Financial Ombudsman Service

complaint

Miss C says Provident Personal Credit Limited lent to her irresponsibly.

background

Miss C had four home loans with Provident. I've summarised some of the details Provident provided about these loans in the table below.

loan no.	start date	end date	amount	weeks	repayment
1	01/11/2010	19/04/2011	£500	52	£17.50
2	15/04/2011	20/12/2011	£700	50	£24.50
3	16/12/2011	29/05/2013	£800	60	£24
4	23/05/2013	23/04/2014	£800	63	£24

An adjudicator considered the complaint and thought it should be upheld in part. They thought Provident shouldn't have approved loans 2 to 4 because the repayments were such a significant portion of Miss C's income that they were unlikely to be sustainably affordable. They also thought that by loan 4, the pattern of borrowing alone suggested the loans were not likely to be sustainably affordable.

Provident didn't respond to the adjudicator, so the complaint was passed to me to decide.

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.

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 Miss C 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 the consumer'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 the consumer. 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.

I think that it is important for me to start by saying that Provident was required to establish whether Miss C could sustainably repay her 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 the relevant regulations define 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 Miss C's complaint.

I should start by saying that I don't have any evidence (from either party) about Miss C's income and expenditure for the period covering loan 1. I've seen the loan agreement but the application form doesn't appear to contain the same income and expenditure details as the application forms for loans 2 to 4. With no evidence from either party to help me decide whether loan 1 was sustainably affordable, I am unable to make any findings in respect of this loan.

Loans 2 to 4 were taken out over about two years, between April 2011 and May 2013. Miss C's weekly income, as declared on the application forms, was £190 for loan 2; £110 per week for loan 3; and £135 per week for loan 4. Miss C's weekly expenditure (excluding her existing commitments to Provident) was recorded as £0 for loan 2; £35 for loan 3; and £20 for loan 4.

I'm not particularly persuaded by the income and expenditure analysis Provident carried out for any of loans 2 to 4. It seems unlikely to me that Miss C had virtually no other outgoings, other than her existing commitments to Provident. Miss C was on a low income and I understand she was a full-time student at the time of loans 3 to 4, so I think it's likely she did have other outgoings and any reasonable and proportionate assessment of Miss C's expenditure would've taken this into account. I've seen, for example, that Miss C had a number of other credit commitments (to at least three payday lenders) at the time she took out loan 3. For the period of time I do have bank statements for Miss C, there's evidence of a reliance on payday and home credit lending to meet ordinary, everyday outgoings – and I don't think that's a situation in which lending like that provided by Provident could be repaid sustainably.

I think Provident, bearing in mind Miss C's low income, ought to have done more to check the loans were affordable – including asking for information to check Miss C's expenditure (such as bank statements). But, putting this aside, I think Provident ought to have realised that these loans were too expensive, on a weekly basis, to be sustainably affordable for someone in Miss C's circumstances. Each of loans 2 to 3 had a term of about a year, or a little more, and the repayments left Miss C with little room for any unexpected/unplanned expenditure – which might be sustainable for a month or two, but I don't think is sustainable over a year. In saying this, I'm taking into account that Provident's affordability checks were inadequate and that Miss C's expenditure was likely to be higher than it has recorded.

In addition to the above I have found that Provident, by the time of loan 4, ought to have realised, from the pattern of lending, that further lending wasn't likely to be sustainable. Each of the loans before loan 4 appears to have been taken either to repay the preceding loan or immediately after the preceding loan was repaid – and therefore likely taken as a consequence of the hole repaying that loan left in Miss C's finances. By approving loan 4, I think Provident also unfairly prolonged Miss C's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time.

So for the reasons given above, I'm upholding Miss C's complaint about loans 2 to 4.

putting things right

I understand loans 2 to 4 were all repaid. So Provident should:

- refund the interest and charges Miss C paid for loans 2 to 4
- add to the above interest at 8% simple per year, from when Miss C paid the interest and charges, until the date of settlement†

Miss C's loans were all repaid over six years ago. So it's unlikely they will still appear on her credit report. If they do, Provident should now remove them.

† HM Revenue & Customs requires Provident to take off tax from this interest. Provident must give Miss C a certificate showing how much tax it's taken off if she asks for one.

my final decision

I uphold Miss C's complaint in part. Provident Personal Credit Limited must put things right by taking the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 May 2020.

Matthew Bradford
Ombudsman