

The complaint

Mr F has complained that Madison CF UK Limited (trading as 118 118 Money) are holding him liable for a debt which he says was taken out as the result of a scam.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

Mr F had previously been scammed into making a cryptocurrency investment which then disappeared.

In 2023, Mr F was contacted by a scammer who claimed they'd found his cryptocurrency, it had greatly increased in value, and they could help him get it back. They persuaded Mr F to install a remote access application, log into his online banking, and pay them about £2,000 as a fee. In addition to the £2,000 payment, a £5,000 loan was taken out with Madison in Mr F's name, paid to his bank account, and then sent on to the scammer. Mr F says he saw the scammer go to Madison's website, but they told him it was just a sister company.

Madison held Mr F liable for the loan. Our investigator looked into things independently and didn't uphold the complaint. Mr F didn't agree, so the complaint's been passed to me to decide.

I sent Mr F and Madison a provisional decision on 11 October 2023, to explain why I thought the complaint should be partially upheld. In that decision, I said:

I understand that Mr F was scammed here. He's provided his chat history with the scammer, and I can see his bank investigated and concluded he'd been scammed. I appreciate this can't have been an easy time for Mr F. It's worth keeping in mind that it's the scammer who's primarily responsible for what happened. But I can only consider what Mr F and Madison did in this dispute between them, and I must be fair to both sides.

I can't see that Madison had any good reason to think it wasn't Mr F applying for this loan. It was taken out on his device, using his genuine details, and it passed its identity checks, ultimately because Mr F had given the scammer everything they needed.

It's not conclusive whether Mr F applied for this loan himself or not. I accept that he was scammed, and that the scammer had control of his device. But the loan was taken out using his contact details, rather than the scammer's, so Mr F would have received any relevant communication. His chat with the scammer indicates he knew this was a loan which would need to be paid back. And given that he saw the scammer go to Madison's website, and would've seen them fill out the loan application, he ought reasonably to have been aware that this loan was being taken out in his name and would need to be repaid.

Further, I need to consider whether Mr F did enough to verify what was really going on and to reasonably mitigate his losses. I'm afraid I think Mr F ought to have had more concerns along the way about what he was being asked to do. So that also means he should bear some responsibility for what happened. For example, Mr F was cold-called by someone offering an implausible story and returns that were too good to be true, and he didn't have any reasonable evidence that they were who they claimed to be, nor did he carry out any reasonable checks or seek independent advice. Essentially, he gave a stranger full access to his device, personal details, and bank account without having a reasonable basis to believe what they were telling him.

Then perhaps most importantly, I can see that Mr F's bank have refunded the £5,000 that was paid from the Madison loan onto the scammer. So Mr F still has the loan funds. And that's not Mr F's money, that's Madison's money. He needs to pay that back to them.

So even if I were to conclude that this loan was taken out without Mr F's full knowledge and consent, I still could not fairly or reasonably tell Madison to write off this loan's principal. It would not be fair to hold Madison responsible for the scammer's actions or for Mr F's negligence, or for Mr F to get the benefit of £5,000 that was not his in the first place.

Of course, I do accept that Mr F was scammed. I'm conscious of the possibility that this loan was applied for without his explicit and informed consent – which would mean Madison wouldn't be able to hold him to the terms of it, including the interest and fees. And in any case, it doesn't seem fair for Mr F to have to pay interest and fees on a loan he was tricked into getting on false pretences, nor would it seem very appropriate for Madison to seek to profit from fraud.

Further, I'm not confident that it was entirely responsible to lend this loan. I note Mr F's existing indebtedness, his very high balance-to-limit ratio and tendency to go over his credit limits, his recent missed payments, and his use of high-cost short-term lending. I also note he was living out of his overdraft and appears to have been in some financial difficulties.

So with all of that in mind, I currently think that the fairest thing is for Madison to waive the interest and fees on this particular loan, and for Mr F to repay the £5,000 principal.

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.

In response to the provisional decision, Madison let us know they had nothing further to add.

Mr F agreed to repay the £5,000 but requested that Madison remove the loan from his credit file first.

I understand why Mr F thought to ask for this. Had Mr F returned the £5,000 as soon as his bank refunded it back in March, I might have suggested that Madison remove the loan from his file.

However, as I explored in the provisional decision, I found that Mr F reasonably knew that this was a loan which was being taken out in his name and which he would need to pay back. He then held onto the £5,000 loan funds after his bank returned it to his account, despite reasonably knowing that this money was not his and that it needed to be paid back to Madison. Since March, he has continued to benefit from the use of those loan funds.

Mr F's credit file is supposed to be an accurate reflection of his borrowing. Given that he reasonably understood that he had borrowed this money, and given that he chose not to repay the borrowing for many months, it would not be appropriate to remove the debt from his credit file in this case. It is more accurate for Mr F's credit file to reflect that he chose to hold onto the money he borrowed and chose to remain in debt to Madison for a significant period of time.

So having reconsidered the case, I've come to the same conclusions as before, for the reasons set out above.

Putting things right

I direct Madison CF UK Limited to rework the loan account to remove any interest and fees. I do not make any further award.

My final decision

I uphold Mr F's complaint in part and direct Madison CF UK Limited to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 13 November 2023.

Adam Charles
Ombudsman