

complaint

Mr G has complained about a loan he took out with Madison CF UK Limited, trading as 118 118 Money. Mr G says it was irresponsible for the company to give him the loan as it should have been obvious he could not afford to pay it back.

background

I issued a provisional decision in this case in October 2020 explaining why I intended to uphold this complaint. A copy of my provisional decision is attached and forms part of my final decision.

I asked both parties to provide me with any further comments or evidence they would like me to consider before I issued a final decision. Both parties appear to have accepted my provisional decision and have not provided me with anything further to consider.

my findings

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

Given that neither party has provided anything further for me to consider, I see no reason to depart from the findings set out in my provisional decision. It follows that I uphold this complaint for the same reasons as those set out in my provisional decision.

putting things right

Where a business has done something wrong, our service usually aims to put the consumer back in the position they would've been in had the incident not occurred. However, in cases where a business has lent irresponsibly, this isn't entirely possible – as the lending provided cannot be undone.

Mr G has asked for the loan to be written off. But I don't think that would be appropriate here. I think it's fair that he should have to repay the money he borrowed and had the use of. But 118 118 Money should refund all of the interest and charges Mr G has paid on his loan. I understand Mr G paid a total of £1,110.25 to 118 118 Money and the outstanding debt was sold onto a debt purchasing company. I understand that there may be a balance outstanding on it. So 118 118 Money should buy the debt back if it is able to do so and then take the following steps.

If 118 118 Money is not able to buy the debt back then it should liaise with the new debt owner to achieve the results outlined below:

- a) 118 Money should remove all interest, fees and charges from the outstanding balance on the loan, and treat any repayments made by Mr G as though they had been repayments of the principal, including repayments made to the third party.

If this results in Mr G having made overpayments then 118 118 Money should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

If there is an outstanding balance then 118 118 Money should agree an affordable repayment plan with Mr G. It shouldn't pursue outstanding balances made up of principal it has already written-off.

- b) 118 Money should remove any adverse information recorded on Mr G's credit file in relation to the loan from the date it was agree to the date of settlement.

* HM Revenue & Customs requires 118 118 Money to take off tax from this interest. 118 118 Money must give Mr G a certificate showing how much tax it's taken off if he ask for one.

my final decision

I uphold Mr G's complaint against Madison CF UK Limited and require them to pay Mr G the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to Mr G to accept or reject my decision before 20 December 2020.

Navneet Sher
ombudsman

copy of my provisional decision

Complaint

Mr G has complained about a loan he took out with Madison CF UK Limited, trading as 118 118 Money. Mr G says it was irresponsible for the company to give him the loan as it should have been obvious he could not afford to pay it back.

Background

Mr G took out a loan with 118 118 Money online in August 2017 for a period of 24 months. The loan was for £3,500 and had a monthly repayment of £268.81. The annual percentage rate was 99.9%. The total interest to be charged on the loan was £2,951.44. The total amount to repay was therefore £6,451.44. The purpose of the loan was "debt consolidation".

Mr G was unable to keep up repayments on the loan within a few months of taking it out and ended up on a debt management plan. 118 118 Money later sold this loan to another business.

Mr G says 118 118 Money shouldn't have approved the loan. He told us he was already in a lot of debt when he applied for it and was struggling financially. He says he was addicted to gambling and had mental health problems and this is why he was in the difficult financial position he was in at the time. He believes his financial situation should have been apparent to 118 118 Money when it checked his credit report. He'd like 118 118 Money to write off the loan or, failing that, refund all the interest applied to it.

Our adjudicator didn't uphold the complaint. In summary, they accepted that Mr G had outstanding debt when he took this loan out and was financially stretched. But they thought the consolidation of the debt would have helped Mr G and that 118 118 Money had carried out reasonable and proportionate checks to assess whether or not to give Mr G the loan. So they didn't think 118 118 Money had lent irresponsibly.

Mr G is unhappy with the adjudicator's conclusion. He still believes 118 118 Money was irresponsible in providing the loan to him and so the complaint has come to me to decide.

My provisional findings

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

In considering what is fair and reasonable I have taken into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and what I consider to have been good industry practice at the time.

Taking this into account, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstance of this complaint are:

- ☐ Did 118 118 Money complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay the loan in a sustainable way? If not, would those checks have shown that Mr G would have been able to do so?
- ☐ Did 118 118 Money act unfairly or unreasonably in some other way?

If I determine that 118 118 Money did not act fairly and reasonably in its dealings with Mr G and that he has lost out as a result, I will go on to consider what is fair compensation.

Did 118 118 Money complete reasonable and proportionate checks to satisfy itself that Mr G would be able to repay his loan in a sustainable way?

