DRN-4455877

The complaint

Mr B says that Madison CF UK Limited trading as 118 118 Money ("Madison") lent to him irresponsibly when he was granted two personal loans.

What happened

Mr B applied for a £4,000 loan from Madison on 11 April 2021 ("Loan 1"). It had a term of 36 months, and it was repayable at £177.34 a month. The Annual Percentage Rate ('APR') was 39.9% and the total amount repayable after interest and costs was £6,384.24. The purpose for the loan was recorded as 'Other'.

Mr B then applied for a £4,983.21 loan – of which £2,683.21 was used to settle Loan 1 - from Madison on 4 August 2022 ("Loan 2"). It had a term of 60 months, and it was repayable at £164.26 a month. The APR was 35.9% and the total amount repayable after interest and costs was £9,855.60. The purpose for the loan was recorded as 'Car Purchase or Repairs'.

In June 2023 Mr B – via his professional representative ("PR") - made a complaint to Madison about its decision to lend to him. The reasons for the complaint are familiar to both sides so I don't intend to repeat them in detail here. But, in summary, Mr B said the loans were unaffordable and, therefore, the decisions to lend to him were irresponsible as a result. Mr B has also alleged Loan 2 was mis-sold and, in the letter of complaint, PR has queried whether the loans were enforceable.

It doesn't look like Madison responded to the complaint. So, PR referred it to the Financial Ombudsman Service in September 2023.

The complaint was looked at by an investigator who, in November 2023, issued her findings in which she concluded it was not wrong of Madison to lend.

PR disagreed with our investigator. And as it wasn't possible to resolve the complaint informally, it was referred for an ombudsman's decision. Both sides were given time to add to what had already been said and/or provided.

As the deadline to do that has now passed, the complaint was passed to me for a 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.

When doing that, I'm required by DISP 3.6.4 R of the Financial Conduct Authority's (the 'FCA') Handbook to take into account the:

> *"(1) relevant:*
> *(a) law and regulations;*
> *(b) regulators' rules, guidance and standards;*
> *(c) codes of practice; and*

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time."

The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website. And having taken this into account along with everything else I need to consider, I don't currently think it would be fair or reasonable to uphold this complaint. I recognise this might be disappointing for Mr B. I hope my explanation helps him to understand why I've come to this conclusion.

Under the relevant legal and regulatory framework, Madison was obliged to lend responsibly. This meant that it had to reasonably assess whether Mr B could afford to meet the loan repayments in a sustainable way over the term of the loan in question.

The relevant regulator didn't specify what level of detail such an assessment might require – nor did it set out how such an assessment needed to be carried out in practice. Instead, it said that the necessary level of detail when carrying out a requisite assessment would depend on the risk to the borrower relative to the borrower's financial situation – though it wouldn't necessarily be limited to that.

However, the regulator did define the notion of sustainably repaying debt as being able to meet the repayments of a credit agreement without undue difficulty. And that includes being able to make repayments on time and without taking on additional borrowing to do so while also meeting other reasonable commitments.

So, in keeping with the information on the Financial Ombudsman Service's website, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:

1. Did Madison carry out reasonable and proportionate checks to satisfy itself that Mr B was likely to have been able to repay the borrowing in a sustainable way?

> i. If Madison carried out such checks, did it lend to Mr B responsibly using the information it had?
>
> Or
>
> ii. If Madison didn't carry out such checks, would the requisite checks have demonstrated that Mr B was unlikely to have been able to repay the borrowing in a sustainable way?

2. If relevant, did Mr B lose out as a result of Madison's decision to lend to him

What constituted proportionate checks will depend on several factors. And for that reason, determining what these checks looked like in practice when Madison lent to Mr B wasn't an exact science – and I'd say that's still the case now.

There are, of course, many factors that could be relevant when determining how detailed proportionate checks should have been. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to:

- the type of credit Mr B was applying for along with the size, length and cost of the borrowing; and

- Mr B's financial circumstances – which included his financial history and outlook along with his situation as it was, including signs of vulnerability and/or financial difficulty.

And generally speaking, the circumstances in which it was reasonable to conclude that a less detailed affordability assessment was proportionate strike me as being more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant and short-lived – especially in the early stages of a lending relationship.

<u>Loan 1</u>

Did Madison carry out reasonable and proportionate checks?

Prior to agreeing to lend Loan 1 Madison asked Mr B to provide details about his income and expenditure. It also carried out a credit search.

It looks like Mr B declared he was working full-time, and his monthly income was £1,880. It looks like Mr B did not declare any expenditure. However, Madison didn't rely solely on what it was told by Mr B in relation to his income and expenditure. It adjusted his income and expenditure based on, in part, what it found from the credit search it carried out. Having done so, it adjusted his expenditure to £1,034.46 split across several categories.

Given the size of the monthly repayments Mr B had to make to the loan relative to his income, and in light of what Madison knew from the checks it carried out, I think it proceeded with a proportionate amount of information – especially when Mr B doesn't appear to have had a recent history of borrowing from Madison.

