

The complaint

Mr A complains about the loan Madison CF UK LLC, trading as 118 118 Money, approved for him. He says it was unaffordable.

Mr A also says that Madison got it wrong by not accepting his reduced settlement figure when he offered it to them. He says Madison has reported his arrears to the credit reference agencies incorrectly and that it ought not to have recorded a default against his account.

What happened

Mr A was approved for a loan in February 2019 for £2,000 repayable at £167.26 per month for 18 months. The interest was £1,010.68 and the total to pay was £3,010.68.

His concern about the default is that he was still in touch with Madison about the debt and had house sale proceeds due soon which he planned to use to pay off the loan. He says it was at the start of lockdown – hence the delay – and he feels rather hard done by that the default was registered against him despite telling Madison he could pay soon. Mr A has told us that he has demonstrated he could pay as he did pay it off within a month of the default. However, now he has a default against his name for six years. Mr A said:

'I fully understand I shouldn't have got behind my payments at the time but the build up to selling my property and covid did not help matters but as I've stated I wasted no time to pay these two companies the money I was due to them.'

Mr A says that Madison was too quick to issue the default. Mr A says he kept in touch with Madison and kept them updated.

'Even the fact that since I took the loan I never missed any surely could have been a little more flexible as a good payer till this started.'

I do note however that a Statement of Account sent to Mr A shows that there had been problems paying from quite early in the lending relationship as well as missed payments in November and December 2019. And in March and April 2020.

On 24 April 2020 Mr A offered Madison a reduced settlement figure. He was in arrears of £501.78 and Mr A had offered to pay off the whole loan with a £500 payment.

The record Mr A has sent us shows that the default was for £1,003 in May 2020 and he paid it off in July 2020.

Mr A complained to Madison in September 2021.

The final response letter (FRL) in March 2022 covered several issues concerning the loan. For the irresponsible lending part Madison gave reasons why it did not consider it had approached the loan correctly and so it did not uphold that part of the complaint. For the arrears leading to a Notice of Default (NOD), it said –

'I am aware that you had redeemed a one-time offer in February 2020 where we wrote off arrears amounting to £334.52. This brought the account up to date however, the payments that fell due on the 02/03/2020, 01/04/2020 and the 01/05/2020 failed. This equated to £501.78. I am therefore, unsure how the amount was incorrect on the NOD. I can confirm that the NOD was not remedied and the default was therefore, applied correctly.'

The loan was sold to a third party on 25 June 2020.

Madison investigated the reporting of his account to the credit reference agencies (CRAs) and said that it had reported it correctly.

Mr A responded to the FRL with additional evidence to show that two different CRAs were showing differing dates in relation to arrears and settlement of the debt. And so later Madison accepted this and offered to report the information again to try to correct that. But it was not a fault with Madison – it was that two different CRAs had reported it for the individual customer differently.

Madison also explained further on the point relating to the NODs.

'You redeemed a one-time offer we had sent you by making a payment of £167.26 on the 21/02/2020. As you had made this payment, in order to help you bring the account out of arrears and stop any further impact on your credit file, including applying the default, we wrote off an amount of £334.52 on the 29/02/2020, equating to 2 months arrears. Please bear in mind, that we were not obliged to provide you with this offer as the funds were rightfully owed however, this offer was presented to you in order to help.'

One of our adjudicators looked at all the aspects of the complaint and issued her view in February 2023. In it she said that Madison had carried out proportionate checks before lending and she did not think that it had done anything wrong.

Our adjudicator also thought that the default had been registered correctly, that Madison had assisted him when he was having trouble repaying the loan. And as for the reporting of the missed payments and the default dates Madison had already offered to see if it could amend those entries and so our adjudicator did not consider she had to ask Madison to do anything further.

Mr A was not content and asked for an ombudsman to review it. He said:

'I still feel the default was to [sic] harsh and its going to be on my credit file for another few years when I asked them for help.'