The regulations in place when 118 118 Money lent to Mr G required it to carry out a reasonable assessment of whether Mr G could afford to repay his loan in a sustainable manner. This is sometimes referred to as an “affordability assessment” or an “affordability check”.

The affordability check should have been “borrower-focused” – so 118 118 Money had to think about whether repaying the loan sustainably would cause financial difficulties or adverse consequences for Mr G. In other words, it wasn’t enough for 118 118 Money to only think about the likelihood that it would get its money back without considering the impact of the loan repayments on Mr G himself.

The checks 118 118 Money carried out also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will depend on a number of factors including, but not limited to, the particular circumstances of the borrower (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they are seeking. Even for the same customer, a proportionate check will more likely than not look different for different loan applications.

In light of that, I think reasonable and proportionate checks should generally be more thorough:

- the lower a customer’s income (as it could be harder to make any loan repayments from a lower income);
- the higher the amount to be repaid (as it could be harder to meet a higher repayment from a given income);
- the longer the term of the loan (as the total cost of the loan is likely to be greater and the customer is required to make payments for an extended period).

There may also be other factors which could affect how detailed a proportionate check should be when it comes to a loan application – including, but not limited to, any indications of borrower vulnerability and any foreseeable changes in the consumer’s future circumstances. I’ve thought about all the relevant factors in this case.

I’ve carefully considered what reasonable and proportionate checks should have looked like when 118 118 Money was in the process of approving the loan for Mr G. And I’ve thought carefully about what checks 118 118 Money say it carried out and whether those were proportionate in the circumstances.

The loan was for a relatively high amount and was to be paid over two years. Due to the high interest charged, the overall amount Mr G would have to pay back was almost twice what he had borrowed and the monthly repayments were high. In these circumstances, I would have expected 118 118 Money to carry out detailed checks when assessing whether or not to give Mr G this loan.

118 118 Money says it did this by asking Mr G for details of his income and expenditure and doing a credit search. It also carried out a “welcome call” during which it asked Mr G whether there was likely to be any change in his circumstances and whether he could afford the monthly payments.

I’ve looked at the information 118 118 Money collected. But it wasn’t enough for 118 118 Money to just conduct the checks and not react to the information it received. And I think the information the checks revealed should have prompted 118 118 Money to have carried out further checks on Mr G’s financial circumstances.

In particular, I think the information Mr G gave 118 118 Money about his income and

expenditure should have prompted further checks. It would, or at least should, have been clear to 118 118 Money that the amount Mr G had given as his expenditure on monthly loan repayments was incorrect. He had stated this was £100 but according to his credit file his monthly repayments towards loans was far higher – over £500.

According to the credit search, Mr G appears to have had the following debt when he applied for the loan:

- An unsecured loan with a balance of £5,329 and monthly payments of £262.
- A high interest shorter term loan with a balance of £558 and monthly payments of £285.
- A short term loan with a credit extension and outstanding balance of £552.
- A credit card with a balance of £944 and credit limit of £1,000. The balance history showed he'd started using the card in March – and had run the card up to almost the credit limit in the three months before he applied for the loan. He'd also taken £400 in cash advances in this time.
- An overdraft facility of £2,250 of which he had used £2,240. Mr G had cleared the overdraft on this account in March 2017 – possibly using the larger loan he took at that time. But he'd used almost the whole limit on this account again in the three months before the new loan application.

So there was a clear difference between what Mr G said his existing credit commitments were and what they really were. And there were also indications that Mr G was relying on increasing levels of borrowing. I don't think it was reasonable, in the circumstances, for 118 118 Money to rely solely on Mr G's statement about his income and expenditure without independently verifying it.

Further, although the application form said the loan was for debt consolidation, Mr G's overall debt was much higher than the £3,500 he was taking out with 118 118 Money. So it wasn't clear what he would be able to consolidate or what effect that would have on his ability to sustain payments.

Given the higher credit commitments and outgoings shown on his credit file, I would have expected 118 118 Money to find out from Mr G during the 'welcome call' which debts he was intending to consolidate and whether this would have left him with a reasonable amount of disposable income so that the loan was affordable to him without undue difficulties.

However, 118 118 Money didn't take any steps to find out which debts, if any, Mr G would actually be consolidating with this loan. So without knowing which debts Mr G would be consolidating, 118 118 ran the risk this loan would put him in a worse position. And by failing to take account of which existing debts would be consolidated, I have to question how accurate any affordability assessment going forward would be.

So, I think based on the information it had – and given the size and term of the loan – 118 118 Money should reasonably have done more to get a clearer picture of Mr G's financial situation before deciding whether to lend. I don't think the checks it carried out were reasonable and proportionate in Mr G's case.

