DRN-5149489

The complaint

Mr B is unhappy Madison CF UK Limited, trading as 118 118 Money ('118 118') placed a default on his credit file in relation to a credit card, while he was in a payment plan.

What happened

I issued my Provisional Decision to both parties on 18 October 2024 setting out the background to this complaint and my provisional findings, both of which are copied below and form part of this Final Decision.

What happened

Mr B took out his credit card with 118 118 in July 2019.

In December 2021 Mr B appointed Company CL to help him manage his debts and set up payment plans with various creditors, including 118 118. Numerous letters proposing a payment plan were sent to 118 118, at first offering £26.22 per month, later reducing to £15.36 per month from February 2022.

Each letter requested the payment plan to be 6-12 months with some suggestion to pay the sums offered indefinitely. The letters also requested no contact by phone and gave a specific email to be used which had Company CL's domain name (I will call this Email 1).

In April 2022 the account was terminated and 118 118 registered a default on Mr B's credit file in relation to the account in question. At the end of May 2022 118 118 sold the account to a debt purchaser (Company L).

On 31 May 2023 Mr B settled the outstanding balance and Company L recorded the default as 'satisfied'.

Mr B complained 118 118 had registered a default on his credit file while he had been in an agreed payment plan. Mr B said he had only discovered the default on his credit file after checking his report in July 2023. Mr B said 118 118 had not done enough to contact him to notify him of their intention to record a default or notify him that the debt had been sold to Company L. Mr B also raised concerns that despite selling the debt 118 118 continued to collect payments from him.

Our Investigator reviewed the matter and concluded 118 118 had not done anything wrong as given the circumstances it was reasonable for them to report the account as defaulted. The Investigator said 118 118 were entitled to sell the debt and that all funds received after the debt was sold were passed to Company L. The Investigator also noted there had been numerous emails, letters and texts sent to Mr B during the time in question so they found it unlikely Mr B had been unaware of what was happening with the account.

Mr B strongly disagreed. He said he had not received any communications from 118 118 who had ignored numerous letters regarding his proposal for a payment plan, and 118 118 had not sent him the Default Notice or correspondence relating to the sale of the debt. Mr B

pointed out he had not had any problems with any of his other creditors.

As a resolution could not be reached the matter has come to me to decide.

What I've provisionally decided – and why

For the avoidance of doubt, it may help if I start by explaining the role of this service and the limitations of my power in considering this matter. The Financial Ombudsman Service is an alternative dispute resolution service set up to resolve individual complaints based on what is fair and reasonable in the circumstances of each case. The Financial Ombudsman Service does not fine or punish businesses, or direct that businesses change their processes or practices – that is the role of the regulator, the Financial Conduct Authority (FCA) to consider.

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

When deciding what is a fair and reasonable resolution to a complaint, I am required to take into account any relevant law and regulations; regulators' rules, guidance and standards; codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

I have only included a summary of events above, but I assure the parties I have reviewed all the evidence and submissions that have been made available to me. Under our rules it is for me to decide the issues relevant to resolving this matter so I am not required to answer each individual point that has been raised.

Where the evidence is incomplete, inconclusive or contradictory I have reached my decision on the balance of probabilities – which, in other words, means I have based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Reporting the default

Mr B's complaint is that he thinks a default should not have been registered on his credit file. So I have first considered the industry's expectations of when a default can be reported by creditors to the Credit Reference Agencies (CRAs).

The Information Commissioner's Office (ICO) – an independent regulatory office set up to uphold information rights in the interest of the public – published a document for the public's understanding called Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies (I will refer to this document as the ICO's Principles). This sets out that if the expected payment is not made by the agreed time and / or for the agreed amount according to the terms and conditions of the account, then the account can be reported as being in arrears. It also sets out that a default may be recorded to show that the relationship [between creditor and debtor] has broken down – usually when the account is three months in arrears, and normally by the time the account is six months in arrears.

The FCA Handbook of rules and guidance includes specialist sourcebooks which indicate to firms in certain sectors how the Handbook applies to their business. CONC (Consumer Credit sourcebook) covers credit-related regulated activities.

CONC 7.1.3(G) (3) explains that 'arrears' are recognised as any shortfall in one or more payment due from a customer under an agreement.

In light of the above, I have reviewed the status of Mr B's account at the time 118 118 reported his account as defaulted to the CRAs. I think it important to also recognise that regardless of reporting to the CRAs, an event of default occurs when an individual has been unable to meet the terms of their credit agreement, so Mr B's account was in default from the time he did not make the minimum payments required.

