

The complaint

Mr P is unhappy that Madison CF UK Limited, trading as 118 118 Money ("118"), recorded a fraud marker against his name using the Cifas database.

What happened

Mr P approached Cifas and asked it what information it held on him after he had issues with existing, and obtaining, financial products.

Cifas responded to Mr P's data request confirming that a 'misuse of facility' marker had been placed against his name by 118 on 5 June 2019. The reason for the filing was listed as 'Evasion of payment'. Mr P complained to 118 as he was unhappy it had loaded the marker.

118 responded to Mr P's concerns stating that in December 2018 he'd made an application for a loan. After the loan was approved and paid to Mr P, he failed to make any repayments on it. He also failed to make contact with 118 despite numerous attempts by it to engage with him until he eventually made contact in March 2019 to explain his circumstances.

It concluded that an evasion of payment marker is used where it is confirmed that a customer took out a product but never had the intention of honouring their commitment to repay that product. It felt this correctly reflected the circumstances and therefore didn't uphold the complaint. It also later added that Mr P had failed to provide any evidence of his financial difficulties other than a third-party debt management form, that didn't contain any reference numbers or relevant details, and information of his benefit payments. Despite being asked for more info, Mr P wasn't forthcoming.

Mr P was unhappy with this response. He said that in December 2018 he was self-employed and was earning money at the time he'd taken the loan. But in January 2019 his circumstances changed—due to his friend who he worked for losing jobs—and was laid off. This placed him into financial difficulty, and he had to seek help from a debt management charity. Mr P was unhappy as he'd informed 118 of this when he did make contact in March 2019. Yet it still decided to go ahead and load the marker.

Mr P remained unhappy with 118's response to his complaint, so he brought it to our service where it was looked at by an Investigator. During the investigation, 118 disclosed that the Cifas marker had been removed against Mr P due to an internal error. It told our service that it didn't intend to reapply the marker but stood by its decision to load it initially.

Upon considering the evidence provided by both parties, the Investigator concluded that 118 hadn't loaded the marker fairly. Broadly summarised, they felt that 118 were aware Mr P was in financial difficulties prior to loading the marker. And as Mr P's circumstances meant it was unlikely he was intent on defrauding the business at the point of application, the Cifas standards for loading hadn't fairly been met. They recommended that 118 pay £250 for the distress and inconvenience caused.

118 questioned the impact caused. It asked if Mr P had provided any evidence of this impact, such as account closures and employment issues. It also pointed out that it'd

received evidence directly from Mr P's bank that it'd closed his account due to abusive behaviour toward staff.

Mr P felt that 118 were further attempting to delay matters regarding his complaint and therefore chose to not accept the Investigator's findings. He asked that the matter be reviewed by an Ombudsman and that the compensation be increased to £750 (plus interest) to reflect this. He also supplied emails from two third-party banks which evidenced they had terminated their products with him due to the Cifas loading.

118 also responded to the points made in the view; the points I deem to be relevant are summarised as follows:

- When Mr P made it aware of his circumstances in March 2019, the account was put on hold until April 2019 and Mr P was asked to ensure he made arrangements to pay or for the debt management charity to contact it. Neither of these occurred.
- Following a review of Mr P's credit file, 118 discovered that Mr P had taken out three historic credit agreements where he failed to make any payments on the debt, and one after where he'd not made payments in the final five months.
- It pointed out that Cifas itself had agreed with the loading.

As both parties disagreed with the outcome reached, the matter has now been passed to me for a final 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.

One of the relevant considerations here are set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards regarding this complaint are:

1. That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
2. That the evidence must clear, relevant and rigorous such that the member [118] could confidently report the conduct of the subject [Mr P] to the police.

When considering these standards, my interpretation of the bar for recording a Cifas marker is a high one. I must also take into consideration what is fair and reasonable in the circumstances. Having done so, I don't find that the marker was applied fairly here: I'll explain why.

There is no dispute that Mr P contacted 118 and informed it that he was in financial difficulties in March 2019. This was prior to the loading, which was applied in June 2019. In Mr P's email, he clearly explained that he'd lost his job, fallen into financial difficulties and was being evicted from a family members home. He also highlighted that due to his financial difficulties his phone was being cut off. Mr P provided documents to support he was seeking help from a debt support charity and evidence he was in receipt of benefits.

