

complaint

Mrs B has complained about loans granted to her by Provident Personal Credit Limited ("Provident" or "the lender"). Mrs B says that Provident didn't properly look into her finances before agreeing to lend to her and it didn't treat her fairly when she couldn't meet her repayments.

background

Provident agreed 16 loans for Mrs B from November 2009 to December 2014. The loan terms varied from 29 to 110 weeks and some of the loans ran concurrently. The below table sets out some of the information Provident provided about these loans (with numbers rounded to the nearest pound).

Loan number	Start	End	Principal (£)	Total to pay (£)	Term (weeks)	Rate (£)
1	09/11/2009	24/08/2010	100	145	29	5
2	23/08/2010	02/08/2011	200	364	52	7
3	29/07/2011	14/05/2012	200	350	50	7
4	29/07/2011	06/08/2013	1,000	2,120	106	20
5	09/05/2012	27/02/2013	200	360	60	6
6	09/05/2012	27/02/2013	300	540	30	9
7	23/10/2012		400	728	63	14
8	23/10/2012		400	728	63	14
9	01/08/2013		1,000	2,200	110	20
10	01/08/2013		400	806	84	10
11	01/08/2013		200	378	63	6
12	12/03/2014		700	1,411	84	17
13	12/03/2014		300	605	84	7
14	12/03/2014		300	567	63	9
15	12/12/2014		1,000	2,200	110	20
16	12/12/2014		300	660	110	6

I don't have a complete picture of when Mrs B repaid her loans but I understand she didn't completely repay two of them and so there may be outstanding balance owing.

One of our adjudicators looked into Mrs B's complaint and found that it should be upheld in part. He recommended that Provident refunds the interest and charges Mrs B paid on loans 3 to 16. Provident has not responded to this recommendation and so the complaint has come to me, as an ombudsman, for review and final 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. We've set out our general approach to complaints about these types of loans - including the relevant rules, guidance and good industry practice - on our website. And I've followed this approach.

Having done so, I plan to uphold Mrs B's complaint in part. I appreciate this will be disappointing for Provident and I hope the following explanation makes it clear why I have come to this conclusion.

When Mrs B first asked Provident for credit the lender was regulated by the Office of Fair Trading (OFT) and then from April 2014 by the Financial Conduct Authority (FCA). The requirements under both regulators were similar. Provident needed to take reasonable steps to assess whether or not Mrs B could afford to meet its loan repayments in a sustainable manner. Neither the law nor the regulators specified exactly how the assessment was to be carried out but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for Mrs B.

In early 2010 the OFT published its 'Irresponsible Lending Guidance' (ILG) which set out the obligations on lenders before and after agreeing credit.

ILG Paragraph 4.1 stated:

"In the OFT's view, all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower's financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors..."

...'Assessing affordability', in the context of this guidance, is a 'borrower-focussed test' which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences."

Paragraph 4.2 stated:

*Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. **In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question.** (my emphasis)*

Paragraph 4.3 stated:

The OFT regards 'in a sustainable manner' in this context as meaning credit that can be repaid by the borrower:

- *without undue difficulty – **in particular without incurring or increasing problem indebtedness** (again, my emphasis)*
- *over the life of the credit agreement or, in the case of open-end agreements, within a reasonable period of time*
- *out of income and/or available savings, without having to realise security or assets.*

And Paragraph 4.4 described "undue difficulty":

The OFT would regard 'without undue difficulty' in this context as meaning the borrower being able to make repayments (in the absence of changes in personal circumstances that were not reasonably foreseeable at the time the credit was granted):

- *while also meeting other debt repayments and other normal/reasonable outgoings and*
- *without having to borrow further to meet these repayments.*

Finally, Section 4.26 said that a business would be acting irresponsibly if it granted an application for credit when, on the basis of an affordability assessment, it is known, or reasonably ought to be suspected, that the credit is likely to be unsustainable.

All of this means that the assessments Provident carried out before lending needed to be consumer-focussed. It was not an assessment of the risk to Provident of recouping its money, but of the risk to Mrs B in having difficulty meeting her repayments, experiencing adverse consequences or incurring or increasing problem indebtedness. The assessment needed to be proportionate to both the circumstances of the lending and the circumstances of the consumer. Therefore, a lender might need to be flexible in its approach to making such an assessment – what was reasonable for one consumer might not be so for another, or indeed what might be reasonable for a consumer in one circumstance might not be so for the same consumer in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- 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 demonstrates that the lending was unsustainable.