Our adjudicator clarified with Mr A that it is the default that he had the issue with. From this it seems that Mr A does not need me to review the irresponsible lending part of the complaint but for the avoidance of doubt I have considered that part too.

The unresolved complaint was passed to me to decide.

I issued a provisional decision on 7 March 2023 in which I gave reasons why I considered that the loan had not been lent irresponsibly. And in that provisional decision I addressed the concerns Mr A had surrounding the arrears and the default applied to his account. In that provisional decision I gave reasons why I was not satisfied about the procedure surrounding the default and I considered it to have been applied too early.

It is a lengthy provisional decision, and for ease of reading, in the next section I have set it out in smaller type to differentiate it from this decision. The parties' responses to it follow that duplicated 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.

My provisional decision dated 7 March 2023

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.

It does appear that the part relating to the correction of the credit file has been resolved and so I do not plan to look at that part. Mr A has indicated that his main concern is about the default which I address later in the decision.

Considering 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 Madison completed reasonable and proportionate checks to satisfy itself that Mr A would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr A would've been able to do so?

If I determine that Madison did not act fairly and reasonably in its dealings with Mr A and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required Madison to carry out a reasonable and proportionate assessment of Mr A'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 Madison had to think about whether repaying the loans would be sustainable and/or cause significant adverse consequences for Mr A. In practice this meant that Madison had to ensure that making the payments to the loans wouldn't cause Mr A undue difficulty or significant adverse consequences.

In other words, it wasn't enough for Madison to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr A. 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 Mr A's complaint.

Irresponsible lending

In relation to the irresponsible lending part, for completeness I have looked at this part of Mr A's complaint as well.

Madison received Mr A's application in which he gave them his monthly income as £1,365 and his expenditure as £616 which was broken down into mortgage/rent £110, unsecured credit £233 and 'other' which was £273. So, on the figures the loan appeared affordable.

Madison obtained a credit search and I've received a copy of that search from February 2019. Mr A had hardly any debt at that point (around £2,880 total debt) and although he had a default registered from August 2017 that was long enough before the loan application to Madison for it not to be a high risk.

Our adjudicator has asked Mr A for copy bank statements but they have not been sent.

Mr A has recently told us that he was locked into some maintenance payments as well but again, no evidence has been sent to show us that. And in any event, for this type of loan where Mr A was a new customer I would not have expected Madison to have delved into Mr A's finances to discover that. I have no evidence that he volunteered that information to Madison. So, without the detail and as I think it's unlikely Madison would know of it then I say no more about that part. And the loan looked affordable to Mr A and so I do not uphold this part of Mr A's complaint.

Arrears and default

Although Mr A's view is that by the time he got relatively close to the end date for the loan repayment – 18 months from the first payment date which was 1 March 2019 would have been September 2020 – he still owed quite a lot (just over a £1,000).

In February 2020 – before the Covid 19 national pandemic lockdown was announced around 23 March 2020 – Mr A had asked for help and had received it. Two months' worth of repayments (over £334) was written off by Madison to help Mr A 'get back on track'. So, I do not agree with what Mr A says - that Madison had not been helpful at that point. And I do not agree that he had been a good payer up to May 2020. The records show he had paid erratically from the beginning.

Mr A has sent to us a letter confirming he was being 'furloughed' from November 2020. This does not demonstrate to me that he had income issues in April 2020 or May 2020.

Mr A has asserted that he was in touch with Madison and telling it (and sending screenshots) about his pending house sale which would have furnished him with funds to repay the loan immediately. But again, I have seen one telephone note on 8 January 2020 in which Mr A says that his house was on the market. I've not seen any further correspondence about that from either party or any screenshots from Mr A about the house sale. So, I think that the evidence Mr A kept Madison informed about the imminent funds is thin.

I have a detail Statement of Account from Madison. After Madison had written off the £334, the outstanding balance on 29 February 2020 was £1,003.56 and that did not alter until the default in May 2020 as no further successful payments were taken from Mr A. The last successful payment was 21 February 2020 which was the late February one. Three payments were due – 2 March, 1 April and 1 May 2020. None were paid.