However, Madison didn't satisfy its obligation to lend responsibly to Mr B by simply proceeding with a proportionate amount of information before making its decision to lend. Once it had the information it thought it needed, it then had to evaluate it because it still had to reasonably assess whether he could afford to meet the loan repayments in a sustainable way over the term of the loan.

Did Madison lend to Mr B responsibly using the information it had?

The income and expenditure check Madison carried out indicated Mr B had a monthly disposable income of around £845. The monthly repayments for the loan in question were £177.34. So, the loan repayments did appear to be affordable for Mr B, whilst also leaving him with enough financial headroom to cover unexpected expenses.

The credit search Madison carried out drew its attention to a credit card and a hire purchase agreement with a combined outstanding balance of £1,493. The repayments for these accounts were included in Madison's expenditure calculations. The credit search showed that both accounts were well maintained with no late or missed payments.

I note the credit card had only been opened a month prior to the lending in question, but the credit limit was relatively low and there were no other accounts opened in the six months prior to the lending in question. So, I don't think this ought to have given Madison cause for concern.

Looking at things in the round, I don't think the checks Madison carried out indicated Mr B would be unable to afford the loan. Indeed, Mr B has said that he *found no issue with the repayments.* It follows that I don't think that Madison treated Mr B unfairly or unreasonably when providing him with Loan 1.

Loan 2

Did Madison carry out reasonable and proportionate checks?

Prior to agreeing to lend Loan 2 Madison asked Mr B to provide details about his income and expenditure. It looks like Mr B declared he was working full-time, and his monthly income was £1,880. It looks like Mr B did not declare any expenditure.

However, unlike Loan 1, I can't see that Madison made any adjustments to these figures or carried out any further checks prior to approving Mr B's application.

This was the second loan Mr B had taken out with Madison in less than 18 months. And the total amount repayable at the end of the 60-month loan term was almost £10,000 so I don't think the lending can be considered insignificant. With this in mind, I'm not persuaded Madison carried out reasonable and proportionate checks.

Would the requisite checks have demonstrated that Mr B was unlikely to have been able to repay the borrowing in a sustainable way?

It isn't possible to determine with certainty what such checks would have shown Madison in practice as I don't know what checks it would have decided to carry out if it had its time again. As a result, what I'm considering here is the likelihood of reasonable and proportionate checks showing Madison that Mr B would have been able to sustainably repay the borrowing in question when there were signs that suggested otherwise. And for that reason, it is necessary to now consider information that Madison hadn't considered at the time.

Madison could have obtained a deeper understanding of Mr B's financial circumstances by asking him for bank statements or by checking his credit file. Mr B has provided his bank statements for the three months prior to the lending in question ("the Relevant Period"). I think a three-month period would have given Madison sufficient insight had it requested bank statements. Mr B has also provided a copy of his credit report.

I acknowledge that something that I can now see from the information Mr B has provided wouldn't necessarily have been disclosed by whatever reasonable and proportionate checks Madison might have decided to carry out. But, in the absence of anything else, I don't currently think it's unreasonable to rely on the information I've got when determining what Mr B's financial circumstances were likely to have been like before Madison decided to lend to him.

I'll firstly address what the bank statements would have shown Madison. The bank statements show Mr B's average monthly income – excluding incoming payments from Mr B's family members - during the Relevant Period was £1,952.

There were a number of regular payments that left the account each month during the Relevant Period[1], largely by Direct Debit – including average payments of:

V12 Retail Finance	£9.56
Capital One	£28.70

[1] There was a monthly direct debit to Madison of £177.34 during the Relevant Period. This was for Loan 1. As Loan 2 was being used, in part, to settle Loan 1, I have not included this monthly payment in Mr B's average monthly outgoings.

118118 Money Credit Card	£76.27
First Central Service	£83.36
First Central Insurance	£26.78
Disney Plus	£5.33
Netflix	£15.99
Experian	£14.99
EE Ltd	£212.14
DWR Cymru	£13.17
Secure Trust Bank	£13.67
PayPal	£100.00
DVLA	£14.75
Apple.com/bill	£9.31
Standard Saver	£100.00

I note there is no mortgage/rent payment present on Mr B's bank statements. At the time of his application Mr B has recorded his residential status as 'Other' and I can see his address is an army barracks. Therefore, I am satisfied the absence of a mortgage/rent payment is to be expected.

In addition to the above, it looks like an average of £131.46 was spent in supermarkets or on food and £54.45 was spent on petrol each month during the Relevant Period.

These payments equal £987.27. With that being the case, it looks like the gap between Mr B's outgoings and his average net monthly income during the Relevant Period was roughly £964.

I recognise that Mr B's bank statements show he was overdrawn during the Relevant Period. But the bank statements suggest that there was a reasonable amount of discretionary spending during the Relevant Period. And as I think Mr B was probably left with enough disposable income to service the loan in question and leave him with a reasonable cushion once all of the regular expenditure I've referred to above was taken into account (including the repayment, over a reasonable period of time, of his credit card debt and overdraft balances), I don't think Madison would have reached a different lending decision had it seen this information.

