complaint

Mr E complains about three instalment loans that he took out with Provident Personal Credit Limited, trading as Satsuma Loans, (“SL”), which he said were unaffordable.

background

Mr E was given three instalment loans by SL from April 2016 to May 2017. A summary of the loans taken out by Mr E is shown below:

Loan number	Date of loan	Repayment date	Loan amount	Repayment amounts
1.	2/4/16	15/4/16 (Loan withdrawn)	£100	13 weekly repayments of £11.01
2.	27/2/17	17/5/18	£400	6 monthly repayments of £126.40
3.	17/5/17	Unpaid	£800	10 monthly repayments of £160

SL said that it had carried out a credit check before each loan and asked Mr E for details of his income and expenditure. And SL also applied extra safeguards and buffers to Mr E’s declared expenses to reflect the information it obtained from its credit and internal checks. It said that the information it obtained showed that the loans were affordable and left Mr E with a comfortable disposable income.

The adjudicator didn’t initially recommend that any of the loans should be upheld. Mr E responded to her view to say that SL should have done further checks before Loan 3. These would have shown that Mr E was borrowing from other lenders and gambling. The adjudicator then issued a second view which recommended that Loan 3 should be upheld. She said that proportionate checks would most likely have shown that Mr E was having problems managing his money.

SL responded to say that its calculations showed that after Mr E had paid for all his financial commitments (excluding Loan 3) his housing costs and other expenditure, and it had applied its additional buffers, Mr E was left with a disposable income of £837. It said that Mr E’s repayments to other lenders were included in the financial commitments figure it used. So it had already accounted for these and deducted them from Mr E’s disposable income. So SL said that Loan 3 was affordable.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. We’ve set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

When SL lent to Mr E the regulator was the Financial Conduct Authority (“FCA”) and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC). The CONC contained guidance for lenders about responsible lending.

SL 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 Mr E could repay the 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 Mr E'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 SL should fairly and reasonably have done more to establish that any lending was sustainable for Mr E. These factors include:

- the *lower* a customer'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.

I think that it is important for me to start by saying that SL was required to establish whether Mr E could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr E's complaint.

SL did a number of checks before it lent to Mr E. It asked him for details of his income and expenditure. Mr E declared his monthly income as between £1,540 and £1,620 and his expenditure as £775 before Loan 1 and £680 before Loans 2 and 3.

I also note that SL checked Mr E's credit file before agreeing to the loans. SL's checks showed that Mr E had no recent bankruptcies, no county court judgements, no debt management plans and no individual voluntary arrangements. The checks also showed that Mr E hadn't taken out any short term loans in the previous month or the previous three months. I shall refer below to other entries in the credit checks.

Mr E has provided this service with a copy of his credit report. I can see there were numerous other short term loans shown on this report which I shall refer to below.

But I'm also aware that when a lender carries out a credit check, the information it sees doesn't usually provide the same level of detail that a consumer's credit report will and it isn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I'm also aware that not all payday and short term lenders report to the same credit reference agencies. So, this may explain any differences between the information provided by SL's credit check and Mr E's actual situation.

I can see that Loan 1 was for £100 repayable by 13 weekly repayments of £11.01. I note that Mr E's declared monthly disposable income was £765. SL had also deducted safeguards of £277.82. So it calculated Mr E's disposable income to be £487.18. I also note that SL's credit check showed two payments in arrears in the last six months on active credit accounts. Nevertheless I think that the checks SL carried out before agreeing Loan 1 were proportionate. The repayments that Mr E needed to make on Loan 1 were relatively modest compared to the income that he declared to SL. And I don't think the repayments were so large that it's obvious they would've caused Mr E financial difficulty.

So given Mr E's repayment amounts, what was apparent about his circumstances at the time, and that this was his first loan with the lender, I don't think it would've been proportionate for SL to ask him for the amount of information that would be needed to show the lending was unsustainable.

And there wasn't anything in the information Mr E provided or the information SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying. So I don't think SL was wrong to give Loan 1 to Mr E.

I note that Mr E exercised his right of withdrawal on Loan 1 and repaid the loan and the interest due on it 13 days after taking it out.