On 24 April 2020 Mr A offered to pay £500 to settle the account and therefore he was asking for an early settlement 'deal'. Madison's email back on 1 May 2020 indicated that the rationale for not accepting a reduced final settlement figure was because he was £501 in arrears and so the £500 to pay it all off was not acceptable to Madison. It said to Mr A:

'We are happy to work with you and provide a settlement figure, but this amount will be considerably higher than what you have offered'.

Then when Mr A, on 11 May 2020, asked for a full and final settlement figure he was told that an early repayment rebate would only be £6.39 as he was relatively close to the end of the agreement date (September 2020) and so the full and final settlement figure was offered to him at £997.17. Which does amount (when combined) to the outstanding balance of £1,003.56.

So, I do not consider that the figures were incorrect as Mr A asserts.

My view is that it was not unreasonable for Madison to refuse the £500 offered by Mr A as a final payment to cover the whole debt.. Mr A's logic and for which he has sent me his calculator screenshots – is that with his £500 he would have paid to Madison around £1,838 which was only £106 short of the capital sum of £2,000 and about £338 'extra'. So, he was asking Madison to forego around £670 of interest. As Madison had already written off around £338 for him two months earlier than its reaction may well have been justified as to why it did not agree to such a drop.

And there was nothing to stop Mr A using that sum he said he could pay (£500) to catch-up with his arrears. But he did not do that.

Turning to the actual Notice of Default, I have some issues with that document and its date. The Default notice in February 2020 made it clear that he had to pay £501.78 before 26 February 2020. Mr A paid £167.26 on 21 February 2020 and Madison helped him out by writing off the £334.52 which, when combined, comes to £501.78. That was the amount needed to be paid to catch-up with the arrears.

But after that Mr A allowed the payments to slip again and no payments were received for March, April or May 2020. The default was registered 26 May 2020 and was then sold to a debt purchaser on 25 June 2020.

When considering defaults there is guidance issued by the Information Commissioner's Office (ICO). The ICO is the body created which deals with an individual's data, and it has released a document called "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies". It is entirely reasonable to rely on this, because in my view, it constitutes good industry practice.

Turning to Principle 4, which is mentioned above – *titled "If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down."*

The principle then goes on to say;

'As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.'

There are exceptions to this which may result in a default being recorded at a later stage, such as secured or long term loans e.g. mortgages, or if the product operates in a more flexible way e.g. current accounts, student loans, home credit.

If an arrangement is agreed (see Principle 3 above), a default would not normally be registered unless the terms of that arrangement are broken.'

And the guidance from the ICO has said this:

"The term 'default', when recorded on a credit reference file should be used to refer to a situation when "the lender in a standard business relationship with the individual decides the relationship has broken down".

However, I am aware of three factors which I have thought about carefully.

The first is that the original default notice was effectively 'cured' by the payment by Mr A on 21 February 2020 and the write-off by Madison around the same time in February 2020. So, I think another default notice or at least a notice of arrears giving Mr A time to pay off the arrears ought to have been issued around April or May 2020. Whereas I think that Madison has relied on the original default notice and acted on that in May 2020.

Additionally, I do not think that the relationship had broken down with Mr A as on 11 May 2020 Madison was offering – at Mr A's request – an early settlement figure. And it had received an email from Mr A offering to pay the £500 there and then. So, although it was not willing to accept the £500 offered by Mr A to settle the debt, it had communication from Mr A that he had the cash to pay that sum to it.

It is unfortunate that Mr A did not pay that £500, or a sum close to it, to demonstrate his willingness and intention to repay the debt. But there's not much more I can say about that.

And the third point I have thought about carefully is that as the pandemic had taken hold, the FCA issued guidance on how to approach debtors – for a temporary period. It was published on 24 April 2020, which was the same date that Mr A emailed Madison to offer that £500.

