

## **The complaint**

Mr D complains about a loan provided to him by Madison CF UK Limited, trading as 118 118 Money, ("118 118 Money"), which he says was unaffordable. His complaint is brought to this Service by a firm of solicitors. But for ease I shall refer below to all actions being taken by Mr D.

## **What happened**

118 118 Money entered into an agreement for a loan for Mr D in January 2019. The loan was for £4,000 and was repayable by 24 monthly payments of £313.83. The interest rate was 71.3%, (99.9% APR). If Mr D made each repayment when it was due, the total amount payable would be £7,531.92. Mr D said that the loan was for debt consolidation.

118 118 Money's loan statement appears to show that the loan was repaid in January 2021.

Mr D says that 118 118 Money had lent money to him without checking whether he was able to repay. At the time he took out the loan, he was personally and mentally struggling and financially he was in a mess. The loan got him into a bigger mess. He fell behind on existing payments and had to borrow more money to keep up with essential payments.

In its final response letter, 118 118 Money said that it had asked Mr D for information about his income and expenditure, the reason for the loan and about his employment. It said that it had used industry standard verification checks to validate this information. It was satisfied that it had acted correctly in approving the loan application.

## *Our investigator's view*

Our investigator recommended that Mr D's complaint should be upheld. She said that 118 118 Money's checks weren't proportionate but the checks it did complete revealed enough information to enable it to make an informed lending decision. She noted that the loan was for debt consolidation but the loan of £4,000 wasn't enough to clear Mr D's unsecured debt of around £24,000 and 118 118 Money didn't take steps to discover what loans would be consolidated. So, the loan would be increasing Mr D's overall debt and time in debt further.

118 118 Money disagreed and responded to the investigator's view by saying that it had found nothing in Mr D's credit file that would have triggered it to have completed more checks. The credit file showed Mr D was using 56% of his available credit demonstrating that he wasn't reliant on credit.

As this complaint hadn't been resolved informally, it was passed to me, as an ombudsman, to review and resolve.

## *My initial provisional decision*

After considering all the evidence, I issued my first provisional decision on this complaint to Mr D and to 118 118 Money on 26 July 2022. I summarise my findings:

I'd noted that when 118 118 Money lent to Mr D the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

118 118 Money was entering a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr D's creditworthiness before it entered the agreement. This meant that 118 118 Money had to consider both the risk to it that Mr D wouldn't make the repayments under the agreement when due, and the risk to Mr D of not being able to make these repayments.

In particular, 118 118 Money had to consider Mr D's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules didn't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wished to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what was appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks

- 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 longer the period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr D's case, I considered the following questions:

- Did 118 118 Money complete reasonable and proportionate checks when assessing Mr D's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did 118 118 Money make a fair lending decision?

*Did 118 118 Money complete reasonable and proportionate checks when assessing Mr D's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?*

118 118 Money gathered some information from Mr D about his income and expenditure before it agreed the loan. It had also carried out a credit check.

Mr D said his net monthly income was £4,200. 118 118 Money said that it used industry standard verification checks to verify this. I hadn't seen the results of 118 118 Money's income checks.

Mr D declared his mortgage payment to be £635 and his other monthly living costs to be £670. He didn't declare any credit card and loan payments. But 118 118 Money was aware from its credit checks that Mr D did have a number of credit commitments. So, I thought it ought to have been concerned about whether the expenditure information provided by Mr D was complete.

The lender provided this Service with its credit checks which I'd reviewed. The credit checks showed that Mr D's total credit balance was £63,878. He had 12 active accounts and one account had been opened in the six months prior to the loan application. The checks showed that Mr D had a monthly mortgage payment of £663. In addition, he had a monthly hire purchase payment of £366. More concerning was that he had taken out two relatively large loans in 2018. The larger loan with a balance of £8,001 had only been taken out around five months prior to the loan application and the smaller loan with a balance of £2,459 had been taken out around five months before that. Mr D was making a total monthly payment of around £460 for these two loans. Mr D also had two credit cards although only one had a balance, which was £2,062. I'd noted that Mr D appeared not to have made any payments to this card in June 2018 and August 2018 which might have caused 118 118 Money concerns. He also had a mail order account with a balance of £1,577 on which he was paying £65 per month.

I'd said that simply performing credit checks wasn't enough. A lender needed to react appropriately to the information that any checks showed. The checks suggested that Mr D's finances might have been under pressure especially in view of the two relatively recent large loans and the missed payments on his credit card. And I thought they should have led 118 118 Money to conclude it should gather some more information about Mr D's finances.

I also didn't think it was reasonable for 118 118 Money to rely on the expenditure Mr D declared especially as 118 118 Money would have likely known from its credit checks that Mr D hadn't declared all his credit commitments to it. 118 118 Money's affordability assessment wasn't tailored to Mr D and I thought it should have been in his circumstances. Mr D was entering into a significant commitment with 118 118 Money. He would need to make monthly repayments of around £314 for 24 months. Given the length of time Mr D was committing to repay the credit and what 118 118 Money would have likely seen on its credit checks, I didn't think its checks were sufficient for 118 118 Money to get a clear picture of Mr D's finances at the time. I thought it would have been proportionate for 118 118 Money to independently check the true state of Mr D's finances before agreeing the loan.

118 118 Money needed to do more than just ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Mr D, asking for copies of bills and/or receipts for his expenses and by asking him for more information about his existing credit commitments. I couldn't see that 118 118 Money took steps to do this.

But although I thought 118 118 Money should have asked for some additional information before agreeing the loan, that in itself didn't mean that Mr D's complaint should succeed. I also needed to be persuaded that any further information would have shown 118 118 Money that Mr D couldn't repay the loan without the repayments having a significant adverse impact on his financial situation. So, I asked the investigator to ask Mr D for copies of his bank statements from around the time of the loan, so we could see what better checks would have shown the lender.

