

The complaint

Mr B complains that a loan given to him by Madison CF UK Limited trading as 118 118 Money (118) was unaffordable for him.

What happened

In April 2019, Mr B applied to 118 for a loan of £5,000 to be repaid in 24 monthly instalments of £297.26. The total amount repayable was £7,134.24. The loan was agreed but Mr B says 118 didn't carry out enough checks to ensure he could afford the repayments. Had it done so, he says the loan wouldn't have been approved as it was unaffordable for him. He says he'd had previous loans with 118 which he'd complained about in the past, and it had agreed were unaffordable. He's since repaid this loan by refinancing it twice with 118.

118 says it carried out reasonable and proportionate checks in line with its usual process and, based on the information Mr B had given it, had had no concerns about his ability to afford the payments. It acknowledged that a previous complaint had been successful but said his circumstances had improved since those loans had been agreed.

One of our investigators looked into the complaint. She noticed that Mr B had overstated his monthly income by £2,000 on his application form. She said for that reason, in line with a lending rules set out by the industry regulator, the Financial Conduct Authority (FCA), 118 should have refused the loan and asked 118 to put matters right.

Mr B accepted our investigators opinion, but 118 didn't. As there was no agreement, the complaint has been passed to me for a decision.

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.

Having done so, I disagree with our investigator and don't think Mr B's complaint should be upheld. I issued my provisional decision saying:

The rules which our investigator referred to are set out in the FCA's Conduct of Business Sourcebook (CONC). Specifically, she referred to CONC 5.3.7. But at the time of Mr B's application, this rule had been replaced by a similar rule – 5.2A.36 which says, 'A firm must not accept an application for credit...where it knows or has reasonable cause to suspect that the customer has not been truthful in completing the application in relation to information relevant to the creditworthiness assessment'.

The income given by Mr B in his application was £5,583, whereas he received £3,584 per month. I've thought carefully about whether 118 should still have accepted his application given this discrepancy. I don't think it was unreasonable to do so. I say this because while the income completed on the application form was overstated, I suspect it was more a typographical error rather than an attempt by Mr B to mislead 118.

118 got copies of Mr B's bank statements - which showed his income - as part of its creditworthiness checks and it used the correct amount in assessing his application. I think that was a reasonable thing to do in these circumstances. I would take a different view, if a lender believed an applicant had intentionally provided misleading information and still went on to lend. I don't think that was the case here.

So I've gone on to consider whether 118 carried out reasonable and proportionate checks to satisfy itself that Mr B could afford the loan. To be clear, I'm not considering the previous loans Mr B had with 118 or two that he's taken since, as they've been the subject of other complaints. I'm only considering the loan I've given details of earlier.

We've set out our approach to complaints about high cost credit on our website – including the key relevant rules, guidance good industry practice and law. I've considered this approach when deciding this complaint.

118 needed to take reasonable steps to ensure that it didn't lend to Mr B irresponsibly by carrying out reasonable and proportionate checks. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did 118 carry out reasonable and proportionate checks to satisfy itself that Mr B was in a position to sustainably repay the loan? If not, what would reasonable and proportionate checks have shown at the time?
- Did 118 make a fair lending decision?
- Did 118 act unfairly or unreasonably towards Mr B in some other way?

118 was required to carry out a borrower focussed assessment. This assessment is sometimes referred to as an 'affordability check' or 'affordability assessment'. The purpose of the checks is for 118 to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn't about 118 assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr B.

118 had to carry out reasonable and proportionate checks to satisfy itself that Mr B would be able to repay the loan sustainably. There was no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower.

Taking all that into account, I think a reasonable and proportionate check ought generally to have been more thorough where:

- a customer as a low income (because it may make it more difficult to make loan payments of a set amount from a low level of income);
- the higher the amount due to be repaid (because it may be more difficult to meet a higher repayment for a particular level of income);
- the longer the term of the loan (because the total cost of the credit is likely to be higher, and the customer is obliged to make payments for a longer period); and
- the greater the number and frequency of loans and the longer the period of time during which a customer has been given loans (because of the risk of repeated refinancing may signal that the borrowing has become or was becoming unsustainable).