The FCA guidance was different where the customer – here Mr A – had already demonstrated difficulties repaying the debt. The 24 April 2020 FCA guidance says:

'Where a customer was in pre-existing financial difficulty, our existing forbearance rules and guidance in CONC would continue to apply.'

Here, Mr A had a poor repayment history which had dated back to early in 2019. So, the FCA guidance to assist customers as the pandemic took hold in the Spring of 2020 was not necessarily applicable to Mr A.

However, the usual FCA CONC Guidance and approach – and the ICO approach – would still apply. And within the context of the pandemic, Mr A's employment and the nature of his employment as it was affected by the pandemic (about which Madison knew from his email to it dated 24 April 2020).

So, placing all of this together, and within the context of it being May 2020 when these incidents about which Mr A is complaining took place, I think that Mr A ought to have received further communication about his arrears and been given a chance to repay all or some of the arrears due.

And I do not think that the relationship had broken down by 26 May 2020. And I say that because of the correspondence I have seen between the parties from 24 April 2020 to mid-May 2020. So, I think that the default was imposed too early.

Mr A has said that he did repay the debt to that third party very soon after the default was imposed and the debt was sold on and so he says that demonstrated he did get the funds in July 2020. He emailed Madison to tell them this.

Assuming that was correct – as I've seen no records to show me that – then it further persuades me that the arrears were on the verge of being paid off and the default was imposed too early. I plan to uphold this part of Mr A's complaint.

This is the end of the duplicated provisional decision.

How did the parties respond to the provisional decision

Mr A has replied twice. The first time he said that he agreed with the provisional decision.

Mr A's second response was:

'...after reading over the ombudsman response I'd like to ask for some sort of compensation from madison [sic] as it has been stressful dealing with this over the past couple of years.'

I had already addressed this element in my provisional decision in the planned 'putting things right' part. I said –

'I considered an additional compensation payment but I think that Mr A has made it clear he just wants the default corrected. And so, by asking Madison to do what I have outlined above is, in my view, sufficient recompense.'

Mr A came to us first in January 2022 and later he received his final response letter (FRL) on 10 March 2022. That was sent directly to Mr A despite us being involved at that point.

In Mr A's email response to Madison on 11 March 2022 he said he'd be taking the complaint to us. Mr A said to Madison:

'I simply wanted a genuine goodwill gesture on my credit file but it looks like I'll have to escalate your decision to the ombudsman service...I will now also be asking the ombudsman for compensation also for my stress, time and anxiety during this process.'

I had noted these points before I issued my provisional decision earlier this month. I noted that all Mr A was seeking was a 'goodwill gesture' to which he was referring to this request that his credit file was cleaned up and the default removed. But in Mr A's complaint form sent to the Financial Ombudsman Service the reference to requiring any compensation was not mentioned.

This precipitated my paragraph set out in my provisional decision in which I'd decided I did not consider any financial compensation was warranted. I've no evidence to show me how it was that Mr A suffered any stress or anxiety. And so, I remain of the same view now that it's been raised again by Mr A, almost a year after first emailing that point to Madison but not including it with his complaint form to us.

I gave extra time for Madison to respond to my provisional decision but we have not received a response from it.

In the interests of both parties I consider that a resolution is required on this complaint and so I have decided to issue my final decision now.

Putting things right

I think Madison should do as follows:

- contact the third party and buy back the debt
- remove the default
- and then, so far as is possible, to put Mr A back in the position he ought to have been had the default not been imposed, accept the payment Mr A made to that third party in full and final settlement of the debt
- write off any balance
- amend Mr A's credit file, again, this time by showing the account as being settled on the date he settled the third party's account. I understand that was July 2020.
- The adverse repayment records will remain on Mr A's credit file as that would have been the correct and accurate reporting of the debt.

My final decision

My final decision is that I uphold the complaint in part and I direct that Madison CF UK Limited, trading as 118 118 Money, does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 April 2023.

Rachael Williams
Ombudsman