

The complaint

Miss N complains that Progressive Money Limited (PML), lent to her irresponsibly.

What happened

Using information from PML then it seems that Miss N was approved for a loan which commenced 7 December 2017. It was for £3,900 of which £2,481 was used to pay off another loan (and that was done by PML) and the balance of £1,418 was paid to Miss N. The full amount of credit taken was £4,680 as it included two sets of fees added to the loan.

The total to pay after the addition of interest and fees was £9,084.60 over five years being 60 equal instalment amounts of £151.41 each month. Miss N paid it off early in March 2020.

Miss N had started a complaint in 2019 about a different aspect of the loan but did not progress it after receiving the PML final response letter for that complaint. This decision covers the complaint about irresponsible lending by Miss N against PML. The final response letter for that was issued in February 2021 and she referred it to us in time but there were delays and the complaint was investigated in 2022.

PML's records show that it had seen Miss N's payslips and it had verified her monthly net income (including any benefits received) as just over £2,588. Her outgoings were just over £2,350 which included her monthly consumer credit repayments plus the new loan of £151.41. Those came to over £703 each month. Our adjudicator thought that

- Miss N's credit record showed that she had been experiencing financial difficulty before she took the loan. Miss N had over £27,500 debt (excluding mortgage). Our adjudicator had noted that she had taken four new loans and two new credit cards in the months leading up to December 2017
- Our adjudicator's calculations led him to believe that Miss N's credit commitment costs alone amounted to a large proportion of her income - £1,191 a month – our adjudicator had noted that PML had calculated it as around £703 a month.
- in our adjudicator's view, this would have left Miss N with a negative balance and so he thought that the loan with PML was unaffordable.

PML asked our adjudicator for his 'income and expenditure' (I&E) calculations. It reviewed them and responded in detail. Here is a summary of what it has described as '*discrepancies*' between its calculations and our adjudicator's. PML has asked me to review the complaint.

PML says that these discrepancies make up a sum of just under £422 which ought not to be included in the I&E calculations, and:

- taking the PML loan meant that the other loan PML paid off for Mrs N released her from paying that other lender just under £212 a month. The PML loan was over £151
- the recorded call dated 18 November 2017 demonstrates the detail in which PML

discussed Miss N's finances before lending

- in that call PML says Miss N confirmed that she split the mortgage cost with her partner, and her partner contributed to the household bills and PML says this was verified further in the joint bank account statements
- an insurance fee of almost £52 was due to become £34 under a new policy
- Miss N had one account with one particular (named) other lender which PML says should be almost £54 a month – the other account belonged to her partner. Similarly, with a bank loan which should be £53 whereas PML said that we have double counted it.

The unresolved complaint was passed to me to decide.

I had a lot of documentation and recorded calls from PML relating to the earlier discussions between Miss N and PML up to 18 November 2017. But it became clear that Miss N had changed her mind about how much to borrow during the application process and so the recorded calls I had did not cover the decision relating to the loan Miss N actually took. I needed more information.

So, after I had reviewed the complaint I asked Miss N and PML for more information and for further recorded calls following on from the October 2017 and November 2017 calls we'd already received. That was sent to us encrypted and our IT department released it around 12 July 2022 and so I reviewed the whole complaint.

On 18 July 2022 I issued a provisional decision giving additional reasons why I considered that Miss N's complaint should be upheld.

Miss N agreed. PML sent additional submissions as to why it disagreed which I have reviewed.

Here below is my provisional decision duplicated for ease of reference for the parties. It is in smaller type to differentiate it from the final decision.

My provisional decision dated 18 July 2022.

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 unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether PML completed reasonable and proportionate checks to satisfy itself that Miss N would be able to repay in a sustainable way? And if not, would those checks have shown that Miss N would've been able to do so?

If I determine that PML did not act fairly and reasonably in its dealings with Miss N and that she has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required PML to carry out a reasonable and proportionate assessment of Miss N's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be “borrower” focused – so PML had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Miss N. In practice this meant that PML had to ensure that making the payments to the loan wouldn’t cause Miss N undue difficulty or significant adverse consequences.

In other words, it wasn’t enough for PML to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Miss N. Checks also had to be “proportionate” to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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).

I’ve carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss N’s complaint.

I have understood all PML’s objections to our adjudicator’s assessment. I have reviewed our adjudicator’s thorough financial analysis of Miss N’s income and outgoings. I have noted that the accounts being reviewed by PML at the time of the loan and by our adjudicator and by me are all joint accounts which does complicate matters, meaning that the income and outgoings for each account holder, ideally, need to be identified as part of the assessment for affordability.

