

## **The complaint**

Ms S complains that Progressive Money Limited (“Progressive”) lent to her in an irresponsible manner.

## **What happened**

Ms S was given a single loan by Progressive. She borrowed £5,000 in July 2018 and agreed to repay the loan in 36 monthly instalments. Part of the loan was used to repay some other borrowing. Around 7 months or so after taking out the loan, Ms S faced problems making her repayments and a balance remained outstanding when she made her complaint.

Ms S mainly said that she had a gambling addiction and should not have been offered the loan.

Ms S’s complaint was assessed by one of our adjudicators. He felt that Progressive had carried out proportionate checks before agreeing to provide this loan and that the results of those checks suggested that Ms S was facing problems managing her money as there was evidence of substantial gambling showing on one of her bank accounts. So our adjudicator thought the lender should have concluded it was unlikely that Ms S would be able to repay the loan in a sustainable manner. He didn’t think the loan should have been agreed and so he asked Progressive to pay Ms S compensation.

Progressive didn’t agree with that assessment. It mainly said that it discussed the gambling transactions shown on the account with Ms S and accepted her assurances that she wasn’t responsible for the gambling activity shown.

Another adjudicator looked at the complaint again. She agreed with the outcome reached by our first adjudicator, although for slightly different reasons. Her view was that Progressive failed to carry out due diligence and shouldn’t have accepted Ms S’s explanation that she wasn’t responsible for the gambling transactions on her account, or the reasons she had provided for her mortgage being arrears, without looking further into these matters.

Progressive still didn’t agree that it provided this loan irresponsibly and asked for an ombudsman review. The complaint came to me to decide. I issued a provisional decision.

## **What I said in my provisional decision**

Here are some of the main things I said.

“Progressive needed to take reasonable steps to ensure that it didn’t lend irresponsibly. There are some key questions I need to think about when deciding what’s fair and reasonable in the circumstances of Ms S’s complaint:

- Did Progressive carry out reasonable and proportionate checks to satisfy itself that Ms S was in a position to repay the loan in a way that was sustainable for her – and react appropriately to information that those checks showed?

- If Progressive didn't carry out enough checks, what would reasonable and proportionate checks have likely shown if they'd been done when they should've been?
- Was Progressive's lending decision fair?
- Did Progressive act in any other way that wasn't fair and reasonable?

Progressive should have carried out an "affordability check" with the focus on the borrower. This means that Progressive had to look into Ms S's particular financial situation and think about whether repaying the loan sustainably would lead to difficulties or result in adverse consequences for Ms S.

Progressive had to carry out reasonable and proportionate checks to satisfy itself that Ms S would be able repay the loan sustainably. There was no set list of checks that Progressive had to do, but it could take into account a number of different things including the loan amount, the length of the loan term, the repayment amounts and the borrower's overall financial circumstances.

I think a reasonable and proportionate check ought generally be more thorough:

- 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 longer the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and a borrower has to make payments for an extended period).

Progressive was required to establish whether Ms S could sustainably repay any lending it provided - not just whether the loan payments were affordable on a strict pounds and pence calculation. The loan payments being 'affordable' on this basis might be an indication a borrower 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 repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Keeping all this in mind, I've carefully considered all the information I've seen and been told and thought about what this means for Ms S's complaint.

Our first adjudicator thought that Progressive had carried out proportionate checks – and I think that's broadly right.

Progressive verified Ms S's employment and monthly income by looking at payslip information. It took details from her about her monthly expenditure – and checked these with her over the phone to make sure she had included all her usual monthly outgoings. It also carried out credit checks which showed Progressive that Ms S had two credit cards at their limit and she had fallen behind with her mortgage payments.

As part of the application process, Progressive also asked Ms S to provide a bank statement. When Ms S provided details of one account to Progressive, it was able to see that she also operated a second current account. And when Ms S sent in a bank statement showing transactions on that account, it was evident that there was substantial gambling activity taking place through the account.

I've listened carefully to all the call recordings Progressive has provided which have enabled me to further understand the course of the application process Ms S went through to obtain this loan.

It's fair to say that Progressive was concerned to see the gambling activity revealed on this account – it asked Ms S about the gambling (as I would expect a responsible lender to have done). And the questions it put to Ms S about this make me think that Progressive recognised that this was information that on the face of it would mitigate against lending to her.

Progressive accepted Ms S's assurance that she wasn't the person responsible for the gambling activity shown on the account. In support of this view, Progressive relied on the fact that other people were making some payments into the account. And it decided to agree Ms S's loan application.

To my mind, as soon as Progressive could see clear evidence that one of Ms S's accounts (which was in her sole name) was substantially being used to fund extensive gambling, it had to consider the following possibilities:

- if it accepted what Ms S had said, then it followed that the account was being operated by others for gambling purposes. So this meant that Ms S apparently had little or no day to day control over her own account. Progressive should've realised that this presented a real risk that a significant part of its loan could fall under the control of other people and potentially be spent on gambling. The result would be that Ms S would not have the benefit of funds for the stated loan purpose and there would be a real risk that she wouldn't be able to repay the loan in a sustainable way since spending on this bank account wasn't within her control
- if Progressive didn't accept what Ms S had said about the way this account was being used to fund gambling by other people then it would've concluded that she was the person responsible for spending on the account. So the clear evidence of the extent of her gambling activity meant that it would be irresponsible to provide this loan to her.

