

The complaint

Mrs M complains that Madison CF UK Limited, trading as 118 118 Money ("Madison"), lent to her without obtaining the full and correct information from her and so approved the loan when she was not able to afford it.

What happened

I set out here the two provisional decisions I have issued so far in relation to this complaint – the first on 28 July 2023 and the second on 22 August 2023. These give all the details plus my outcome. They are in smaller type to differentiate it from my final decision.

The duplicated first provisional decision dated 28 July 2023

Mrs M applied for a £5,000 loan and she says it was through a credit reference agency link. It was approved on 5 June 2021 and the terms were for £5,000 over 24 months at £298.70 each month. The total debt including the interest was due to have been £7,168.80.

Mrs M started to fall behind in her repayments relatively soon after the loan was approved. Mrs M was receiving arrears letters in December 2021 and in January 2022 she received a Notice of Default. Soon after that the debt balance was sold to third party collection agents in April 2022. It remains outstanding.

Mrs M submitted to Madison a Subject Access Request (SAR) on 10 February 2023 and complained to Madison on 14 February 2023. I have seen the SAR documents from Mrs M and I have seen Mrs M's original complaint email. The final response letter from Madison dated 4 April 2023 explained all it had done before lending to her and said that it did not uphold her complaint.

Not content, Mrs M referred her complaint to the Financial Ombudsman Service and in her complaint form she has said she was pre-approved for the loan and at the time her bank statements showed she was up to her limit on her overdraft and numerous payments had been returned. So, she says that the checks done before the loan was approved were too brief and insufficient.

In her complaint form Mrs M mentions that she had asked Madison for a payment holiday in the past but was not '*offered any solution*'. I come back to this part in the main part of the decision.

One of our adjudicators looked at the complaint and thought as follows:

'I think the lender should've taken steps to build a more detailed picture of your financial situation. This could've included performing a credit search, or asking you for more information at the time of lending – for example, payslips, bills, or bank statements that showed your income and expenditure.'

'118 118 Money has shown me that it carried out a detail credit search before lending to you. I've considered what it learnt from this information – and I don't think there was anything in the information it gathered which meant it shouldn't have lent to you. Your credit report showed you had a total debt balance of £1,461 and you were managing your outstanding credit well.'

So, our adjudicator did not uphold the complaint.

Mrs M responded to say that credit history records are not everything. And that her credit record or her credit score does not show Madison affordability. Mrs M referred to one of the SAR records she'd sent us in which the application showed that all Madison had was her income of £1,323 a month and no outgoings at all.

Plus, Mrs M raised the 'lack of help' point again. She has told us:

'I have asked few times to get a payment holiday when I was struggling and they only provide 1 month of payment holiday and did not do anything to support my situation. Please find the attached image of the mail conversation.'

The unresolved complaint was passed to me to decide. I have decided to issue a provisional decision and I give my reasons why in the decision that follows.

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 general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

Taking into account 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 Mrs M would be able to repay in a sustainable way? And, if not, would those checks have shown that Mrs M would've been able to do so?

If I determine that Madison did not act fairly and reasonably in its dealings with Mrs M 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 Mrs M'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 loan would be sustainable and/or cause significant adverse consequences for Mrs M. In practice this meant that Madison had to ensure that making the payments to the loan wouldn't cause Mrs M 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 Mrs M.

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 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 Mrs M's complaint.

I appreciate that Mrs M has had the benefit of the documents she'd received from the SAR, most of which are the same as the ones Madison relies on to defend the complaint.

I have seen that Mrs M's application had only her income which was £1,323 and that there was nothing else on there, apart from her personal details, her bank details, that she had said she was employed full time and was renting (unfurnished). There were no figures for any of her outgoings.

However, I note that in its FRL, Madison made it clear that it did not rely solely on the information Mrs M would have provided at the application stage. I know that Mrs M says she did not actually 'apply' as such but Madison received information about her and so whether that was information taken from her credit reference agency details or whether it was a form she'd completed, it had the information it used. Madison said:

'...the income and expenditure you provide will be used as a starting point, but we also use reasonable 'average figures'. In addition to this, we also use credit expenditure amounts from your credit file...'

One concern of mine is that I've no evidence of Madison's calculations on what it considered Mrs M's expenditure to be.

Another concern of mine that I've seen from a note dated 26 January 2022 in the SAR records that Mrs M had told Madison she was self-employed and having business trouble. Hence her difficulty making the repayments of just under £300 each month.

If Mrs M was self-employed at the time of the loan approval in June 2021 then I do not consider that Madison knew all the details it ought to have known about Mrs M's income. And therefore, her ability going forward to continue to make 24 months' worth of repayments.

Although there were no figures for Mrs M's expenditure, the credit search Madison did, showed that her debt was low at £1,461 overall and she had no adverse entries on her credit file.

But this was not a small loan – it was for £5,000 plus interest over 24 months and so I do consider that Madison ought to have done more than simply accept a referral document through a credit reference agency and then take the income of £1,323 a month without checking it. I've no evidence of any income verification and if Mrs M was self-employed I'd have expected it to want to know her drawings for a period leading up to June 2021. And I've no evidence of the expenditure figures it did use in its creditworthiness assessment as required by the FCA.