I have received a lot of very useful information from PML and these include comprehensive sets of documents and about a dozen recorded calls ranging from 20 October 2017 to 7 December 2017 which was the date the loan was finalised. I have listened to all the recorded calls.

I have received more information and documents since our adjudicator reviewed the file and I am confident that I’ve seen, read and heard all of the documents and calls that were used by PML at the time of the loan approval in December 2017.

Rather than go into the minutiae of the income and outgoings in this decision, I have chosen to issue a provisional decision as I plan to explain my reasons for the upholding of this complaint in a different way.

I have looked at the income and expenditure figures. I have noted that PML was very particular with its request for documents from Miss N and the number of telephone conversations between Miss N and the PML representatives were extensive and thorough.

Repeating themes during those telephone conversations were:

- Miss N realised that she had a lot of outstanding debt already
- PML needed to go through every bit of household and other expenditure to ensure that they were halved to identify Miss N’s expenditure commitments
- PML identified all of Miss N’s debt and many discussions were had on the value of the loan, which debts were going to be consolidated and what that would leave Miss N with at the end

of the month after paying everything off. Miss N changed her mind several times about the sum to take with PML which shows a positive two-way conversation between the lender and Miss N.

- At one point when Miss N wished to just take a £1,500 loan to pay off an overdraft, the PML representative had explained that doing that meant PML would have to add in all of the other loans and credit commitments she already had and that made it unaffordable to her on the PML calculations. So, this demonstrates how precise PML were being which on one level was positive.
- Gambling transactions were identified early on in the proceedings and were going to require the PML representative to complete a Rationale Form. Miss N told PML that they were her partner's gambling transactions and not hers.
- During one of the recorded calls in November 2017, Miss N was told by the PML representative that on the figures she had, and with splitting of the bills, plus working out of those figures and with the gambling her application fell outside PML's criteria. So, Miss N was asked for three months' worth of bank statements because of the gambling. Miss N was told that a Rationale Form was going to be needed to be completed by the PML representative to justify the loan
- The Rationale Form was required for a second reason – because PML was calculating the joint bills and Miss N's share of those household expenditure sums and that had to be explained on the Rationale Form

This Rationale Form was still being discussed in the 6 December 2017 recorded telephone call when Miss N had chosen to take the £3,900 loan and to use the PML loan money to consolidate one other loan plus pay off her overdraft. This was the loan that Miss N proceeded with. The PML representative still needed more copy bank statements in December 2017 as she was required by PML policy to complete the Rationale Form.

So, it's highly relevant that PML was aware of the gambling, had copies of many of her bank account statements and had discussed with her the gambling.

Since our adjudicator assessed the complaint, I have requested and received a copy of that Rationale Form. I have reviewed all the bank accounts statements which PML had at the time.

My view is that on Miss N's salary, I think it was a tight calculation when halving all the bills and deducting those from her personal income plus deducting her existing loan repayments. Miss N had extensive financial commitments which PML knew about and which our adjudicator had identified as well. I have reviewed those other commitments at the time as well. I do not rehearse all the figures here as I do not think I need to.

And I say that because the overall and obvious matter which appears not to have been factored into Miss N's financial situation is the gambling. Having reviewed everything then it's very clear to me that:

- the joint account ending *1689 on which there was an arranged overdraft of £3,400 was kept in overdraft permanently. Even to the extent that two sets of compensation for PPI paid into that account in September 2017 (about £3,600 and £2,100) was immediately transferred out to the joint account ending *5269. The *5269 account was the one into which both sets of salaries were paid. And on both occasions those transfers out of account *1689 left that account in overdraft right up to the limit again.
- that demonstrates to me that Miss N and/or her partner did not consider that £3,400 overdraft a debt to pay off but seemed to be approaching that as money available to spend. That ought to have been an 'alarm bell' to a professional lender in my view when they had several thousand pounds worth of credit paid into that account and still chose to remove it to keep the account in overdraft.

- I note that there were transfers out of that joint account *5269 to another account *3285 which Miss N said on one of the phone calls was her partner's account. An example is £2,000 on 28 September 2017. That shows me that Miss N's partner did not always keep his salary in that joint account for the provision of bill payments.
- added to which, the gambling transactions apparent on the *5269 joint account, and from which most, if not all, of the household bills were paid, were not small – they were regular and extensive. Examples are: 11 September 2017 - £420 spent on on-line betting/gaming, 18 September 2017 £867 spent, 23 September 2017 £2,100 spent. And these are just a few examples.
- and so I fail to see how a professional lender such as PML, making careful and detailed calculations to halve Miss N's bill and household expenditure liability could not realise that a partner's extensive gambling was inevitably likely to lead to that other partner not having enough money to pay his half of the household bills and expenditure. Which would have had an inevitable impact on Miss N's ability to afford PML's loan repayments plus her existing commitments.