The credit report Mr B has kindly provided shows that, by the time of the application for Loan 2, Mr B's financial situation has changed somewhat. The report shows he had the following debts at the time of the application:

Debt Number	Lender	Credit Type
1	PayPal	Credit Card
2	Lloyds Bank	Overdraft
3	Capital One	Credit Card
4	Secure Trust Bank t/a V12 Retail Finance	Personal Loan
5	Secure Trust Bank	Personal Loan
6	Madison	Credit Card

All of these accounts appear to be well maintained. Indeed, the only negative marker on Mr B's credit file was one late payment in relation to Debt 4 some six months prior to the lending in question. I don't think this credit report throws up anything particularly alarming about Mr B's financial situation. It follows that, if Madison had seen this information prior to agreeing to lend, I don't think this would have given it cause for concern.

With this in mind, if Madison had made further checks, as I think they should have, then I think it's unlikely it would have decided the loan was unaffordable for Mr B. After all, his disposable income was sufficient to cover the monthly repayments for the lending in question. And his credit file suggested he was maintaining his existing credit commitments.

It is worth noting that the purpose of the loan was to consolidate his existing borrowing which had the effect of reducing his monthly outgoings, albeit marginally. And, when asked by our investigator, Mr B said the remainder of the money was *used to pay off as many of my smaller loans/remaining loans from V12, as well as having it sit in my account to try and lower my overdraft. I ultimately used the remainder to live off of or pay off any debt.* Debts 3-6 were all settled in November 2022, several months after Loan 2 was approved. So, it seems reasonable to conclude Loan 2 was used – at least in part – to settle these accounts which further had the effect of reducing his monthly outgoings.

<u>Was Loan 2 mis-sold?</u>

It looks like Madison contacted Mr B to offer him a pre-approved loan. Mr B has raised concerns about the sale of Loan 2. Mr B has said:

"I was interested in the offer [for Loan 2] *as it lowered my repayments by £13, so I believed it to be cheaper and only having to pay off the balance of the additional £2300 with the stated interest rate.*

However once signing the contract I had realised that my total repayment was £9k+ and couldn't understand how my 'offer' of dismissing my previous balance hadn't actually been dismissed but merged into my new 'cheaper' contract and all that had happened was an extension of my contract over 60 months.

If I had known that my loan would have come to a total of almost £1Ok I most likely wouldn't have taken it as I don't have the financial ability to pay it off if I were to stop working. I have received financial help from my partner and immediate family to help relieve some of the financial strain."

From the information I have been given, Madison provided Mr B with documents entitled *Important Information about Your Loan* and *Pre-Contract Credit Information* before he agreed to the loan.

I am satisfied these documents set out how the funds of Loan 2 would be distributed. In other words, these documents set out that the total loan amount was £4,983.21 of which £2,683.21 would be used to settle Loan 1 and the remaining £2,300 would be provided as a cash advance. In addition, these documents set out the monthly loan repayment, the interest rate and the total amount repayable.

I can also see the loan agreement, electronically signed by Mr B, sets out the same information.

Whilst I recognise Mr B's honestly held view, I can't agree that Madison gave Mr B cause to believe Loan 1 was being 'dismissed'. I'm satisfied Mr B was presented with sufficient information before the loan was granted for him to decide if he wished to proceed.

<u>Were the loans enforceable?</u>

In its letter of complaint PR has queried whether the loans were enforceable as they appear to be in breach of Clause 14 (5) of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("the Regulations").

The relevant section of Clause 14 of the Regulations states:

> *14. (1) This regulation applies where a distance contract is concluded by electronic means.*
>
> *(2) If the contract places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places the order, of the information listed in paragraphs (a), (f), (g), (h), (s) and (t) of Schedule 2.*
>
> *(3) The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay.*
>
> *(4) If placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.*
>
> *(5) If the trader has not complied with paragraphs (3) and (4), the consumer is not bound by the contract or order.*

I have carefully considered this point. Having done so, it is my position that these regulations do not apply in this case. I say this because Clause 6 (1) (b) of the Regulations states:

> *6. (1) These Regulations do not apply to a contract, to the extent that it is*
>
> *(a)for—*
>
> *(b)for services of a banking, credit, insurance, personal pension, investment or payment nature.*

Mr B entered into a contract with Madison for a personal loan, which falls within the definition of *credit.* It follows that these regulations do not apply in this case.

However, even if I'm wrong about that (and I don't think I am), I haven't seen anything to persuade me that any alleged failure of Madison to include the words *order with an obligation to pay* (or similar) when Mr B entered into the agreement renders the entire contract unenforceable. After all, it is not in dispute that Mr B was aware he was entering into a contract and the documents provided to Mr B at the time clearly set out his obligations under the terms of the contract, including the repayment amount.

Therefore, I am not persuaded that the loans can be considered unenforceable contrary to Clause 14 (5) of the Regulations.

I recognise it will be disappointing for Mr B, but I don't think that Madison treated Mr B unfairly or unreasonably when providing him with these loans.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 8 March 2024.

Ross Phillips
Ombudsman