It is accepted that from December 2021 Mr B did not make the minimum payments due to his account, so I think it's reasonable to say that from this time the relationship between Mr B and 118 118 can be recognised as broken down.

By April 2022 Mr B's account was more than three months in arrears, so given industry recognised standards it was reasonable for 118 118 to terminate the account and report the account as defaulted with the CRAs when they did.

Default Notice

Mr B complains he received no notice that his account was to be terminated or reported as a default to the CRAs.

After approaching 118 118 for some further information they explained that their internal system, while it does not show the exact date of correspondence on a screen, can list the letters sent out against the account. From the list it is then possible for 118 118 to print a copy of the letter. 118 118 have provided a copy of the Default Notice they sent to Mr B.

The Default Notice is dated 10 March 2022 and is addressed to the same address Mr B gave to this service as his address. The letter explains it is a Default Notice served under section 87(1) of the Consumer Credit Act 1974 (CCA 74), and that the nature of the breach is Mr B's failure to make the required payments under the credit agreement. The arrears are noted as £157.10 and that Mr B has been in arrears since 1 December 2021. The letter further explains £157.10 should be paid before 31 March 2022, or action may be taken to terminate the credit agreement, demand earlier payment of the full amount owed or suspend use of the account.

It is not now possible for me to know exactly what happened, but given the letter was correctly addressed and produced from 118 118's system, on balance I think it more likely than not 118 118 sent Mr B the Default Notice. I understand Mr B says he did not receive it, but it would be unreasonable for me to hold 118 118 responsible for any potential issues with the postal service.

It may also help Mr B to know that the ICO explains on their website in their information to the public that while there is a requirement under the CCA 74 to issue a Default Notice, there is no data protection obligation on a lender to issue such a notice to individuals prior to marking the account as being in default on their credit file.

So there is nothing here to persuade me 118 118 should not have reported the account as defaulted to the CRAs, rather they were entitled to take that step.

Fair and reasonable

In view of the above I am satisfied that given the build-up of arrears on Mr B's account, 118 118 were entitled to report the defaulted account to the CRAs when they did. I have next considered whether, in the circumstances of Mr B's case, it was fair and reasonable for them to do so at that time.

Mr B's submissions include that 118 118 had agreed to a payment plan with him so it was

not fair of them to register the default with the CRAs while he was in a payment plan and meeting the terms of that payment plan. He has also said 118 118 ignored numerous communications from him.

CONC 7.3 sets out how firms should treat customers in default or arrears. It says that customers should be treated fairly and with forbearance and due consideration.

CONC 7.3.8 (G) offers guidance that to treat a customer fairly is, as an example, to allow affordable payment amounts to be made if a reasonable proposal is put forward to repay the debt.

The ICO's Principles discuss offers to make (temporary) reduced payments in terms of whether such an offer is agreed with the lender. The ICO's Principles note that if such an agreement is made and maintained that it will be reflected on a person's credit file, but a default will not be reported to the CRAs.

I have therefore considered whether an arrangement / payment plan was agreed by 118 118.

As noted earlier, Mr B employed Company CL to manage his debts on his behalf. Company CL set up an email account for Mr B (Email 1), and templated letters were sent to 118 118 proposing a payment plan.

Both parties have provided evidence of the many communications they issued to each other from December 2021 onwards. For context I provide a summary of some of these communications.

A letter from Mr B to 118 118 dated 4 January 2022 proposed a monthly offer of payment for £26.22 to begin from 28 January 2022 'indefinitely' or until a change in financial circumstances, and requested the offer be put in place for 6-12 months. The letter requested that 118 118 did not contact Mr B by phone, and asked 118 118 to update Mr B's communication preferences to only communicate with him by his preferred email address (Email 1). The letter also requested that all interest and charges be frozen and reminded 118 118 of their regulatory obligations and responsibilities. 118 118 were asked to provide prompt confirmation that interest and charges on the account had been frozen as well as acceptance of the payment offer.

On 14 January 2022 118 118 emailed Mr B and asked him, for security reasons, to answer three personal questions. Alternatively Mr B was invited to call one of 118 118's agents or approach them using the live chat option on the website.

118 118's submissions are there was a need to ask security questions because they were receiving emails from Email 1 which was not a registered email address with them.