Did 118 carry out reasonable and proportionate checks?

118 asked Mr B for details of his income and expenditure and got his permission to review

his credit file. It says it carried out a number of checks to confirm what Mr B had told it. 118 says the checks it carried out before agreeing to lend to Mr B were reasonable and proportionate, and it believes the loans were affordable for him. As part of its assessment of his application, 118 obtained bank statements from Mr B. These confirmed his monthly income as approximately £3,584 and the account seems well run.

Mr B's expenditure listed on his application form totals £655 for rent (he lived with his parents), utilities, food and included £285 to creditors. 118 calculated he had a disposable income of £2,929, so I can understand why 118 felt that the loan was affordable. But Mr B said during his complaint, his expenditure actually totalled around £2,460. My calculations show that he still had a disposable income in excess of £1,000 per month.

These figures didn't tie up fully with his bank statements, but much of the debits shown in them was discretionary expenditure given Mr B was living with his parents, so I don't think anything in what I've said so far should have given 118 cause for concern.

Mr B's credit file at the time showed he had credit account balances totalling £7,651, and no new accounts being taken in the previous 12 months. There are no defaulted accounts or County Court Judgements.

118 carried out its usual checks and as described above, found nothing which caused it any concerns regarding Mr B's ability to afford the loan he'd requested. 118 would've been aware that it had upheld Mr B's previous complaint about loans it had given him. But it says his circumstances had improved since then and more than a year had passed since he'd repaid the previous loans, so it was happy to lend to him again.

Mr B has told us that he was having gambling problems at the time he took this loan, but his complaint to 118 didn't include this – simply he said the loan was unaffordable for him. He's given us bank statements which show a lot of transactions to and from gambling companies. But the statements he provided to 118 to support his application show no gambling at all, so I don't think it was unreasonable for it to be unaware of the problems Mr B was having.

I've seen nothing at this stage to indicate the complaints about the previous loans was upheld due to gambling which may have put 118 on notice of a problem. The final response letter which dealt with the complaint covering those loans, simply refers to an unaffordable lending issue. But even if I was persuaded the previous complaint was upheld as a result of Mr B having a gambling problem, 17 months had passed since the complaint had been raised. Given there was no gambling shown on the three months' worth of bank statements it received from Mr B, I think it would be reasonable for 118 to have thought the problems were in the past.

I think the checks it carried out were reasonable and proportionate, and I wouldn't have expected 118 to feel the need to investigate Mr B's finances any further based on what he had told them and the information it had found.

Did 118 make a fair lending decision?

Based on what he had told them and the information it had found, I think 118's decision to lend to Mr B was fair.

Did 118 act unfairly or unreasonably towards Mr B in some other way?

I've carefully read and thought about all the evidence provided by each party to this

complaint. Having done so, I don't think 118 has acted unfairly or unreasonably towards Mr B in some other way.

118 didn't respond to my provisional decision but Mr B did. He said the bank statements he sent 118 didn't show gambling transactions but did show significant sums of money being transferred to his second bank account. He's sent me a statement for that account which he'd provided to us previously, that does show numerous gambling transactions. Mr B says he doesn't think 118 did enough to understand his financial situation.

I've thought carefully about Mr B's situation. I agree that the statements he's provided show what he says they do. In its final response on the complaint, 118 says the bank statements were reviewed by its underwriting team who felt the loan was affordable. The underwriters will have seen that Mr B was earning a good level of income and moving money in and out of his current account between accounts in his name. But I don't think that's particularly unusual in itself or, in the circumstances here, ought to have led 118 to ask further questions.

I'm sorry to disappoint Mr B, but having considered what he's said, I'm not persuaded to change my provisional decision.

My final decision

My final decision is that I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 September 2021.

Richard Hale
Ombudsman