

complaint

Miss K has complained about an instalment loan Madison CF UK Limited (trading as “118 118 Money”) provided to her in 2017. Amongst other things, she’s said that the loan was irresponsibly given to her as her credit file would’ve shown that she already had a significant amount of existing debt.

background

Miss K approached 118 118 Money for a loan in July 2017. Miss K was provided with a loan of £3500 and this was to be repaid over 24 monthly instalments of £355.95.

One of our adjudicators looked at what 118 118 Money and Miss K said. He thought that it was unfair for 118 118 Money to have provided this loan to Miss K. 118 118 Money disagreed and as it did so the complaint has been passed to me for a final decision.

the regulatory framework

118 118 Money lent to Miss K while it was authorised and regulated by the Financial Conduct Authority (“FCA”).

- *the FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

The Principles apply in whole or in part to every firm.

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is 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”)*

This sets out the rules which apply to providers of consumer credit like 118 118 Money. CONC also replaced the requirements set out in Section 55B CONC 5 sets out a firm’s obligations in relation to responsible lending. And CONC 6 sets out a firm’s obligations after a consumer has entered into a regulated agreement.

It’s clear there is a high degree of alignment between the Office of Fair Trading’s (“OFT”) Irresponsible Lending Guidance (“ILG”) and the rules set out in CONC 5 and CONC 6. As is evident from the following extracts, the FCA’s CONC rules specifically note and refer back to sections of the OFT’s *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1R(2) of CONC sets out what a lender needs to do before agreeing to give a consumer a loan of this type. It says 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*

[Note: paragraph 4.1 of ILG]

- (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.*

[Note: paragraph 4.3 of ILG]

CONC also includes guidance about 'proportionality of assessments'. CONC 5.2.4G(2) says:

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.

[Note: paragraph 4.11 and part of 4.16 of ILG]

CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability.

CONC 5.3.1G(1) says:

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.

[Note: paragraph 4.2 of ILG]

CONC 5.3.1G(2) then says:

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.

[Note: paragraph 4.1 (box) and 4.2 of ILG]

CONC 5.3.1G(6) goes on to say:

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.

[Note: paragraph 4.3 and 4.4 of ILG]

In respect of the need to double-check information disclosed by applicants, CONC 5.3.1G(4) has a reference to paragraphs 4.13, 4.14, and 4.15 of ILG and states:

(a) 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.

And CONC 5.3.7R says that:

A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application in relation to information supplied by the customer relevant to the creditworthiness assessment or the assessment required by CONC 5.2.2R (1).

[Note: paragraph 4.31 of ILG]

my findings

I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are two overarching questions I need to consider in order to decide what’s fair and reasonable in the circumstances of this complaint. These questions are:

- Did 118 118 Money complete reasonable and proportionate checks to satisfy itself that Miss K would be able to repay her loan in a sustainable way?
 - If so, did it make a fair lending decision?
 - If not, would those checks have shown that Miss K would’ve been able to do so?
- Did 118 118 Money act unfairly or unreasonably in some other way?

If I determine that 118 118 Money didn’t act fairly and reasonably in its dealings with Miss K and that she 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 Miss K would be able to repay her loan in a sustainable way?

The rules and regulations in place at the time 118 118 Money lent to Miss K required it to carry out a reasonable and proportionate assessment of whether Miss K could afford to repay his loan in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks had to be “borrower-focused” – so 118 118 Money had to think about whether Miss K would be able to repay the loan sustainably. In practice this meant that 118 118 Money had to ensure that making the payments to the loan wouldn’t cause Miss K undue difficulty or adverse consequences. In other words, it wasn’t enough for 118 118 Money to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Miss K.

Checks also had to be “proportionate” to the specific circumstances of the loan application. In general, what constitutes a proportionate affordability check will be dependent upon 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 / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different loan applications.

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); and
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should’ve be for a given loan application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve thought about all the relevant factors in this case.

Before I look in more detail at whether the checks that 118 118 Money completed for Miss K’s loan was proportionate, I have some overall observations about its defence of its case.

118 118 Money says it carried out a number of checks before it decided to lend to Miss K. It says that it carried out a credit check and this together with the income and expenditure information provided by Miss K was reviewed by its systems and assessed against its scorecard. It says it used “*industry standard verification checks to validate the information*” provided by Miss K on the application. Finally it has also referred to the information contained on Miss K’s loan agreement.

From what I can see, 118 118 Money appears to be relying on heavily on Miss K’s application having been assessed by its systems and against its scorecard. But it hasn’t provided any detail about its scorecard – or its industry standard checks - I get the impression that it expects us to simply accept its scorecard resulted in a fair lending decision here.

To be clear, 118 118 Money is responsible for the lending approved by its systems. This service cannot and will not search through dozens of pages of coded information looking for evidence to support 118 118 Money’s defence of its scorecard and Miss K’s complaint. I’d also point out that the use of industry standard software isn’t in itself demonstrative of the fact that 118 118 Money’s scorecard leads to fair lending decisions.