Further similar letters to 118 118 from Mr B set out his offer of reduced payment again, and on 6 February 2022 118 118 once more requested Mr B complete some security questions before they could discuss his proposal for reduced payments. This email was sent to Mr B's personal email address (Email 2) – the email address Mr B also provided to this service to contact him on, so I think it's likely Mr B would still have had access to this email address.

118 118's records show they received a SMS from Mr B on 11 February 2022 which said 'as advised on numerous occasions previously, please note a payment plan is in place for this through [Company CL]'. I think it's likely this was in reply to 118 118's email from 6 February 2022.

In a letter dated 17 February 2022 Mr B wrote to 118 118 setting out a further reduced offer of payment of £15.36 to begin from 28 February 2022. The content of this letter was similar to the previous offers of reduced payment. Further similar communications were sent from Mr B to 118 118 in late February 2022 and early March 2022.

A Notice of Sums in Arrears (NOSIA) letter was sent to Mr B on 10 March 2022, alongside the Default Notice and confirmation that Mr B's right to draw credit on the account had been suspended.

In a letter dated 14 March 2022 from Mr B to 118 118, similar to those previously sent, again offered a reduced payment.

And on 16 March 2022 118 118 emailed Mr B to request that he answer security questions or contact them.

A letter dated 17 March 2022 was sent to 118 118 with some personal details, but none of these answered the security questions.

There were some further communications from Mr B to 118 118 which followed prior to 118 118 reporting the account as defaulted to the CRAs from 8 April 2022.

Reviewing all the available submissions it is possible to see that Mr B's offers of a reduced payment were made with the request for 118 118 to confirm acceptance to freeze interest and charges as well as to confirm acceptance of the payment plan. I do not doubt that Mr B was taking steps to manage his finances responsibly, however, in the course of my review I did not see any communications or records to support 118 118 ever agreed to the reduced payments Mr B was offering to make.

Because of this, and while I am mindful of the payments Mr B made towards the account, it is apparent to me that no payment plan was ever accepted by 118 118 or put in place for Mr B's account. I think it's likely Mr B's repeated letters proposing a payment plan were because 118 118 had not accepted his offer of reduced payments, so on balance I think it's more likely than not Mr B was aware no plan had been agreed.

I am satisfied 118 118 received Mr B's various proposals to enter into a payment plan, but I can see that before entering into any discussion to arrange such a payment plan they wished to ensure they were dealing with the right person for the account. In the circumstances I don't think it was unreasonable for them to go through security checks before discussing any personal details about Mr B's circumstances to inform whether a payment plan would be possible. I think it's reasonable that a business should take steps to ensure they are engaging with their customer before discussing an account and ensuring they had acceptable authority to deal with any third-party being put forward.

Mr B says he didn't receive anything from 118 118, but given the communications I have seen I think Mr B was more likely than not aware of 118 118's communications, including the requests to compete security checks.

In addition to the above exchanges, I am also mindful SMS messages were sent to Mr B about his account setting out offers to make payments to bring the account up to date and offering a way to access support through 118 118. Mr B says he didn't receive these and suggested that he would not have engaged with such messages which he would have viewed as 'sales' texts. The mobile number 118 118 used matches the number Mr B provided to this service, and is the number that 118 118's records show Mr B messaged them from on 11 February 2022, so I have no reason to believe Mr B did not receive the numerous SMS messages 118 118 sent to him.

As no payment plan was ever agreed between 118 118 and Mr B, I am unable to say 118 118 were unfair to report the account as defaulted to the CRAs.

Other matters

I've considered Mr B's concerns about not being notified that the debt was sold to Company L, but I have been able to see that Company L notified Mr B they had been assigned the debt. Company L's communication to Mr B included a letter from 118 118 dated 9 June 2022 to inform Mr B that his debt had been purchased by Company L and that payments should now go to Company L. The letter confirmed the balance sold was £586.01. I am not aware of any requirement for 118 118 to notify Mr B directly as Company L would take this responsibility on, and 118 118's account terms and conditions allowed for them to be able to sell the account.

I have therefore not seen that 118 118 have done anything wrong here.

I've also considered Mr B's concerns that 118 118 continued to take payment from him after the debt was sold. From the 118 118 statements I have seen, these show that payments 118 118 received after the sale of the debt did not remain on Mr B's 118 118 account. So I've not seen anything to suggest 118 118 held onto those payments or that Mr B has been made worse off here. 118 118 have explained they would have passed the payments to Company L each month. I have also been able to see from Company L's notes on 25 August 2022 that Mr B had said he would change his standing order to Company L if needed, but he didn't do this for several months.