There was then a gap of around ten months between when Mr E repaid Loan 1 and when he took out Loan 2. I think this was significant enough a gap at this stage of Mr E's borrowing history with SL to constitute a break in the chain of lending.

Loan 2 was for £400 to be repaid over six months with a highest monthly repayment of around £126.40 The amounts that Mr E needed to repay each month were smaller than if he'd taken a normal payday loan. But of course he was committing to making those repayments over a far longer period.

SL's credit checks showed that he'd had one payment in arrears in the previous six months. But overall I don't think the results of SL's credit checks appear to contain anything that I think should have caused additional concerns to the lender about Mr E's financial situation. Mr E had declared his disposable income to be £910 and SL hadn't applied any safeguards. I don't think the repayment amounts on Loan 2 were so large that it's obvious they would've caused Mr E financial difficulty.

So given Mr E's repayment amounts, what was apparent about his circumstances at the time, and his history with the lender, I don't think it would've been proportionate for SL to ask him for the amount of information that would be needed to show the lending was unsustainable. And there wasn't anything in the information Mr E provided or the information

SL should've been aware of, which meant it would've been proportionate to start verifying what he was saying.

Mr E had repaid two of his monthly payments on Loan 2 when he applied for Loan 3. The loan amount had doubled and the loan was to be repaid over 12 months with a highest instalment of £160. So Mr E was committing to make his repayments over a far longer period than his previous loans. And as Mr E took out Loan 3 whilst Loan 2 was still outstanding, the highest total monthly repayment for both loans of around £286 would be repayable for around ten months.

I can see that SL's credit checks showed that Mr E had just opened a new credit account before Loan 3 which might have caused concerns, although the checks showed that no active credit accounts were in arrears. SL had added safeguards of £103 to Mr E's declared financial commitments and a further buffer of £65 to reflect what it had seen in its credit checks and internal models. So it was aware that Mr E wasn't declaring all his financial commitments. SL calculated Mr E's disposable income to be £837. But I think the pattern and increasing amount of Mr E's borrowing with repayments over a long period were such that it wasn't reasonable for SL to rely on that information. And I think SL should have been concerned that the combined repayments on Loans 2 and 3 were a significant proportion of Mr E's disposable income and that both needed to be repaid over ten months. I also think SL ought to have asked why a person with an apparent high level of disposable income was coming back to it for a £800 loan whilst his previous loan with SL was still outstanding. So I think all this should have prompted SL to do some additional checks such as asking Mr E for more information about his other short term borrowing commitments.

Had it done so, SL would have discovered that Mr E was borrowing from at least four other short term lenders and was committed to repaying them at the same time as he'd be repaying Loans 2 and 3. I have seen these loans on Mr E's credit report and bank statements.

So I think it would have been clear to SL if it had done proportionate checks that Mr E was facing significant problems managing his money and unlikely to be able repay Loan 3 in a sustainable manner. So I don't think SL should have provided Loan 3 to Mr E.

So I'm upholding this complaint in part and SL should put things right as follows.

putting things right – what SL needs to do

- Refund all the interest and charges that Mr E has paid on Loan 3, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
- Write off any unpaid interest and charges from Loan 3;
- Apply the refunds referred to above to reduce any capital outstanding on Loan 3 and pay any balance to Mr E;
- Remove all adverse entries about Loan 3 from Mr E's credit file.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mr E a certificate showing how much tax it's taken off if he asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Provident Personal Credit Limited, trading as Satsuma Loans, to take the following steps. If SL has sold the outstanding debt, it should buy this back. If it is not able or unwilling to do so, then it should liaise with the new debt owner to achieve the results outlined below.

1. Refund all the interest and charges that Mr E has paid on Loan 3 and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;

2. Write off any unpaid interest and charges from Loan 3;

3. Apply the refunds referred to above to reduce any capital outstanding on Loan 3 and pay any balance to Mr E; and

4. Remove all adverse entries about Loan 3 from Mr E's credit file.

*HM Revenue & Customs requires SL to take off tax from this interest. SL must give Mr E a certificate showing how much tax it's taken off if he asks for one. If SL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 20 December 2019.

Roslyn Rawson
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