I wasn't suggesting that this was the exact check that 118 118 Money should have carried out. Looking at Mr D's bank statements was one way of achieving that although there were other ways that level of detail could be established. But I thought that by looking at Mr D's bank statements I would be able to get a good idea of what better checks might have shown.

Despite our request Mr D hadn't provided us with copies of his bank statements from around the time of the loan. He said that his current account provider had said that there was a large backlog to provide copy statements. I'd noted from another of Mr D's complaints with this Service that he was told by his account provider around three months earlier that his request for copy statements would take up to eight weeks. More than eight weeks had passed since our request for Mr D's bank statements. I thought Mr D had been provided with a reasonable period of time to provide these.

As I'd not seen Mr D's bank statements, I hadn't been able to get a picture from these of what his financial situation was like at the relevant time. I'd seen a copy of Mr D's credit report and that didn't show that Mr D had additional credit beyond that shown in 118 118 Money's credit checks. I also couldn't see that he'd taken out short term loans to supplement his income.

Altogether, I couldn't say that if 118 118 Money had completed further checks, it would've found that Mr D couldn't afford to repay the loan. So, based on the information I'd seen, I wasn't able to conclude that 118 118 Money shouldn't have agreed to provide the loan to Mr D. But I'd said that if Mr D was able to provide us with the relevant copies of his bank statements in response to my initial provisional decision, I would reconsider my decision. But subject to any further representations by Mr D or 118 118 Money, I said that I didn't intend to uphold the complaint.

118 118 Money responded to my first provisional decision to say that it accepted it.

Mr D responded to my first provisional decision by providing us with copies of his current account statements from around the time of the loan.

### *My second provisional decision*

After considering all the evidence, I issued a second provisional decision on this complaint to Mr D and to 118 118 Money on 31 August 2022. I summarise my findings:

I'd reviewed Mr D's bank statements from November 2018 and December 2018. Had 118 118 Money sought some verification of Mr D's financial situation, I thought it would've been in a better position to have understood Mr D's financial circumstances before it decided to lend to him.

The income Mr D received in November 2018 and December 2018 (£1,300 and £500 respectively) appeared to be irregular and substantially less than he'd declared to 118 118 Money. I thought that he might be self-employed and asked the investigator to ask him about this. I could also see on the bank statements that Mr D's regular living costs and credit commitments appeared to exceed his income. I also couldn't see that Mr D was paying his mortgage in those months and asked the investigator to ask Mr D if it was being paid from another account. I'd also noted that Mr D received two loans totalling £3,500 in December 2018 and he'd also received £7,000 from a family member in that month and I'd asked the investigator to ask Mr D about these. I'd also noted he was making regular payments to a solicitor and asked the investigator to ask Mr D about these.

Mr D told this Service he was self-employed. The fact that Mr D was self-employed meant that his income might have been sporadic or likely to fluctuate. His declared income might not have been his available income and might not have been net of all tax, national insurance and business expenses. There was also an element of uncertainty – especially as Mr D was unlikely to receive any sick pay or holiday pay. If 118 118 Money had made proportionate checks and seen that Mr D was self-employed, I thought it should then have taken steps to verify Mr D's available income as carefully as possible as any error – even if slight - was likely to have a significant impact on his ability to repay 118 118 Money's loan.

Mr D also said that he wasn't paying his mortgage at the time due to financial problems. He said that he'd taken out the two loans totalling £3,500 in December 2018 because he was in a financial mess and needed to survive. And the family loan for £7,000 was to help him out. He was also making payments to a solicitor so he could keep a debt out of court action.

So, if 118 118 Money had carried out what I considered to be proportionate checks, I thought it was likely it would have discovered that Mr D was self-employed, that his net monthly income was substantially less than he'd declared and less than the total of his regular expenditure and credit commitments and that he was having to rely on loans from third parties. And in these circumstances, I thought 118 118 Money ought reasonably to have realised that Mr D was over-committed financially and that he was having significant difficulties managing his finances. So I thought 118 118 Money ought reasonably to have realised that it was unlikely that Mr D would've been able to repay his loan without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

I thought 118 118 Money should reasonably have concluded that it had made an unfair lending decision when it agreed to lend to Mr D. So, subject to any further representations by Mr D or 118 118 Money, my second provisional decision was that I intended to uphold this complaint and say that 118 118 Money needs to take the steps set out below.

### **Putting things right – what 118 118 Money needs to do**

I understand that the loan has been repaid. As I intend to conclude that 118 118 Money was irresponsible to have lent to Mr D, he shouldn't have to pay any interest, fees or charges on the loan.

So, 118 118 Money should:

- Refund any interest, fees and charges paid by Mr D on the loan;
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement\*; and
- Remove any adverse information recorded on Mr D's credit file in relation to the loan.

\* HM Revenue & Customs requires 118 118 Money to take off tax from this interest.

118 118 Money must give Mr D a certificate showing how much tax it has taken off if he asks for one.

118 118 Money responded to my second provisional decision to say that it accepted it.

Mr D hasn't provided a response to my second provisional 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

As 118 118 Money has accepted my second provisional decision, and Mr D hasn't provided any further comments in response to it, I see no reason to depart from the conclusions I reached in my second provisional decision. And I'm satisfied that the proposed resolution in my second provisional decision is fair in all the circumstances and that 118 118 Money should put things right as set out under the above heading "Putting things right – what 118 118 Money needs to do".

### **My final decision**

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Madison CF UK Limited, trading as 118 118 Money, to pay the compensation and take the steps set out under the above heading "Putting things right – what 118 118 Money needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 October 2022.

Roslyn Rawson

**Ombudsman**