Summary

I recognise my findings will be disappointing for Mr B, however, for the reasons I have set out above I have not seen enough to persuade me 118 118 have done anything wrong by reporting the account as defaulted to the CRAs when they did, or that in the circumstances they were unreasonable in doing so.

Responses to my Provisional Decision

I asked both parties to provide me with their responses by 8 November 2024. Mr B replied with further detailed submissions to explain why he did not agree with my provisional findings. 118 118 provided no further evidence or submissions for me to consider.

In summary, Mr B disagrees with my provisional findings as he believed there was a payment plan in place (so no default should have been reported to the CRAs) and he maintains that he did not receive the Default Notice and was not told that the debt had been sold to Company L. Mr B also reiterated that none of his other creditors Company CL had engaged with had reported defaults to the CRAs.

In his response to my provisional findings Mr B said he expected all of his points to be responded to, so I would once more like to manage Mr B's expectations here. My role in this matter is to determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case and to consider the issues relevant to resolving this complaint. There is no requirement for me to answer each and every question Mr B has raised and, contrary to his belief, my silent response to any of his questions is not an acquiescence of his view on the associated question and / or point. I have set out below my findings and the reasons for my findings in this decision as I am required to do.

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.

I acknowledge Mr B's strength of feeling about what has happened to bring about this complaint and recognise that a default reported to the CRAs can impact individuals personally and financially, so I understand why this is so important to Mr B. I can only give my assurance to Mr B that, while on this occasion I may not have reached an outcome he is happy with, I have given this matter careful consideration taking everything into account to reach what I consider is a fair and reasonable decision in this case.

I set out above in my provisional findings that I think, in line with industry expectations, 118 118 were entitled to report the account as defaulted to the CRAs when they did, and I have seen nothing to change my view in this regard. In light of Mr B's additional submissions I have considered again if 118 118 acted fairly and reasonably in their decision to report the account as defaulted to the CRAs, but for the reasons below I am not persuaded to alter my findings here either.

Payment Plan

I see from Mr B's most recent submissions that he strongly believes a payment plan was in place and therefore a default should not have been reported to the CRAs. If a payment plan had been agreed between both parties, then I might agree with Mr B. But I have not seen anything to support a payment plan was accepted by 118 118.

Mr B submits that he was making payments in line with the proposed payment plan he had put forward, therefore there was a payment plan in place and 118 118's acceptance of the payments is proof of this.

While Mr B may have been making the payments he wanted to make, there is no suggestion that 118 118 assessed and accepted these payments as a reasonable proposal for a payment plan. Simply making the payments does not equate to 118 118's acceptance of a payment plan. And to answer Mr B's other point, I think it's fair to say a creditor would be happy to accept *any* payments towards an outstanding debt.

Mr B mentions the numerous letters sent to 118 118 about setting up a payment plan – the templated letters each asked for 118 118 to confirm acceptance of the proposal. Mr B submits 118 118 ignored numerous communications about putting together a payment plan. I accept Mr B was proposing a payment plan and I think 118 118 received the correspondence in question. But in reply to the correspondence they were receiving 118 118 had asked Mr B to engage with them and answer security questions in order to discuss the proposal. The requests are recorded on 118 118's files and I think the repeated requests for a payment plan go some way to suggesting that Mr B and / or Company CL were likely aware a formal payment plan had not been agreed and accepted.

Overall, in these circumstances, I have not seen anything to persuade me that a payment plan had been accepted by 118 118 so that a payment plan was formally in place. Therefore, in the absence of an agreed payment plan, and given the arrears on the account (which Mr B accepts), 118 118 were entitled to report the account as defaulted to the CRAs.

Security questions

Mr B has said it is unfair of 118 118 to use security checks as a reason to have reported the default to the CRAs.

As I've previously said, I think 118 118 were in receipt of Mr B's payment plan proposals, but in the circumstances I don't think it was unreasonable for 118 118 to assure themselves of who they were dealing with prior to discussing their customer's details to determine if the proposed payment plan would've been acceptable to them.

