DRN-4724693

The complaint

Miss D is complaining about Madison CF UK Limited because she says it lent irresponsibly when granting her a series of loans she couldn't afford without carrying out proper affordability checks.

What happened

Between 2019 and 2021, Miss D took the following loans with Madison CF, trading as 118 118 Money:

- Loan 1 - October 2019 - £3,000 over two years, with an interest rate of 39.9% and monthly repayment of £175.

- Loan 2 - June 2020 - £4,072 over two years, with an interest rate of 39.9% and monthly repayment of £232. At the same time as taking this loan, she paid £2,372 to clear the balance of loan 1.

- Loan 3 - October 2020 - £3,000 over two years, with an interest rate of 49.9% and monthly repayment of £184. At the same time as taking this loan, she paid £3,756 to clear the balance of loan 2.

- Loan 4 – October 2021 - £4,993 over five years, with an interest rate of 35.9% and monthly repayment of £164. At the same time as taking this loan, she paid £1,793 to clear the balance of loan 3.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be partly upheld. My findings are attached in full at the end of this decision.

Miss D accepted my provisional decision and Madison CF told us it had nothing further to add.

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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Miss D to the position she'd now be in but for the errors or inappropriate actions of Madison CF. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Madison CF should have given loans 2, 3 and 4 to Miss D, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, Madison CF should now take the following steps in respect of each of loans 2, 3 and 4:

- Calculate the total of all Miss D's payments towards the loan.

- If this exceeds the amount borrowed (without the addition of interest or charges), any excess should be paid to her with simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires Madison CF to deduct tax from any interest. It must provide Miss D with a certificate showing how much tax has been deducted if she asks for one. If Madison CF intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Miss D's payments doesn't exceed the amount borrowed (without the addition of interest or charges), Madison CF should arrange an affordable payment plan with her for the shortfall.

- Remove any adverse information recorded on Miss D's credit file relating to loans 2, 3 and 4, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm partly upholding Miss D's complaint. Subject to her acceptance, Madison CF UK Limited should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 3 May 2024.

Extract from provisional decision

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've reached different conclusions to the investigator. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Miss D, Madison CF was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- *Did Madison CF complete reasonable and proportionate checks to establish that Miss D would be able to repay the loan in a sustainable way?*

- *If so, was the decision to lend fair and reasonable?*

- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

The rules, regulations and good industry practice in place at the time each loan was approved required Madison CF to carry out a proportionate and borrower-focused assessment of whether Miss D could afford the repayments. This assessment also had to consider whether the loan could be repaid sustainably. In practice this meant Madison CF had to satisfy itself that making payments to the loan wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss D.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:
- *the lower the customer's income, reflecting that it could be more difficult to make repayments 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 longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and*
- *the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.*

There may also be other factors that could influence how detailed a proportionate check should've been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Madison CF has described the information it gathered to assess whether each loan was affordable for Miss D before it was approved. This included:

- *information contained in her application, including residential status, employment status and her income;*
- *information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit, including missed payments and defaults; and*
- *an expenditure assessment that I understand used a combination of modelled data along with actual data from the CRA for the cost of existing credit arrangements.*

Madison CF maintains its affordability assessments were proportionate and showed each loan was affordable.

Loan 1

The application data records that Miss D lived in rented accommodation and was in full-time employment with a monthly income of £2,822. After estimating her expenses, Madison CF calculated she had a monthly disposable income of £1,100. Miss D's credit file shows she had total debt of £15,254 with revolving credit of £471, using only 16% of the limits available to her. And while she had historic defaults, no account had defaulted within the previous 12 months.

Taking everything into account, I'm satisfied the checks were proportionate in the circumstances and there was nothing of sufficient concern that should have prompted Madison CF to carry out further affordability checks. While Miss D had existing debt, the evidence suggested she was managing this well enough and that the monthly loan repayment would be affordable.

As a result, I'm not currently proposing to uphold the complaint about this loan.