And as I have said earlier, I have not rehearsed the figures to the extent that our adjudicator has and the detail with which PML has done in its response to object to our adjudicator's assessment. My view is that all the accounts for Miss N and her partner were under stress and in the end Miss N and her partner's joint income was not going to be able to pay for everything and sustain what appears to be an extensive and expensive gambling habit.

I note that PML has sent to me some copy 2020 bank statements but those are largely irrelevant as I am looking at a complaint relating to the approval date of 7 December 2017.

For all the reasons set out in detail by our adjudicator, plus the additional points I have elaborated on here, I am planning to uphold Miss N's complaint.

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.

PML responded to my provisional decision (which has been duplicated above) in detail. I do not list all the latest PML points here.

However, I do make it clear that I did not uphold the complaint just because of the five points PML has listed on the first page of its letter dated 29 July 2022 addressed to the Financial Ombudsman Service. Those five points are summaries of what it has interpreted as my reasons for the uphold and duplicate large parts of that provisional decision.

I made it clear in my provisional decision that as well as looking at the adjudicator's calculations, the original points made by PML, and having listened to all the call recordings and reviewed all the evidence I came to some conclusions in addition to what had already been said before by our adjudicator. So, I reject PML's contention that the five points it listed are the only reasons for the uphold.

One of the fresh points PML has made is that Miss N had told PML usually she received an annual £5,000 bonus in February and so was expecting the same in the February following which would have been February 2018. I do not consider it usual or responsible for PML to have relied on future promise of a bonus when calculating affordability. For obvious reasons, that would not have been guaranteed income in the same way that a regular salary for an employee would be. And I do not consider it right that this future bonus payment would be factored into an affordability assessment.

And, even if PML did consider it right to factor in the £5,000 bonus reward due in February 2018, I make this comment – PML ought to have asked itself why Miss N needed the £3,900 loan in December 2017 when, according to Miss N, she was due to receive £5,000 in February 2018. On the evidence I have, that was never looked into by PML.

PML's comments about the 2020 bank account statements do not lead me to alter my view. I have been asked to consider a complaint about the lending decision made in 2017 and so looking at evidence from 2020 is irrelevant.

PML's new points on the gambling are not persuasive to lead me to alter my view. PML has, essentially, said that the gambling transactions show that Miss N's partner won more than he spent. That suggests that PML considered that was satisfactory to it. And PML has referred to a lack of returned or missed Direct Debit payments and therefore the situation Miss N was in appeared not to be one to cause it concern. It has summarised its position on the gambling as this:

Therefore, there's no evidence to indicate that Miss N's partners gambling spend at the time of the loan application was impacting their ability to maintain their financial commitments at the time of the loan application or during the term of the loan.

I find this a remarkable statement. And not one that persuades me to alter my view which is that Miss N was applying for a loan, to consolidate other debt, effectively to 'save' about £60 a month, while it also had evidence that her bank accounts (joint with another) showed evidence of extensive betting and gaming transactions. And they showed that when substantial credits appeared (such as the PPI payments referred to earlier) they were immediately used not to repay the overdraft debt of around £3,400 but likely transferred to be used for gambling or other uses such as paying off different debts, leaving the overdraft debt in place.

The other points made in the 29 July 2022 letter to us either have been addressed in my provisional decision already and I have not changed my view. Or, the points made have not persuaded me to alter my view.

I uphold Miss N's complaint.

Putting things right

Miss N paid off this loan in March 2020. To settle Miss N's complaint, I direct that PML does as follows:

- the fees and charges PML added to the loan when setting it up need to be removed from the overall figure Miss N owed to PML and a statement of account I have been sent shows that was £4,680. But the loan was £3,900
- the repayments Miss N made should be deducted from the £3,900 capital amount. If this results in Miss N having paid more than £3,900, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement); *
- remove any negative payment information recorded on Miss N's credit file relating to this loan.

*HM Revenue & Customs requires PML to take off tax from this interest. It must give Miss N a certificate showing how much tax PML has taken off if she asks for one.

My final decision

My final decision is that I uphold Miss N's complaint and direct that Progressive Money Limited does as I have directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 5 September 2022.

Rachael Williams
Ombudsman