118 did respond to this sympathetically and asked Mr P to contact the debt support charity and ask it to link in with 118 to provide support. It also placed Mr P's account on hold and provided him appropriate guidance and signposting. But it was after this point where I find communication between both parties broke down.

118 has claimed that beyond this point, Mr P made no effort to make repayment or discuss repayments in a meaningful way. While Mr P hadn't made any payments, he was communicating with 118 between March and June 2019.

- On 23 April 2019 Mr P registered a complaint via email against 118 regarding the debt and incorrect reporting of it.
- On 24 April 2019 Mr P sent an email to 118. In the email he again informed 118 that he didn't have the means to make any repayments.
- On 23 May 2019 Mr P contacted 118 complaining of incorrect information recorded on his credit file. He also reiterated that he didn't live at the address on his application and therefore couldn't receive letters.

There are a number of other emails and telephone calls between the ones I have included above, but I've highlighted these specifically to show that Mr P was in contact with 118 between letting it know of his financial difficulties and the loading of the Cifas marker. He didn't disengage with it, he was clearly unhappy with way he was being treated and some of the actions of 118.

These don't appear to me to be the actions of someone intent on defrauding a business. Mr P didn't merely take a loan out and disappear with the money he'd obtained. He contacted 118, albeit two months after his first payment was due, informed it of his financial difficulties and provided evidence of his intention to seek help and his income from benefits. While 118 has provided a number of speculative reasons for believing Mr P was intent on never repaying the loan at the point of taking it, I'm not persuaded by these.

118, and I, aren't aware of the circumstances around each of the credit agreements Mr P historically held. It could equally be argued that poor management of finances or repeatedly falling into financial difficulties does not reasonably amount to a fraud or financial crime. There are also circumstances where consumers are provided credit where it's unaffordable. Nevertheless, I don't think this supports Mr P's intentions when taking out this specific loan.

Also, while Cifas has agreed with the loading, I'm not bound by its decision. I'm unaware of the intricacies of Cifas' investigation and what information it has relied upon. However, I have taken into account any relevant comments Cifas has made as part of my decision, along with the evidence provided by both parties.

Taking into consideration what is fair, I don't find that falling into financial difficulties or poor management of finances reasonably amounts to a fraud or financial crime. And as the required burden of proof outlines, members must have reasonable grounds to believe that one of these has been committed or attempted. It must also have robust evidence that supports the consumer's conduct or actions were deliberate or intentionally dishonest such that they could be confidently reported to police. I don't find that 118 has been able to demonstrate that here. And as 118 was given reasonable notice and evidence of this fact prior to loading the marker, I find that it did make an error in loading it.

Putting things right

As 118 has already removed the marker from Mr P's name, I don't need to direct it to do anything further in regard to this. However, Mr P has requested that compensation be provided for the distress and inconvenience caused.

Cifas markers do have a detrimental impact on a consumer's finances. As tends to be seen, Mr P has provided evidence that one of his accounts was closed. And in the closure letter from the bank, Mr P was directed to Cifas for further information. Mr P has also provided

evidence that another account he attempted to open was closed after due diligence checks were completed. Again, the bank highlighted the Cifas marker as the reason for these actions. So, I'm persuaded that the marker did have an impact on Mr P's finances.

It's also clear that Mr P has been frustrated by what he describes broadly as the drawn-out process of this dispute. While I'm not suggesting this is Mr P's fault, he has contributed to this, and the delays, in some way. Mr P has frustrated 118's investigations and ability to respond to his concerns by contacting it an unreasonable amount of times and sometimes making inappropriate comments toward its staff over the telephone. While I understand that emotions can run high in disputes like this, I find that it's only fair to acknowledge these issues when awarding compensation for the impact caused.

For the reasons I've given, I don't find the figure of £750 that Mr P has proposed is fair. I realise he feels 118 has deliberately delayed the process as a whole and with our service, but 118 is entitled to defend its position and ask questions where it feels appropriate evidence should be provided. Therefore, I find the £250 recommended by the Investigator to be fair in the circumstances.

My final decision

For the reasons I've given above, I uphold this complaint and direct Madison CF UK Ltd, trading as 118 118 Money, to pay Mr P £250 for the impact the marker caused without delay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 September 2022.

Stephen Westlake
Ombudsman