Given 118 118 Money insists that Miss K’s loan was responsibly lent, it ought to know – and have explained – how it interpreted the information it gathered and how its scorecard led to a responsible lending decision being made in this case. Without this explanation from 118 118 Money, I cannot and will not take it as read that this lending decision was fair simply because the scorecard didn’t trigger a manual review of Miss K’s application.

Equally while I’ve seen 118 118 Money’s reference to the information on Miss K’s loan agreement, I can’t see that Miss K has ever complained about the amount of interest charged or that she didn’t agree to taking out the loan.

So I don’t see how Miss K’s loan application is relevant to the complaint that’s in front of me. And I’m certainly not persuaded that anything contained in the loan application or terms and conditions somehow negates 118 118 Money’s regulatory obligation to lend responsibly.

Were 118 118 Money’s checks reasonable and proportionate?

Having carefully thought about what 118 118 Money has said, I don’t think that its checks did go far enough.

As I’ve set out above, CONC 5.2.4G(2) provides some guidance on the proportionality of assessments. And it makes it clear that 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.

Miss K’s loan required her to make payments of around £350 for around two years. So the total charge for Miss K’s credit was in excess of £5000. I’m also mindful that 118 118 Money says that Miss K was asked what the purpose of this loan was and she said that she was going to use the funds to consolidate existing debts.

Taking all of this into account, I think that 118 118 Money needed to get a thorough understanding of Miss K’s financial position. So as well as asking Miss K about the details of her income and expenditure, I think that 118 118 Money needed to take steps to verify what

it was being told by Miss K. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Miss K's income.

Indeed CONC 5.3.1G(4)(b) says that where it takes income or expenditure into account, it is not generally sufficient for a firm to rely solely on a statement of those matters made by the customer. 118 118 Money might have carried out a credit search. But I can't see that it properly scrutinised what the credit search showed. For example, I can't see that it asked Miss K for an explanation regarding her defaulted account.

And given the purpose of the loan was recorded as debt consolidation, and the credit search flagged up a substantial amount of existing debt I also think that 118 118 Money ought to have taken steps to establish which debts, if any, Miss K would actually be consolidating with this loan. By failing to do so, 118 118 Money ran the risk of increasing Miss K's debt unsustainably. I'd also question how could it possibly have worked out what Miss K's disposable income would be going forward without having any idea of which credit commitments she'd still be left with after she was given this loan.

As there's no evidence that 118 118 Money did properly scrutinise the information on the credit check, the purpose of the loan, or that it asked Miss K to provide documentary evidence to support the income and expenditure declaration made, I don't think it completed reasonable and proportionate affordability checks before providing this loan.

Would reasonable and proportionate checks have indicated to 118 118 Money that Miss K would have been unable to sustainably repay the loan?

As proportionate checks weren't carried out for this loan, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that a proportionate check would have told 118 118 Money that it was unfair to offer this loan to Miss K.

Miss K has provided us with evidence of her financial circumstances at the time she applied for the loan. Of course, I accept different checks might show different things. And just because something shows up in the information Miss K has provided, it doesn't mean it would've shown up in any checks 118 118 Money might've carried out. But in the absence of anything else from 118 118 Money showing what this information would have shown, I think it's perfectly fair and reasonable to place considerable weight on it as an indication of what Miss K's financial circumstances were likely to have been at the time.

Bearing in mind 118 118 Money's response to our adjudicator's assessment, I think that it is important for me to start by saying that 118 118 Money was required to establish whether Miss K could sustainably make her loan repayments – not whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. This is because CONC defines sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments.

And it follows that if a lender realises, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information Miss K has provided in light of this.

The information I've been provided with shows Miss K had an overdraft which she was in continually in, in the months leading up to this loan application. And Miss K didn't see a credit balance even when she received her monthly salary. Indeed Miss K was struggling to make ends meet to such an extent that she was even supplementing her overdraft by using a revolving credit facility from a high-cost credit provider.

I've thought about the arguments 118 118 Money has made about Miss K being able to make minimum payments to her credit card. And if she did so, that would have made the payments to this loan pounds and pence affordable. I have to say I have significant concerns about any encouragement given to consumers to pay other debts more slowly so they can take on further (and in this case more expensive) debt with another provider.

But, in any event, even if I were to leave my concerns about this to one side and accept 118 118 Money's points on this argument (I want to reiterate that I don't), I remain satisfied that reasonable and proportionate checks would more likely than not have only been able to make her loan payments by using her overdraft to do so. And, in these circumstances, I think that reasonable and proportionate checks would have alerted 118 118 Money to the fact that Miss K would not be able to sustainably make the repayments to this loan.

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

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude 118 118 Money acted unfairly or unreasonably towards Miss K in some other way.