Loan 2

The application data is identical to that obtained for loan 1. But after estimating her expenses, Madison CF now calculated Miss D's disposable income had reduced to £961. Her credit file shows her overall debt had increased to £21,485 and she now had revolving credit of £3,196, using 91% of the available limits. And while she still had historic defaults, no account had defaulted within the previous three years.

After carefully reviewing the information Madison CF obtained this time around, I think there were factors that should have prompted it to carry out further checks before approving the loan and I don't agree the affordability assessment was reasonable and proportionate in this case. In my view, a combination of the following factors should have prompted further investigation:

- *This was a loan with a high interest rate and a substantial monthly repayment.*

- *Miss D had already borrowed a significant amount only eight months earlier. While she was using £2,372 of the loan to clear loan 1, she borrowed substantially more than this and her level of debt was thereby increased further.*

- *Her credit file shows her debt had already increased significantly since the first loan was granted and her debt to income ratio was now high.*

- *Madison CF's own calculations showed Miss D's monthly credit repayments were substantially higher at £722 per month, compared to £520 when loan 1 was approved.*

- *The balance of Miss D's revolving credit had risen substantially (from £471 to £3,196) and she was now using 91% of her limits, compared to 16% previously.*

I also have some concerns about the validity of Madison CF's income and expenditure calculation. I say this because it's not clear the application data was up to date, particularly Miss D's income which I note remained the same for all four applications across a period of two years. I find this unlikely and it suggests to me that Madison CF didn't get an updated income figure before approving later loans. I'm also conscious that the expenditure check was based mainly on modelled statistical data, rather than Miss D's actual circumstances.

On balance, I don't think Madison CF could reasonably be confident the loan was affordable based on the information it obtained and that further checks were therefore required to complete a proportionate affordability assessment.

I can't know exactly what further checks Madison CF might have carried out at the time, but I think a consideration of Miss D's actual income and expenditure would have been reasonable. So we've obtained copies of her bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Miss D had an overdraft limit of £500 and was consistently using this facility each month and was often near the limit. Her account only returned to credit for a few days each month after she was paid before she then was overdrawn again. When this evidence is considered alongside the information Madison CF already had, I think this all indicates Miss D was reliant on credit to meet her essential expenditure.

If Madison CF had seen this information, it's my view that it shouldn't have lent.

Loans 3 and 4

For very similar reasons, I also believe further checks were needed to complete a proportionate assessment before loans 3 and 4 were approved, rather than relying on estimated expenditure calculations and an income figure that doesn't appear to have been updated since the initial application.

The credit files obtained in connection with each of these applications show Miss D's debt remained high, including the amount of revolving credit and her use of the available limits. Both loans increased Miss D's indebtedness further and carried a high interest rate and substantial monthly repayments. I note loan 4 was arranged over a long period and this should also have prompted a deeper consideration of whether the repayments would be sustainable for the whole term.

As before, I can't know what information Madison CF would have obtained if it had carried out further checks. But I believe Miss D's bank statements provide a reasonable picture of what it could reasonably have been expected to discover.

A review of the statements prior to each of the loans shows Miss D was continuing to rely on her overdraft and to use this facility in the same way as before. By the time of loan 4, the limit had been increased to £1,500 and her negative balance was regularly close to this amount. In my view, this evidence shows miss D was still reliant on credit to meet her living expenses as she had been when loan 2 was approved. The statements also appear to show that following loans 2 and 3, Miss D made substantial payments to other creditors suggesting she may have been in a debt cycle where she was regularly refinancing to pay off other credit without actually reducing her overall debt.

Again, it's my view that Madison CF shouldn't have lent if it had obtained more detail about Miss D's actual situation.

In summary

If Madison CF had adequately assessed whether the repayments for loans 2,3 and 4 were affordable and sustainable, it's my view that it shouldn't have lent to Miss D. It's for this reason that that I'm proposing to uphold the complaint about these loans.

James Biles
Ombudsman