

## **The complaint**

Miss G complains that Madison CF UK Limited, trading as 118 118 Money, defaulted her credit card account without sending her a default notice, and while she was on and keeping to an agreed repayment plan.

## **What happened**

Miss G had a credit card account with 118 118 Money. She failed to make some of her minimum payments, and the account fell into arrears. In April 2022 118 118 Money sent her a letter telling her that it was closing her account. She complained that she had not been warned that this would happen, and that on 4 March of that year she had agreed a repayment plan under which she would pay £30 a month for three months, and that she had kept to that plan.

118 118 Money did not uphold her complaint. It said it had sent Miss G a default notice on 11 March; Miss G says she did not receive this, but 118 118 Money suggested that she take that up with the post office. It accepted that she had kept to the terms of her repayment plan, but said that at the time of setting up the plan it had warned her that it would still continue to send her regulatory letters (such as a default notice for example), and that her credit file would still be affected while her account remained in arrears.

Miss G then referred this complaint to our service. Our investigator was not satisfied that the default notice had been sent, and so on that basis he upheld this complaint and recommended that 118 118 Money remove the default marker from Miss G's credit file. 118 118 Money re-iterated its previous stance. Since agreement could not be reached, this complaint was referred for an ombudsman's decision.

I wrote a provisional decision which read as follows.

## **What I've provisionally 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 am minded to uphold this complaint but for entirely different reasons.

I am satisfied that a default notice was served. I have seen it and it is correctly addressed. My colleague asked to see screenshots from the bank's systems showing that it was sent, and these have not been provided, but I don't think I need to see them. The fact that the default notice exists, and that the system for sending it is automated, leads me to think that on the balance of probabilities it probably was sent. I also accept that Miss G did not receive it, but it is not the bank's fault if a letter went astray in the post.

So I am satisfied that the bank took the proper procedural steps for defaulting Miss G's account. However, I currently do not think that the bank should have defaulted her at all. I will explain why.

As I have said, on 4 March 2022 Miss G contacted the bank and the result was that a repayment plan was agreed. The terms were that she would make three monthly payments of £30, starting on 23 March.

The bank's final response letter incorrectly gives 23 March as the date on which the plan was agreed; this error matters because the default notice is dated 11 March. So the bank dealt with her complaint on the basis that a default notice had already been issued by the time the plan was agreed, whereas the plan had already been agreed a week earlier.

Regulations made by the FCA say that *"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration."*<sup>1</sup> The FCA's guidelines about this rule say (in the next paragraph) that forbearance may include accepting token payments for a reasonable period of time. I think that three months is a reasonable time.

I have referred to further guidelines issued by the Information Commissioner's Office, which I think are relevant here. These are the *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*. These say (in section 3) that where a temporary change in payment terms is agreed and subsequently adhered to, arrears may continue to be reported, and the arrangement may be reported too. But then in section 4 it goes on to say:

*"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 on the next page it states:

*"A default should not be filed ... [if] jointly with the lender an agreement is reached for an arrangement and you keep to the terms of that arrangement."*

So the bank's decision to default Miss G's account while she was keeping to a temporary arrangement which had been agreed between the parties went in the face of that guidance and, in my view, contravened the FCA rule I have quoted above.

I have noted that the bank told Miss G, when the repayment plan was agreed, that it would still send her regulatory letters and that her credit file would still be affected by the arrears. However, I do not think that is enough to justify defaulting her account during the plan. "Regulatory letters" means more than just a default notice; it also covers other letters that banks have to issue, such as a notice of sums in arrears (one of those was sent to her in April). It does not mean that a default notice can still be sent in contravention of the rules and guidelines I have referred to above. And the fact that the arrears would continue to affect her credit file only means that the bank would continue to report the arrears; nobody would take that to mean that the bank would decide to default her and then report the default during the plan. If the bank intended to do that, it would have needed to tell her that in express terms on 4 March. But of course, that would not have been consistent with the agreement that had just been reached. So I am not persuaded that what was said to Miss G when the plan was agreed meant that the bank could still default her during the term of the plan, which ended on 25 May.

So for all of these reasons, I am currently minded to uphold this complaint. Subject to any further submissions I may receive from the parties ... I intend to order Madison CF UK Limited (trading as 118 118 Money) to arrange to remove the default marker from Miss G's account.

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<sup>1</sup> CONC 7.3.4 R

**Responses to my provisional decision**

118 118 Money has agreed to remove the default marker, and it had nothing else to add. So there is no reason for me to depart from my provisional findings, and I confirm them here.

**My final decision**

My decision is that I uphold this complaint. I order Madison CF UK Limited (trading as 118 118 Money) to arrange to remove the default marker from Miss G's account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 29 August 2023.

Richard Wood  
**Ombudsman**