

complaint

Mr L complains that Madison CF UK Limited trading as 118 118 Money was irresponsible when it provided him with three loans between October 2015 and August 2017.

background

Mr L took three loans with 118 118 Money. Each of them was due to be repaid through 24 monthly instalments. The first was for £3,500. Mr L repaid Loan 1 early using some of the proceeds of the second loan to repay the first. And similarly, he used some of the third loan to repay the second.

This table includes some of the information provided to us by 118 118 Money about Mr L's loans.

	date loan taken	principal amount of the loan	amount used to repay earlier loan	amount credited to Mr L's bank account	monthly instalments	total amount due to be repaid
Loan 1	20/10/15	£3,500.00	-	£3,500	£280.53	£6,732.72
Loan 2	03/06/16	£3,994.17	£2,994.17	£1,000	£312.07	£7,489.68
Loan 3	31/08/17	£4,399.75	£2,149.75	£2,250	£345.45	£8,290.80

When Mr L complained to 118 118 Money, it didn't agree that it had been irresponsible. So he brought his complaint to this Service. One of our adjudicators has looked into Mr L's complaint and recommended that it be upheld and that 118 118 Money put things right. It doesn't agree and so the complaint has come to me – an ombudsman – for a decision. If Mr L accepts my decision it will be binding on the parties.

my findings

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

118 118 Money provided the loans in question while it was authorised and regulated by the Financial Conduct Authority ("FCA").

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook ("CONC") sets out the rules and guidance which apply to loan providers like 118 118 Money when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

Section 5.2.1R of CONC set out what a lender needed to do before agreeing to give a borrower a loan saying:

(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.

And at Section 5.2.1(2), a firm must consider:

(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and

(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.

CONC also included guidance about 'proportionality of assessments'. CONC 5.2.4G(2) saying:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

CONC 5.3 contained further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) saying:

In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.

CONC 5.3.1G(2) then added:

The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.

CONC 5.3.1G(6) clarified what is meant by "sustainable":

For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:

(a) without undue difficulties, in particular:

- (i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and*
- (ii) without having to borrow to meet the repayments;*

- (b) *over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and*
- (c) *out of income and savings without having to realise security or assets; and*
unsustainable” has the opposite meaning.

CONC 5.3.1G (4) added that if a firm does take account of income and expenditure in its credit worthiness assessment:

- (b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*
- (c) its assessment should be based on what the firm knows at the time of the assessment*

Whilst CONC sets out the regulatory framework that authorised consumer credit providers have to adhere to it represents a minimum standard for firms. And - as an ombudsman - I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr L's complaint:

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

- If so, did it make a fair lending decision?
- If not, would those checks have shown that Mr L would've been able to do so?

I've outlined above some of the regulations in place at the time 118 118 Money provided the loans to Mr L. It had to carry out a reasonable and proportionate assessments of whether he could afford to repay his loans in a sustainable way.

The checks 118 118 Money did, had to be proportionate to the specific circumstances of the loan. And what is proportionate will depend on a number of factors including things like the consumer's financial history and current situation as well as things such as the amount, type, cost of the credit being sought.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount 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 loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period);

I've carefully considered what a reasonable and proportionate check should've looked like when 118 118 Money was in the process of approving the three loans for Mr L.

I note that Mr L applied for a loan of £5,000 when he first approached 118 118 Money for credit. But he was only approved for a loan of £3,500. Our adjudicator asked 118 118 Money about this. It said: *"If a customer is granted an APR of 99.9% then the maximum loan amount we can offer is £3,500 (as long as affordability fits). Loans of £5,000 were given to customers who were granted the APR of 35.9%".*

But 118 118 Money hasn't explained what it was about Mr L that meant that it wasn't minded to approve a loan of £5,000. From what I can tell it looks to me that the monthly cost of a £5,000 loan over 2 years at 35.9% was likely to be only around £5 per month more for Mr L. In other words by granting him a loan of only £3,500 at 99.9% he was going to have to pay over £3,200 in interest: whereas had he been granted a loan of £5,000 at 35.9% the total interest payable would've been closer to £1,800.