Overall and having carefully thought about the two overarching questions, set out on page three of this decision, I think that 118 118 Money unfairly and unreasonably provided Miss K with a loan because it failed to carry out reasonable and proportionate checks and its more likely than not that such checks would've shown 118 118 Money that Miss K's wouldn't be able to sustainably repay the loan. So 118 118 Money shouldn't have provided the loan to Miss K.

As Miss K ended up paying interest and charges on a loan proportionate checks would more likely than not have shown she'd be unable to sustainably repay, I think that she lost out because of what 118 118 Money did wrong. So 118 118 Money should put things right.

fair compensation – what 118 118 Money needs to do to put things right for Miss K

I've carefully thought about what amounts to fair compensation in this case.

Where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean 118 118 Money putting Miss K in the position she'd now be in if he hadn't been given this loan.

But when it comes to complaints about irresponsible lending this isn't straightforward. Miss K was given the loan in question and she's used the funds. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Miss K back in the position she would be in if she hadn't been given this loan in the first place.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. And I'd like to fully explain the reasons why I think that it would be fair and reasonable for 118 118 Money to put things right in the following way.

interest and charges

As I've explained, Miss K received the funds for this loan and she's used them. So I think it's fair that she pays back what she borrowed. In reality it's the interest that Miss K had to pay 118 118 Money on the loan that is the problem, as she kept having to find additional funds (usually through borrowing elsewhere) to pay this interest. And she then had to borrow again, on a number of occasions, to either repay others or cover the hole left in her finances and she incurred more interest and charges when she did this. So I think that 118 118 Money should refund any interest and charges Miss K has paid as a result of this loan.

The statement of accounts 118 118 Money has provided shows that Miss K has already made, at least, 12 payments of £355.95. So the payments Miss K has already made are more than enough to clear what she initially borrowed. As this case, 118 118 Money should treat any payments made after Miss K paid the amount she received as overpayments. And to start with, I think that 118 118 Money should refund these overpayments.

I've also given thought to the argument that Miss K had to borrow – from elsewhere – in order to repay the interest and charges she paid to 118 118 Money and so she should be refunded any borrowing costs she incurred to pay 118 118 Money's interest and charges.

I accept that there were occasions where Miss K was simply cycling money around borrowing from multiple sources in order to pay debts. For example, it's clear that Miss K made a number of payments by using her overdraft. And, in circumstances, where it is clear that a consumer incurred additional costs in order to be able to repay a lender's interest and charges, it might be appropriate to direct a lender to pay the consumer extra compensation to cover those additional costs.

But, in this case, Miss K is borrowing from so many different sources. And I can't see a clear correlation showing that funds from a particular source (or sources) of credit directly went towards repaying 118 118 Money's interest and charges. In other words, I can't say exactly what directly additional cost Miss K incurred at a given time. So, in these circumstances, I don't think that 118 118 Money should refund extra interest because Miss K might've paid interest elsewhere in order to repay her 118 118 Money loans.

That said, it's clear that Miss K did lose the use of the funds she used to pay the interest, I now think that 118 118 Money needs to refund to her. As Miss K lost the use of these funds, I think that she should be compensated for this.

We normally ask a business to pay 8% simple interest where a consumer hasn't had the use of funds because its actions resulted in something having gone wrong. Bearing in mind my conclusions in the paragraph above, I see no reason to depart from our usual approach here and I think awarding 8% per year simple interest, on the interest and charges that were paid (in other words any overpayments over and above the amount of money Miss K received), is fair and reasonable in the circumstances of this case.

Miss K's credit file

Generally speaking, I'd expect a lender to remove any adverse information recorded on a consumer's credit file as a result of the interest and charges on the loans they shouldn't have been given. After all it's the interest and charges that the consumer is being refunded and the expectation is they will have repaid, or they should repay what they owe. As the monetary award I'm making reflects this, I see no reason to depart from our typical approach in this case. So I think that 118 118 Money should remove any adverse information recorded on Miss K's credit file as a result of this loan.

All of this means that I think it would be fair and reasonable in all the circumstances of Miss K's complaint for 118 118 Money to put things right in the following way:

- remove all interest, fees and charges added to the loan from the outset. The repayments Miss K made should be deducted from this amount. Any payments made after the total exceeds the amount of money Miss K was given (in other words £3500) should be treated as overpayments;
- add interest at 8% per year simple on the above overpayments from the date they were paid by Miss K to the date of settlement†;
- remove any adverse information recorded on Miss K's credit file as a result of this loan.

† HM Revenue & Customs requires 118 118 Money to take off tax from this interest. 118 118 Money must give Miss K a certificate showing how much tax it's taken off if she asks for one.

my final decision

For the reasons given above, I'm upholding Miss K's complaint. Madison CF UK Limited (trading as "118 118 Money") should pay Miss K compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 8 March 2019.

Jeshen Narayanan
ombudsman