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

In its final response to Mrs B about her complaint Provident said that it reviewed the information she provided on her application forms and while it showed that she was a homemaker, it also showed that she had suitable disposable income to meet her repayments. I note that Provident knew Mrs B was unemployed from around the time of her first loan.

Provident explained that it would have asked Mrs B for her income and expenditure each time she asked for a loan. It said its agent would have discussed *"the customer's credit needs and the suitability of our product and the particular loan terms to match to their ability to meet the repayments."* Provident hasn't provided a record of the income and expenditure figures it gathered for all 16 loans – the earliest information I have appears to be from May 2012 which shows Mrs B declared a weekly income of £200 and said that she had three dependents.

Provident said that Mrs B signed documents to indicate that the information she provided at that time was a true reflection of her financial circumstances. And that her repayment history

didn't raise concerns about granting further credit. The lender also checked Mrs B's credit file and provided the summary information it obtained for some of her loans from 2012.

Mrs B's first loan was for £100 to be repaid over 29 weeks. When she repaid this she took out a second loan for twice the amount. This was to be repaid over a year. I note what Provident has said about Mrs B signing to indicate that the information she provided was a true reflection of her finances, but I don't think it was fair to rely on the information she provided without verifying it, given her circumstances and that she'd need to meet her loan repayments each week for a year. I don't know whether or not Provident did go further and verify any of the information Mrs B provided. And I don't know what it would have found out had it do so because I have limited information from Mrs B about her circumstances at the time. So, considering everything in the round, I am not upholding her complaint about her first two loans.

Around the time Mrs B repaid her second loan she took out two more loans on the same day amounting to £1,200. She'd now been indebted to Provident for over 18 months. Agreeing these two loans took Mrs B's account balance to almost £2,500. I think at this point Provident ought to have considered that Mrs B's debts were continuing and increasing and it wasn't likely that she was going to be able to repay any further credit in a sustainable manner. These loans had the effect of unfairly prolonging her indebtedness, and so I think it was irresponsible to have agreed to further credit for her.

Mrs B remained indebted to Provident for over three years and I can see from customer records that her balance never reduced below £1,000. I understand that she still has an outstanding debt with the lender. I think Mrs B lost out when Provident continued to agree credit for her because the length of time over which she'd borrowed was likely to be seen negatively by other lenders and potentially kept her in the market for this high cost credit.

what Provident needs to do to put things right

I've concluded that Provident shouldn't have provided loans 3 through to loan 16 for Mrs B, in other words it shouldn't have provided her with any of the loans taken from (and including) loans taken out in July 2011 and it should put things right as set out below:

- 1) Add together the total of the repayments made by Mrs B towards interest, fees and charges on the loans which have been repaid.
- 2) Calculate 8% simple interest* on the individual payments made by Mrs B which were considered as part of 1), calculated from the date she originally made the payments, to the date the complaint is settled.
- 3) Pay Mrs B the total of 1) plus 2)

For any unpaid loans Provident should:

- 4) Remove any interest and charges which form part of the remaining balances.
- 5) Treat any payments made by Mrs B towards these loans as payments towards the original capital.
- 6) For each loan, if this means Mrs B has made payments over and above the capital balance then it needs to refund these payments to her, along with 8% simple interest from when the overpayment originated to the date the complaint is settled.
- 7) Alternatively, if this means there is still a capital balance outstanding, Provident may use the refund in 3) above to reduce this balance. Any remainder should be paid to Mrs B.

- 8) If a capital debt still remains after applying the refund, then Provident needs to treat Mrs B fairly and sympathetically which may mean agreeing an affordable repayment plan with her.

If any loans have been sold on Provident should seek to buy this debt back or work with the new owner to achieve steps 4 to 8.

- 9) The overall pattern of Mrs B's borrowing for loans 3 to 16 means any information recorded about them is adverse, so if they still appear on her credit file Provident should remove them entirely, or work with a third party to do so, once settled.

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

my final decision

For the reasons I've given, I'm upholding Mrs B's complaint in part and require Provident Personal Credit Limited to put things right for her as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 May 2020.

Michelle Boundy
ombudsman