As Progressive said, it appears that Ms S's sons and her ex-husband and ex-mother in law were paying into the account which was used for the gambling. I've taken carefully into account that Progressive felt this supported Ms S's claim that other people were using this account and led it to believe that the gambling activity wasn't attributable to Ms S.

But it seems at least as likely to me that these payments into the account could have been contributions to household expenses from Ms S's adult children (Ms S had told Progressive that they were living at home with her) and financial support from their father and grandmother.

And I think Progressive should've realised that the payments made into the account by other people were substantially less than the payments being made out of the account on gambling spending.

So I think Progressive failed to take properly into consideration the information it had gathered which pointed to the clear risk that this loan would not be sustainable for Ms S. And that was likely to be the case irrespective of who it thought was responsible for the gambling.

So for these reasons I'm planning on upholding this complaint.

I've also thought carefully about whether Progressive acted in any other way that wasn't fair and reasonable – particularly when Ms S contacted Progressive in February 2019 to say that she was finding it hard to make the loan repayment. I've listened carefully to the call recording of that discussion. I think Progressive handled the call sympathetically and tried to be constructive. I think it's fair to say that Ms S failed to disclose her gambling to Progressive during that call – she alluded only to the shops having put up prices so that her shopping was more expensive. This meant that it was difficult for Progressive to gain a proper understanding of her financial situation – and Ms S terminated that call so there was no further possibility of a discussion about what Progressive could do to help. I'm sorry that Ms S found that call frustrating. But I don't think Progressive is at fault for not doing more to help Ms S at that stage when she didn't provide information it needed to know.

And I haven't identified any other reasons that mean it would be fair for me to make any award, over and above the redress I've set out below."

### **What the parties said in response to my provisional decision**

Ms S has confirmed that she accepts what I've said in my provisional decision.

Progressive still disagrees that it provided this loan unfairly. In brief summary, the key points it makes are that Ms S benefitted from the loan as Progressive paid the balance left after consolidating all her other debts into her main bank account (not the one used for gambling). This meant she cleared her other debt and had money available to spend on home improvements and its loan didn't fall under the control of anyone else. Also, given that Ms S repeatedly failed to disclose her gambling habit to Progressive, it said that making an award in favour of Ms S effectively rewards deception - so it wouldn't be fair or reasonable.

### **What I've decided – and why**

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 approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've taken all this into account when I've been thinking about this complaint .

I've taken carefully into account everything that's been said in response to my provisional decision.

For the reasons I have explained in my provisional decision, I think the clear evidence of gambling that Progressive saw should've prompted it to decline Ms S's loan application.

I don't think the fact alone that this expensive loan was used partly to repay other expensive credit means it was fairly provided.

Overall, I don't think Progressive could reasonably have satisfied itself that providing this loan to Ms S wouldn't put her in a worse position given the evidence it saw which suggested there was a real risk that Ms S might use (or allow the use of) this loan for gambling purposes.

And I don't consider that risk was sufficiently mitigated by paying the loan into the account it did.

Progressive hasn't provided me with any new information or said anything else that changes what I think about this case.

I'd already considered all the main points mentioned above when thinking about my provisional decision and addressed all the points mentioned which had a bearing on the outcome.

I accept that Progressive takes a different view to me and I appreciate the time and trouble it has taken to present its position.

I hope that setting things out as I've done helps explain how I've come to my view.

I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

### **Putting things right**

I think it's fair and reasonable for Ms S to repay the principal amount that she borrowed when she took out this loan because she's had the benefit of the loan.

But she has paid interest and charges on a loan that shouldn't have been provided to her.

So, Progressive should take the following steps:

- if Progressive has sold this debt it should buy back this loan so it can carry out these directions – or otherwise tell the third party debt collector that it needs to carry out these steps to put things right
- remove any interest, fees and charges Ms S paid on this loan over and above the principal loan amount of £5000
- add 8% simple a year on any refunded interest, fees and charges from the date they were paid (if they were) to the date of settlement\*
- when Progressive works out what it owes Ms S it can first apply this towards offsetting any outstanding capital balance Ms S owes on this loan before paying any surplus to Ms S.
- If there is still an outstanding balance, then I remind Progressive that it should take a sympathetic view when seeking to agree an affordable repayment plan with Ms S
- remove any adverse information recorded on Ms S's credit file in relation to this loan once it is paid

\*HM Revenue & Customs requires Progressive to take off tax from this interest. Progressive must give Ms S a certificate showing how much tax has been taken off if she asks for one.

### **My final decision**

I uphold this complaint and direct Progressive Money Limited to take the steps set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 1 June 2021.

Susan Webb  
**Ombudsman**