Our adjudicator also considered that Madison ought to have done more but Mrs M has not sent in her details relating to her expenditure at the time or any copies of other documents such as, for instance, her bank account statements. Mrs M had sent in the SAR records.

I do think Madison ought to have looked at more about Mrs M's financial situation before approving the £5,000 loan, and yet I've no evidence from Mrs M to show me what it was Madison would have discovered in June 2021 if it had carried out additional checks.

So, on current evidence I cannot decide that Mrs M's loan was approved by Madison irresponsibly. By issuing a provisional decision I give time to Madison to send further evidence if it wishes and I give Mrs M time to send to us details of her financial situation in May and June 2021 being the lead period to the June 2021 application.

On current evidence I plan not to uphold the complaint – *this was the first provisional decision outcome.*

The part of Mrs M's complaint about lack of help

I have seen that in her complaint form (submitted to us in March 2023) and in her response to the adjudicator's view Mrs M has said that she is concerned about the lack of help she received when she was asking for it when she was in arrears. These complaint elements were not in Mrs M's original complaint email to Madison and not covered in its FRL to Mrs M.

I plan to arrange for a separate complaint file to be commenced and for Madison to respond to those complaint points. I don't have enough currently to be able to make an informed and full decision on that part of Mrs M's concerns about Madison's approach to her arrears and her debt.

What I provisionally decided for the second time – and why

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Madison has not responded to the first provisional decision.

Mrs M has sent to us bank account statements for two accounts. One was a new account and had about £30 in it. The other was the account which showed transactions in and out relating to the work she did to earn money.

Mrs M sent to us her Self-Assessment calculations for the Tax Year 2019-20 and the Tax Year 2020 – 21. For the Tax Year 2019-20 Mrs M's total income from all employments including her business: £16,423. For the Tax Year 2020-21, which is more relevant as it's the closest period up to the time Mrs M applied for the Madison loan, her income received was: £10,009.

For the period from the end of the Tax Year 2021 to 4 June 2021 was a matter of two months. I doubt that her income situation altered much. The bank account statements do not reveal that Mrs M's income altered much. £10,009 in a year translates into about £834 a month.

This loan was scheduled to be repaid by instalments of just under £300 each month for five years. During the loan application process, I can see that Madison did do a credit search and Mrs M had very little in overall debt on that record - £1,461. I have accounted for this in my deliberations.

But I have expressed concern about the limited information Madison knew about Mrs M's income and her expenditure. The lack of information about her expenditure would be enough of a concern but the lack of information about her income for a loan as big as this - £5,000 over five years – is a concern.

I think that a full financial review would have led Madison to have realised that Mrs M was struggling to get a business off the ground, was self-employed and was receiving very little income from it.

Even without the expenditure information, I can see that Mrs M had committed to repay 36% of her likely drawings each month to repay the loan. Madison has explained that as well as reviewing a credit search, it explained in its FRL:

'... we do not solely rely on the details you provide to us and therefore, the income and expenditure you provide will be used as a starting point, but we also use reasonable 'average figures'.'

Mrs M had said she was renting her accommodation. So even allowing £500 for rent plus bills – which I do not think is an unrealistic figure - then the loan was likely unaffordable.

I consider that for the length and the size of the loan I do not consider that Madison carried out proportionate checks and if it had carried out a full financial review it would have appreciated her situation. I plan to uphold the complaint about the irresponsible lending.

A new complaint to cover the second issue Mrs M raised has been set up so I say no more about that part.

This is the end of the two duplicated provisional decisions.

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.

Having issued two provisional decisions, the second after new information was sent to us by Mrs M, Madison has sent to us documentation but no submissions. I have reviewed it all but each of the documents we had already received before I issued my first provisional decision.

So, I do not consider that Madison has sent anything new to me such that I am persuaded to alter my second provisional decision outcome.

Mrs M has not responded. In the absence of anything further since issuing my second provisional decision I have decided it's fair and reasonable to issue the decision to resolve the complaint.

For the reasons given I uphold Mrs M's complaint.

Putting things right

I uphold the complaint and I direct that Madison does as I have set out below. Madison is entitled to offset the refund sums due to Mrs M against the debt that she owes to it. The default needs to be removed from her credit file.

The statement of account suggests that Madison may have sold the debt or passed it to a debt collector. It needs to bring that debt back 'in-house' and after doing that (if it can) then Madison needs to do as I have listed below.

If Madison cannot bring the debt back 'in-house' it must liaise with the current debt owner to ensure that no additional third party fees or charges have been added to that debt and that the end result with Mrs M is the same as I have outlined here:

- remove all interest, fees and charges applied to the loan,
- treat any payments made by Mrs M as payments towards the capital amount,
- if Mrs M has paid more than the capital then any overpayments should be refunded to with 8%* simple interest from the date they were paid to the date of settlement, but if there's still an outstanding balance, Madison should come to a reasonable repayment plan with Mrs M.
- remove any adverse payment information about the loans from Mrs M's credit file.

* HM Revenue & Customs requires Madison to take off tax from this interest. It must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold the complaint 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 Mrs M to accept or reject my decision before 2 October 2023.

Rachael Williams
Ombudsman