Would proportionate checks on this loan have indicated to 118 118 Money that Mr G would have been unable to repay it in a sustainable manner?

As I don't think 118 118 Money carried out proportionate checks, I've gone on to consider what would have happened had 118 118 Money carried out further checks.

I can't be sure what further checks would have been done or what they would have shown, so we've asked Mr G for more information about his circumstances at the time. He's sent his statements and I think it's likely that this is the sort of information the lender might have seen, if it'd done better checks to start with.

I've looked at Mr G's bank statements for the three months before the loan application. These show he was having difficulties managing his money. In May 2017, Mr G's income was around £1,985 (excluding short term loans) and his expenditure was £3,048. So his expenditure that month exceeded his income by around £1,000. The expenditure included gambling transactions of around £1,400 and Mr G supplemented his income with three short term loans totalling £992. But, even taking these short term loans into account, Mr G's expenditure still exceeded what came into his account.

In June 2017 Mr G's expenditure again exceeded his income and I note that he had spent at least £450 in gambling transactions. Although in July 2017 there don't appear to be any gambling transactions and Mr G's income exceeded his expenditure, this was by only around £60 – leaving him with very little disposable income. And in August 2017, Mr G had already taken out three short term loans to the value of £653 by the time he made his loan application with 118 118 Money.

I note that this pattern of taking out short term loans is similar to what Mr G had done in 2012 and 2013 to try and resolve the financial difficulties he was facing at that time. But Mr G was unable to manage his money at that time and ended up with a number of defaults. 118 118 Money would have seen this from the credit search they carried out.

As previously mentioned, Mr G also had existing commitments which he wouldn't have been able to consolidate. For example, he would not have been able to pay off his existing loan of £5,329. Although there was the possibility of him consolidating the shorter term debts and his credit card his account would still have been significantly in overdraft and no consideration was made for how he'd repay this sustainably as part of his expenditure. And he would still have been left with over £500 towards loan repayments a month.

Mr G had previously taken out a loan in March 2017 which appears to have repaid his overdraft but he'd used almost the whole limit on this account again in the three months before the new loan application in August 2017. By taking out this loan (August 2017) Mr G ended up with a similar level of repayments but over a longer term which would cost him more.

From the way Mr G had been managing his accounts 118 118 Money should have known that it was unlikely that Mr G would be able to sustain the repayments for any significant period of time. And in fact he wasn't able to sustain his repayments, as he ran into difficulties meeting his repayments within a few months of taking this loan out.

I think that, if 118 118 Money had carried out reasonable and proportionate checks it would have realised that the way Mr G's account was being managed meant it would be irresponsible to give him the loan he'd applied for. So 118 118 Money acted irresponsibly by giving Mr G this loan.

As Mr G ended up paying interest and charges on a loan he couldn't reasonably have been expected to sustainably repay, I think that he lost out because of what 118 118 Money did wrong.

Did 118 118 Money act unfairly or unreasonably in some other way?

Mr G hasn't said 118 118 Money acted unfairly or unreasonably towards him in some other way. And I haven't seen anything else which would lead me to conclude that this was the case.

But as I've found 118 118 Money acted irresponsibly in give Mr G this loan, 118 118 Money should put things right as set out below.

Putting things right

Where a business has done something wrong, our service usually aims to put the consumer back in the position they would've been in had the incident not occurred. However, in cases where a business has lent irresponsibly, this isn't entirely possible – as the lending provided cannot be undone.

Mr G has asked for the loan to be written off. But I don't think that would be appropriate here. I think it's fair that he should have to repay the money he borrowed and had the use of. But 118 118 Money should refund all of the interest and charges Mr G has paid on his loan. I understand Mr G paid a total of £1,110.25 to 118 118 Money and the outstanding debt was sold onto a debt purchasing company. I understand that there may be a balance outstanding on it. So 118 118 Money should buy the debt back if it is able to do so and then take the following steps.

If 118 118 Money is not able to buy the debt back then it should liaise with the new debt owner to achieve the results outlined below:

- c) 118 Money should remove all interest, fees and charges from the outstanding balance on the loan, and treat any repayments made by Mr G as though they had been repayments of the principal, including repayments made to the third party.

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* HM Revenue & Customs requires 118 118 Money to take off tax from this interest. 118 118 Money must give Mr G a certificate showing how much tax it's taken off if he asks for one.

My provisional decision

For the reasons given, I intend to uphold Mr G's complaint against Madison CF UK Limited, trading as 118 118 Money.

Navneet Sher
ombudsman