdiction. The three later loans were taken between 2 September and 22 December 2011. They varied in amounts from £200 to £300.

Loan 1 wasn't repaid in line with the credit agreement and was written-off by Provident in June 2009. Over two years later Mrs R returned to Provident for Loan 2. Mrs R failed to repay Loan 2, and the later loans, as agreed and Provident sold them to a third-party debt collection firm.

Our adjudicator looked into Mrs R's complaint and concluded that it shouldn't be upheld. Mrs R didn't agree and so the complaint came to me for a decision. A few weeks ago I issued a provisional decision in which I explained why I was minded to uphold some aspects of Mrs R's complaint. I invited the parties to let me have anything else they wanted me to think about before I once again considered my decision. Mrs R has said that she accepts my provisional decision. I haven't heard back from Provident.

my findings

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

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 Mrs R could repay her loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mrs R's income and expenditure. With this in mind, 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 Mrs R. 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.

Provident was required to establish whether Mrs R could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. Whilst that might be an indication a borrower could sustainably make their repayments, it doesn't automatically follow. This is because the relevant regulations define "sustainable" as meaning that a borrower could repay the loans over the term of the agreement without undue difficulties, on time, whilst meeting other reasonable commitments and without having to borrow to meet those repayments. And the regulations said that an assessment should take into account more than simply assessing the customer's ability to repay the credit.

I've carefully considered all of the arguments, evidence and information provided and what this all means for Mrs R's complaint. But as I've not been provided with anything new to consider I see no reason to change my provisional conclusions. This is what I said in my provisional decision (for ease of reference I've rounded the figures involved).

> The information which is available about the loans is limited. When Mrs R took Loan 2 in September 2011 her monthly income was just over £817. This is a relatively modest income in my experience and it included some benefit payments. But from the bank statements she's provided it seems that her normal outgoings were also relatively modest.
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> This loan was due to be repaid over 52 weeks at £10.50 per week – around £45 per month. I consider that if Provident had done proportionate checks before providing Loan 2 it would most likely have concluded that this loan would be affordable for Mrs R. And I don't think it would've been wrong to come to that conclusion. I don't think it would've been propionate for Provident to check all of Mrs R's financial circumstances in detail at that point. So, I'm not minded to uphold her complaint about Loan 2.
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> But at the point Mrs R returned for Loan 3 a few weeks later, I think that a propionate check should've involved Provident checking Mrs R's credit situation. This is because - as I've mentioned - Mrs R's income was relatively modest. And here she was, just a few weeks after taking Loan 2 – which was still outstanding and still had over ten months to run – asking for another loan. This loan was for less than Loan 2 but as she had two loans to repay the monthly total repayments were now going to be over £75 per month. This is quite a significant proportion of her modest income. And Provident further added to Mrs R's indebtedness when it provided Loan 4 to her. This additional loan meant that she had three live loans and the monthly total repayments were now around £110.

From Mrs R's bank statements and other sources of information I can see that Mrs R had been borrowing from other payday lenders for some time before she took Loan 2. And by the point Mrs R took Loan 3, she wasn't repaying a loan in line with the agreement she'd taken back in December 2010 with Lender A. That appears to have been written off in 2013. She'd also taken loans with Lender B in 2010 – one of those was also still outstanding at the point she took Loan 3.

According to Mrs R's bank statements she was repaying Lender C – another high-cost short-term lender - for an instalment loan. This was being repaid fortnightly – a monthly repayment of around £21. She also had a loan with Lender D which she was repaying at around £60 per month.

Additionally, Mrs R's bank statements from this period show that direct debits were being returned and that she was charged unplanned overdraft usage fees.

Had Provident done what I think are proportionate checks at the time it provided Loans 3 and 4, it would've realised that Mrs R was not likely to be able to meet her loan repayments from sustainable means and that she was in a cycle of borrowing to repay earlier credit – an unstainable position. And as it turned out – she wasn't able to repay Loans 2, 3 or 4 – which were sold on to a debt collection agency.

I think that by providing these last two loans to Mrs R, Provident treated her unfairly. Not only was it unlikely she'd be able to repay these loans sustainably, but it was prolonging her indebtedness. In these circumstances Provident ought to have realised it was more likely than not that Mrs R was having to borrow further to cover the hole in her finances which was left from repaying earlier credit. This wasn't sustainable and potentially was harmful in that it was likely to restrict her ability to access mainstream (and cheaper) credit.

putting things right

I am upholding Mrs R's complaint about Loans 3 and 4. I'm aware that - as there was an outstanding balance – Provident sold these debts to a third party. So, I've outlined below how I require Provident to put things right.

As Provident has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps.

If Provident isn't able to buy the debts back, then it should liaise with the new debt owner to achieve the results outlined below.

a) Provident should remove all interest, fees and charges from any outstanding balances on Loans 3 and 4 and treat any repayments made by Mrs R as though they had been repayments of the principal on those two loans. Or if those two loans have been settled any repayments made by Mrs R should be treated as though they'd been repayments of the principal.

   If this results in Mrs R having made overpayments then Provident should refund those overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

b) If there is still an outstanding balance after repayments have been applied towards the principal, then Provident should agree an affordable repayment plan with Mrs R. It shouldn't pursue outstanding balances made up of principal that have already been written-off.

c) Provident should remove any adverse information recorded on Mrs R's credit file in relation to Loans 3 and 4.

*HM Revenue & Customs requires Provident to deduct tax from this interest. It should give Mrs R a certificate showing how much tax it has deducted, if she asks for one.

my final decision

For the reasons outlined above and in my provisional decision, I uphold Mrs R's complaint in part and I require Provident Personal Credit Limited to put things right in the way I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 21 March 2020.

EJ Forbes
ombudsman