In these circumstances I have some concerns that affordability for Mr L may not have been paramount consideration for 118 118 Money – after all the monthly repayments for the two options were virtually the same. And as I've said above, 118 118 Money had to consider the risk of credit not being sustainable for Mr L and this directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation – not the risk to itself of not getting back its money.

But, whatever the reasons behind 118 118 Money's decision (and the practical impact meaning Mr L would pay significantly more interest for the smaller loan with the higher interest rate) it seems 118 118 Money had enough concerns about Mr L's creditworthiness to decline his application for the higher loan of £5,000. And given the information it had – which I'll refer to below - I think it was right to be concerned.

118 118 Money obtained details of Mr L's income and outgoings through an on-line application form he had completed - and it did a credit file check. There was also a welcome call between 118 118 Money and Mr L. It adds that it built an internal credit score for Mr L but it's unwilling to share this with us, saying that it's commercially sensitive.

Loan 1 was for a relatively significant sum - £3,500 - and was going to take Mr L two years to repay it at a cost of over £280 per month. In total Mr L was going to repay over £6,730. He declared a monthly income of £1,800. Mr L also declared some expenditure - totalling £370. He stated that his housing cost £130 per month, utilities £20, food £20, insurance £100 and card payments £100. He declared zero for loans.

It seems to me that the amounts declared by Mr L appear very low: for example £20 for food, for a month, is exceptionally low in my experience - and as such ought to have alerted 118 118 Money to question these figures in more detail. It says that it's entitled to rely on the information provided by the consumer. I don't generally disagree, but of course the regulations required 118 118 Money to carry out a proportionate assessment - and it couldn't ignore information it had. CONC says - as I've mentioned above - *it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer..... its assessment should be based on what the firm knows at the time of the assessment*

As such, these expenditure figures alone should've led 118 118 Money to carry out some further checks of what was being declared by Mr L - given that it put such store on what he was telling it in making its assessment.

I accept that 118 118 Money asked Mr L for the front sheet of his bank statements but it seems to me - having listened to the welcome call - that this was to verify Mr L's identification and to confirm the details he'd provided about his bank account. But as 118 118 Money had the front page, I don't think it could fairly ignore what it showed.

I can see that on the front sheet of the bank statement which Mr L provided, there's a transaction for overdraft fees of £76. This is because, based on this one page of his bank statement, Mr L's account was significantly overdrawn. The amounts varied between around £2,585 and £3291 overdrawn. If this was the general state of Mr L's account it would suggest that that even when Mr L's monthly wage was paid into his account, it was likely to remain overdrawn by several hundred pounds. I think this is something which ought to have caused at least some concern to a responsible lender.

118 118 Money has provided a copy of the credit report information it obtained for Mr L before it approved Loan 1. From this report 118 118 Money was aware that Mr L had 11 active accounts and an outstanding balance of £21,956. As an aside I note that Mr L had declared that the purpose of this loan was to consolidate borrowing (even though he'd declared zero for loans in his expenditure form). Given the high amount of outstanding credit he had (according to the report obtained by 118 118 Money), this loan was unlikely to alleviate his debt situation. If he used the whole £3,500 towards other debts, he'd still be left with a balance of close to £18,500. But there was much more in this credit file report which should've alerted 118 118 Money to the fact that Mr L was struggling financially.

For example:

- On a mail order account Mr L's balance was £903 when his credit limit was £1,000. His balance had been creeping up over the previous months.

