

Complaint

Ms S has complained about a personal loan Madison CF UK Limited (trading as “118 118 Money”) provided to her. She says the loan was unaffordable and was therefore irresponsibly lent to her.

Background

118 118 Money provided Ms S with a loan for £5,000.00 in May 2021. This loan had an APR of 35.9% and a term of 60 months. This meant that the total amount to be repaid of £9,826.80, including interest, fees and charges of £4,826.80, was due to be repaid in 60 monthly instalments of £163.78.

One of our adjudicators reviewed Ms S’ complaint and that thought that it didn’t do anything wrong when providing Ms S with her loan. So she didn’t recommend that Ms S’ complaint be upheld.

Ms S disagreed with our adjudicator’s assessment. So the case was passed to an ombudsman as per the next step of our dispute resolution process.

My provisional decision of 25 September 2023

I issued a provisional decision – on 25 September 2023 - setting out why I intended to uphold Ms S’ complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me provisionally decide Ms S’ complaint.

118 118 Money needed to make sure it didn’t lend irresponsibly. In practice, what this means is that 118 118 Money needed to carry out proportionate checks to be able to understand whether Mr L could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

I considered what 118 118 Money had done in light of this.

Having done so, I noted that the credit search carried out appeared to show that Ms S had had difficulties with credit. She had a number of previous defaults and as I understood it had not long been out of a Debt Relief Order (“DRO”).

The credit search information appeared to indicate that Ms S had been subject to some kind of insolvency event, albeit this had been discharged. Bearing this in mind as well as the amount advanced and the fact that 118 118 Money was providing a loan over a five-year term, I was satisfied that 118 118 Money needed to find out more about Ms S’ actual monthly expenditure before concluding that the payments to this loan were affordable for her.

Ms S had provided us with evidence of her financial circumstances at the time she applied for her loan. I did accept different checks might show different things. And just because something showed up in the information Ms S had provided, it didn’t necessarily mean it would have shown up in any checks 118 118 Money might have carried out.

But in the absence of anything else from 118 118 Money showing what this information would have shown, I thought that it was perfectly fair, reasonable and proportionate to place considerable weight on what this information said as an indication of what Ms S’ financial circumstances were more likely than not to have been at the time.

I thought that it was also important to note that 118 118 Money was required to establish whether Ms S could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on a strict pounds and pence basis might have been an indication that a consumer could sustainably make the repayments.

But it didn’t automatically follow that this was the case. And as a borrower shouldn’t have to borrow further in order to make their payments, I thought that it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower would not be able to sustainably make their repayments if it is on notice that they were unlikely to be able to make their repayments without borrowing further.

I considered the available information in this context.

The information provided showed that Miss S was struggling to manage her finances and was even borrowing from family. Given what I saw, it was apparent to me that Ms S was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty.

As this was the case, I did think that Ms S’ existing financial position meant that she was unlikely to be able to afford the repayments to this loan, without undue difficulty or borrowing further. And I was satisfied that reasonable and proportionate checks would more like than not have shown 118 118 Money that it shouldn’t have provided this loan to Ms S.

As 118 118 Money provided Ms S with this loan, notwithstanding this, I was minded to conclude that it failed to act fairly and reasonably towards her. And I explained that it was my intention to uphold this complaint.

I thought that Ms S ended up paying interest, fees and charges on a loan she shouldn’t have been provided with. So I concluded by setting out that it was my intention to issue a final decision which finds that Ms S lost out because of what 118 118 Money did wrong and a direction on how 118 118 Money should put things right for Ms S.

Responses to my provisional decision

Ms S didn't respond to my provisional decision and or provide anything further to me to consider.

118 118 Money confirmed that it didn't have anything further for me to consider and said that it would await my final decision.

My findings

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

I set out in some detail why I intended to uphold Ms S' complaint in my provisional decision of 25 September 2023. As I've not been provided with anything further by the parties to consider, I've not been persuaded to depart from those conclusions.

So overall and having considered everything, I'm still upholding Ms S' complaint and I remain satisfied that 118 118 Money needs to put things right.

Fair compensation – what 118 118 Money needs to do to put things right for Ms S

Having thought about everything, I'm currently minded to conclude that 118 118 Money should put things right for Ms S by:

- removing all interest, fees and charges applied to the loan from the outset. The payments Ms S made, whether to 118 118 Money or any third-party debt purchaser, should be deducted from the new starting balance – the £5,000.00 originally lent. If Ms S has already repaid more than £5,000.00 then 118 118 Money should treat any extra as overpayments. And any overpayments should be refunded to Ms S;
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Ms S to the date of settlement†
- if no outstanding balance remains after all adjustments have been made, all adverse information 118 118 Money recorded about this loan should be removed from Ms S' credit file.

† HM Revenue & Customs requires 118 118 Money to take off tax from this interest. 118 118 Money must give Ms S a certificate showing how much tax it has taken off if she asks for one.

I'd also remind 118 118 Money of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should it own an outstanding debt, after all adjustments have been made to the account and it's the case that Ms S is experiencing financial difficulty.

My final decision

For the reasons I've explained above and in my provisional decision of 25 September 2023, I'm upholding Ms S' complaint. Madison CF UK Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 8 November 2023.

Jeshen Narayanan
Ombudsman