DRN-3364879

The complaint

Ms S has complained that Madison CF UK Limited trading as 118 118 Money lent to her irresponsibly.

What happened

Ms S borrowed £1,000 from Madison in October 2020. The loan was due to be repaid in 24 monthly instalments of about £72. The total amount repayable was around £1,740.

One of our adjudicators has looked into the complaint and thought that Madison had been wrong to provide Ms S with the loan. Madison disagreed with the adjudicator's assessment. As the complaint has not been settled, it has been passed to me to resolve.

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 considered this approach when deciding Ms S's complaint.

Madison needed to take reasonable steps to ensure that it didn't lend to Ms S irresponsibly. I think there are key questions I need to consider in order to decide what's fair and reasonable in the circumstances of this particular complaint:

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

Madison was required to carry out a borrower focussed assessment or "affordability check". The checks had to be "borrower" focussed – so Madison had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Ms S.

Madison 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 Madison had to do, but it could consider a number of different things such as the loan amount, the length of the loan term, the repayment amounts, and the borrower's overall financial circumstances.

In light of this, I think that reasonable and proportionate checks ought generally to have been 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); and
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period).

Madison was required to establish whether Ms S could sustainably repay her loan – 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 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 the evidence, arguments, and information I've seen about this matter and what it means for Ms S.

Madison says that Ms S applied for her loan on its website. The lender asked Ms S for information about her income and expenditure and acquired a credit check before providing the loan.

Madison thinks its checks were reasonable and proportionate. But Ms S was applying to Madison for a costly loan, repayable over an extended two-year period. I would have expected the lender to want to obtain a thorough understanding of Ms S's financial circumstances to satisfy itself that she could sustainably repay the loan over the whole loan term – especially as the credit report showed that she had some outstanding default liability which Madison doesn't appear to have taken into account when it calculated Ms S's regular outgoings. And Ms S doesn't appear to have been asked to supply independent evidence of her income such as a wage slip or her expenditure. Overall, I can't fairly say that I think Madison's checks were reasonable or proportionate. But in any event, I don't think Madison made a fair lending decision on this occasion and I'll explain why.

The credit report shows that Ms S had outstanding credit of around £6,690 including another unsecured loan with an outstanding balance of over £2,000 taken around four months earlier. Ms S's balance to limit ratio was very high at 96% and her outstanding debts included 2 defaulted accounts with a liability of £1,870. From what I've seen, Madison didn't allow for any repayments to be made on these defaulted accounts when it calculated Ms S's regular payments to her outstanding creditors. Madison says that these accounts would have become statute barred within four months of Ms S taking the loan and as she had not been making any regular repayments to these creditors, it was reasonable to exclude this liability from its assessment of the affordability of the loan.

I've thought about Madison's comments carefully and the summary of information that Madison gathered at the time. I think at the point that Madison made its decision to lend to Ms S, it ought fairly and reasonably to have taken into account her full outstanding credit commitments, including the £1,870 still outstanding on the defaulted accounts. The fact that Ms S had not been making repayments to these accounts might also reasonably have suggested to the lender that this consumer could be struggling to meet this liability. The application data says that Ms S was taking the loan for 'household improvements or repairs' so it doesn't seem that Ms S intended to consolidate or otherwise improve her financial position with Madison's loan.

On balance, I think Madison ought reasonably to have realised that, after meeting all her outgoings, existing credit, and new loan repayments to Madison, Ms S would have limited disposable income available each month and was at risk from experiencing further financial difficulties by taking on further lending.

I think Madison ought reasonably to have realised that taking everything into account, Ms S would most likely struggle to repay her loan on a sustainable basis. Madison might have calculated that on the face of it, Ms S had sufficient disposable income to repay her loan. But it had to ensure that she could do so sustainably, over the whole loan term, without borrowing further. Taking Ms S's circumstances as a whole, I think Madison ought reasonably to have realised that she would most likely be unable to repay the loan sustainably and so it ought reasonably to have declined to lend to her.

Putting things right

I think it is fair and reasonable for Ms S to repay the principal amount that she borrowed, because she had the benefit of that lending. But she paid interest and charges on a loan that shouldn't have been provided to her.

Madison should

- Remove all interest, fees, and charges on the loan and treat any payments Ms S made as payments towards the capital.
- If reworking Ms S's loan account results in her having effectively made payments above the original capital borrowed, then Madison should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled*.
- If there is a shortfall in repayments which leaves a capital amount outstanding, then Madison should treat Ms S sympathetically and fairly, which might include coming to a new arrangement about how best to repay this.
- Remove any adverse information recorded on Ms S's credit file in relation to the loans once any outstanding capital has been repaid.

*HM Revenue & Customs requires Madison to deduct tax from this interest. Madison should give Ms S a certificate showing how much tax it's deducted if she asks for one.

My final decision

For the reasons given above, I uphold this complaint and direct Madison CF UK Limited trading as 118 118 Money to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 7 May 2022.

Sharon Parr

Ombudsman