From the communications I've seen from 118 118's records, I think 118 118 did try to engage with Mr B and an email to Mr B's own email (Email 2) on 6 February 2022 did prompt a response from Mr B as I've described above in my provisional findings – the email said, *Before we can discuss this* [one of Mr B's requests for a payment plan] *further, for data protection purposes, please could you provide the following information…* but the security questions 118 118 asked were not answered. Rather Mr B's message on 11 February 2022 said that a payment plan was already in place (which it wasn't).

As noted above, 118 118 asked Mr B to answer security questions in January 2022 and March 2022 as well - prior to the account being reported as a defaulted account. It appears there was some sort of response to 118 118 on 17 March 2022 that provided some personal details, but did not answer the specific security questions 118 118 raised in the request made on 16 March 2022.

Mr B has compared his experience with 118 118 to those of his other creditors who accepted his payment plan proposals and says that the templated letters requesting a payment plan included his signed signature so 118 118 should've accepted these letters. Mr B has also again mentioned the authority he gave to Company CL to act on his behalf in this matter.

While I acknowledge Mr B's frustrations on this point, I can only look at the actions of 118 118 in this matter so what the other creditors deemed acceptable for their purposes is not something for me to consider here.

Just as different lenders can choose who they provide credit to, each lender meets their legal and regulatory responsibilities to ensure security and protection for them and their customers by setting up their own processes. I'm therefore unable to say it was unreasonable of 118 118 to satisfy themselves of who they were dealing with by asking some security questions. It is apparent from the submissions available to me that 118 118's security questions were never answered. There is also nothing I have seen to suggest that 118 118 received the authority Mr B has spoken of that he gave to Company CL either.

Mr B maintains, to an extent, that he did not receive any communications at all from 118 118 and therefore all their emails and SMS messages should not be relied on and should be dismissed. I don't think this is fair or reasonable. I have considered Mr B's submissions and evidence, and I have considered 118 118's submissions and evidence. I explained in my provisional findings where matters are in dispute I must reach a decision based on the balance of probability.

On balance, I think Mr B (and by extension Company CL) more likely than not received communications from 118 118 including the requests to answer security questions prior to the default being reported to the CRAs. Requests to answer security questions were sent on two occasions to Email 1 (which Mr B had asked 118 118 to use) and one request was made to Email 2 as referred to above. 118 118 have records of these emails. I note also that the templated letters requested that no phone calls be made to Mr B. So I can reasonably see why 118 118 made no attempts to call Mr B, but invited him to call them.

In reference to Mr B's submissions that he would not have engaged with any communications that looked like phishing emails, I'm unable to say that 118 118 have done anything wrong here. If Mr B was unsure of any emails or SMS messages he'd received it

would be reasonable to say he could have checked with 118 118 if he had any concerns. As I set out in my provisional findings, I think it's likely Mr B was in receipt of 118 118's SMS messages.

Other matters

While I've also considered what Mr B has said about continuing to make his payments pre and post the Default Notice to support that he wasn't aware of the notice, for reasons I've previously explained in my provisional findings, I think it's more likely than not 118 118 sent Mr B the Default Notice and in that regard did what they were required to do under the CCA 74. Under the CCA 74 there are no requirements for 118 118 to have 'followed up' as Mr B has queried. So I'm unable to say 118 118 did anything wrong here.

Regarding communication with 118 118, I noted Mr B has recently said that if he had received any communications from 118 118, given Company CL told him not to engage with his creditors once they started acting for him, he would have sent it on to Company CL to action. For the avoidance of doubt this matter doesn't concern the actions of Company CL and so do not form part of this decision.

For the reasons I gave in my provisional decision I remain of the view that 118 118 was entitled to sell Mr B's debt to Company L and that he was more likely than not notified of this change in the ownership of his debt. As Mr B has recently noted himself, the change in ownership has not brought about any financial detriment to him, so I don't think there's anything further for me to add here.

Summary

Having reviewed this matter again, taking into account Mr B's additional submissions, it is my decision that overall 118 118 have not done anything wrong in their handling of Mr B's account. There is no evidence that 118 118 agreed to Mr B's payment plan, and it was not unreasonable for them to carry out security checks before engaging in any discussion with Mr B or his nominated third-party about the account. 118 118 made attempts to engage with Mr B, and without the assurance they needed to discuss Mr B's account and the possibility of a payment plan, taking the step to then report the account as defaulted to the CRAs when they did and sell the debt was within their authority to do so at that time.

My final decision

I realise this will be a disappointment to Mr B and I have not taken this matter lightly, but for the reasons above my Final Decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 December 2024.

Kristina Mathews
Ombudsman