- His current account had an overdraft facility of £3,200 – and generally it was overdrawn by around £2,900: this ties in with the front page of the bank statement which 118 118 Money had in its possession and to which I've referred above.
- A credit card account with a credit limit of £500 had a balance of £500 and had exceeded that limit two months before. Over the previous seven months the amount Mr L repaid varied between £17 and £30, which is likely to be close to the minimum amount he was allowed to pay.
- A credit card account with a credit limit of £650 had a balance of £677. In the previous eight months Mr L had exceeded his credit limit six times. The amount he repaid varied but I note that in June 2015 he doesn't appear to have repaid anything. He was also making small cash withdrawals on this credit card- an expensive form of credit and often an indication of financial difficulties
- In June 2015 (four months before Loan 1) Mr L had committed to a hire purchase agreement of over £17,300 – which was being repaid at £259 per month.
- In March 2015 Mr L had taken a loan of £619 which he was repaying at £29 per month

118 118 Money had all this information and so it was aware that Mr L's declared expenses were significantly below his actual commitments.

118 118 Money also says it "TAC checked" Mr L to verify some of the information he had provided. But I note that even on that - in terms of a red, amber, green status - there were a number of amber results.

With all this information in its possession, 118 118 Money should've done a much fuller review of Mr L's financial circumstances before approving a loan of this size for this length of time and for this cost.

A good opportunity to undertake a more thorough interrogation of Mr L's situation would've been during the welcome call. But the questions were generally high level and not really specific. I've listened to some later calls when Mr L was struggling to repay Loan 3. During one of those calls 118 118 Money asked him specifically about his monthly expenditure for around 40 different things - as far apart as the hairdresser and dog-related expenses to how much he paid on payday loans and catalogues. I think 118 118 Money missed an opportunity, in its welcome call before Loan 1, to clarify the concerns I've identified.

As I'm not persuaded 118 118 Money did a sufficient check before approving Loan 1 I've thought about what a proportionate assessment would've shown about the sustainability of this credit for Mr L.

I've had the benefit of seeing Mr L's bank statements, so I've used them to help me understand his financial situation before he took Loan 1. I accept that 118 118 Money didn't have sight of these, but it was open to it to ask for them (after all it asked for the front page). Bank statements can provide a snapshot of a borrower's broad financial situation and how they manage their money. Had 118 118 Money considered Mr L's financial situation more thoroughly – as I think it should – it would've learnt that he was spending significant sums through on-line gambling websites - very frequently. On some days, through these websites, he spent as much as £487, on others it was closer to £250. I accept that there were occasional credits from these websites, but they fell well - short of the sums Mr L was spending.

I'm satisfied that had 118 118 Money done proportionate checks it would've realised that Mr L was spending significant sums through a number of gambling websites. And, given the sums involved, I think it's clear that Mr L was unlikely to be able to repay Loan 1 in a sustainable way. As a responsible lender, had it done proportionate checks, I think 118 118 Money would've declined Mr L's application. So I'm upholding Mr L's complaint about Loan 1.

Less than eight months into Loan 1 Mr L applied for Loan 2. As Loan 1 was still outstanding he used some of the advance to clear Loan 1. The total amount of the loan was £3,994.17, of which £2,994.17 went to repay Loan 1. So, Mr L received £1,000 into his bank account. The loan term was again 24 months and the monthly repayments were increased to £312.07.

This time Mr L declared an income of £1,950. He said he spent £100 on housing, £50 on utilities, £50 on food, £100 on card payments, zero on loans and £150 on insurance. He said he was using the loan for car related expenses.

118 118 Money didn't carry out a welcome call on this occasion, but it did a credit file check again. His active account balance was now over £25,500. I accept that part of this increase is likely to be down to the fact that Loan 1 was still outstanding but what is clear is that Mr L's overall credit situation hadn't really improved. His current account overdraft limit had been reduced to £1,450 but he was generally around £1,300 overdrawn. On one of his credit cards the credit limit had been increased from £650 in March 2016 to £1,950. And the balance on that was now £1,462. Another credit card had a limit of £1,000. The current balance was £931 and although before February 2016 the balance had been around £500, since then it had increased in March and April to £931. And it seems Mr L hadn't repaid anything on that card since November 2015. It also seems Mr L took another loan from a different provider for £619 a month before he took Loan 2. The overall picture – from this credit report - is that Mr L's financial circumstances were deteriorating.

And given this – as with Loan 1 – I'm not persuaded that 118 118 Money did enough to check that Mr L would be in a position to repay this loan sustainably. I should add that I accept that Mr L repaid Loan 1 in line with his agreement. But I think it's important to note that just because someone keeps up their repayments, it doesn't necessarily mean that they are doing so from sustainable means. So, I've again looked at his bank statements to help me understand his broader financial situation. Although it seems that the transactions to the gambling websites had reduced in April and May 2016 they were still relatively significant. And over this period, he was still spending several hundred pounds on these websites with no credits into his account from those gambling businesses.

I think – like our adjudicator - that Loan 2 was in effect a top-up to Loan 1. 118 118 Money says this wasn't a top up but elsewhere told us that *"As the second and third agreement were additional borrowing, the welcome call is only completed on the first"*. I accept that when Mr L took Loan 2, Loan 1 was cleared and a new credit agreement signed. But practically speaking, I don't think it matters whether technically this was a "top up", a "refinance" or a simply a new loan: Loan 1 was repaid, Mr L received some additional capital and his monthly repayments increased. In these circumstances - as Loan 1 shouldn't have been given - it follows that Loan 2 should've been declined too. But I should add that even if this was a wholly fresh loan, from the information 118 118 Money had available and what it would've learnt had it done proportionate checks, it should've realised that Loan 2 wasn't sustainable for Mr L. So it should've declined his application and I uphold Mr L's complaint about it.

In February 2017 Mr L contacted 118 118 Money to ask for a repayment holiday as he'd recently changed address and was struggling to catch-up with his finances. He explained that he'd had to pay a deposit for his new home and his previous deposit hadn't yet been refunded. The 118 118 Money advisor told him that it could set up a temporary arrangement but that this would affect his credit file. Mr L explained that he didn't want to do anything to jeopardise his credit score. He asked if the term of the loan could be extended. The advisor responded that this was not something 118 118 Money would do. The call ended with Mr L indicating that he would try something else to get him out of his difficulties.

Six months later Mr L returned for Loan 3. Again, he used a significant chunk of the loan to clear the outstanding balance on his previous loan. This meant that £2,250 was paid into his account. From what I've seen 118 118 Money didn't clarify with Mr L that he'd recovered from the problems he'd told it about just six months before. This was Mr L's third advance from 118 118 Money. And he had now been indebted to it for almost two years – with no breaks (and they were aware of his earlier struggles). He was borrowing higher and higher amounts and he wasn't making any significant inroad into the amount he owed 118 118 Money. Overall his indebtedness was increasing. This pattern of lending was suggestive of someone dependent on ever higher amounts of credit to make ends meet. And indeed, the credit report obtained by 118 118 Money indicated that Mr L was in a worse situation than previously.

118 118 Money was aware that Mr L now had 41 active accounts with total credit balances of almost £30,000. There were also some negative markers on his repayment history.

In these circumstances I'm satisfied that a responsible lender should've realised that repayment of Loan 3 wasn't going to be sustainable for Mr L. I think he lost out because 118 118 Money continued to provide him with expensive credit which was unfairly prolonging his indebtedness and likely to have implications for him in accessing cheaper credit.

In summary, I'm upholding Mr L's complaint and require 118 118 Money to put things right.

putting things right

As I'm satisfied that 118 118 Money wasn't responsible when it provided the three loans in question to Mr L, I require it to do the following:

- refund all interest and charges Mr L paid on the three loans (taken between and including October 2015 and August 2017)
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*;
- remove any adverse information in Mr L's credit file as regards the three loans

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

my final decision

For the reasons given above I'm upholding Mr L's complaint and I require Madison CF UK Limited to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 December 2019.

EJ Forbes
ombudsman