

The complaint

Ms H complains about four loans provided to her by Madison CF UK Limited, trading as 118 118 Money, ("118 118"), which she says were unaffordable. The complaint is brought to this service on Ms H's behalf by a claims' management company. But for ease, I shall refer below to all actions being taken by Ms H.

What happened

118 118 agreed four loans for Ms H between June 2017 and December 2018. Loans 2 to 4 were each used to repay the previous loan. According to the most recent information I've seen, Loan 4 hasn't been repaid. The balance on Loan 4 was sold to a third party ("T"). Some of the information 118 118 provided about the loans is shown in the table below.

Loan number	Start date	End date	Loan amount	Monthly repayments	Term (months)
1.	6/6/2017	6/1/2018	£1,000	£76.94	24
2.	6/1/2018	5/7/2018	£1,581.97	£121.46	24
3.	5/7/2018	30/12/2018	£2,054.42	£158.84	24
4.	30/12/2018	Unpaid	£2,258.25	£176.07	24

Ms H says that at the time of entering into these credit agreements, she was experiencing financial difficulties. Had any enquiries been conducted by 118 118 into affordability or Ms H's creditworthiness, this would have been discovered. As a result, Ms H believes that the decisions to lend to her were irresponsible.

In its final response letter, 118 118 upheld Ms H's complaint about Loan 4. It said that in full and final settlement of the complaint, as Ms H had overpaid £48.17, it would refund this amount to her together with 8% interest which it calculated as 15 pence before the deduction of tax. It also said it would remove any negative information from Ms H's credit file. 118 118 was satisfied that it had acted correctly in approving the loan applications for Loans 1 to 3 and as such it wasn't upholding this aspect of Ms H's complaint.

Our adjudicator's view

Our adjudicator said she wouldn't investigate Loan 4 as this had been upheld by 118 118. She recommended that the complaint about Loans 2 and 3 be upheld. With regard to Loan 1, she noted that Ms H's income was around £2,100 and her monthly expenditure was around £1,215. 118 118's credit check showed that Ms H's credit commitments were slightly higher than she'd declared. But it would've still appeared that Loan 1 was affordable. In addition, looking at the results of the credit checks, she hadn't seen anything that was likely to have raised concerns about Ms H meeting her repayments. Based on this information, she didn't think it would've been reasonable for 118 118 to verify the information Ms H had provided to it.

With regard to Loans 2 and 3, she said that Ms H confirmed her circumstances were similar to when she applied for Loan 1. But as Loan 2 was taken around six months after Loan 1

and Loan 3 was taken around six months after Loan 2, it should've raised concerns that so many loans were taken in such a short period of time. The adjudicator could also see that Ms H was also seeking credit from other high cost loan companies. Based on the information 118 118 had, she thought it would've been evident that Ms H might have become dependent on high cost credit and she didn't think it was suitable to continue offering Ms H any further borrowing.

118 118 responded to the adjudicator's view by asking her to expand on her reasons for upholding Loans 2 and 3 which she did. She said with regard to Loan 2, that it appeared that Ms H had become dependent on high cost credit and her credit repayments (including Loan 2) represented a significant proportion of her income. With regard to Loan 3, the adjudicator thought that Ms H was displaying a clear reliance on this type of borrowing.

118 118 didn't provide any further response.

As this complaint wasn't resolved informally, it was passed to me, as an ombudsman, to review and resolve.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms H and to 118 118 on 3 March 2022. I summarise my findings:

As 118 118 had upheld Ms H's complaint about Loan 4, I said I wouldn't investigate this loan. But I would include the redress for this loan in my award as I didn't know whether it had yet been actioned.

I noted that when 118 118 lent Loans 1 to 3 to Ms H, the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

Its rules and guidance obliged 118 118 to lend responsibly. As set out in CONC, this meant that 118 118 needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

Repaying debt in a sustainable manner meant being able to meet repayments out of normal income while meeting normal outgoings and not having to borrow further to meet those repayments.

The lender was required to carry out a borrower focussed assessment each time - sometimes referred to as an "affordability assessment" or "affordability check". Neither the law nor the FCA specified what level of detail was needed to carry out an appropriate assessment or how such an assessment was to be carried out in practice. The FCA said that the level of detail would depend on the type of product, the amount of credit being considered, the associated cost and risk to the borrower relative to the borrower's financial situation, amongst other factors.

The checks had to be "borrower" focussed – so 118 118 had to think about whether Ms H could sustainably repay her loans. In practice this meant that the lender had to ensure that making the payments to the loans wouldn't cause Ms H undue difficulty or adverse consequences. In other words, it wasn't enough for 118 118 to simply think about the likelihood of it getting its money back, it had to consider the impact of loan repayments on Ms H.

In general, I'd have expected a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd have expected a lender to seek more assurance by carrying out more detailed checks

- the lower a borrower'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 period of time a borrower would be indebted for (reflecting the fact that the total cost of credit was likely to be greater and the borrower was required to make repayments for an extended period);
- the greater the number and frequency of loans, and the longer the period of time during which a person was given loans (reflecting the risk that repeated refinancing might signal that the borrowing had become, or was becoming, unsustainable).

Bearing all of this in mind, in coming to a decision on Ms H's complaint, I'd considered the following questions:

- Did 118 118 complete reasonable and proportionate checks when assessing Ms H's loan applications to satisfy itself that she would be able to repay the loans in a sustainable way? If not, what would reasonable and proportionate checks have shown?
- Did 118 118 make fair lending decisions?

Did 118 118 carry out reasonable and proportionate checks when it provided the loans?

Loan 1

118 118 provided Ms H with Loan 1 in June 2017. The interest rate was 71.42%, (99.9% APR). The loan was to be repaid by 24 monthly repayments of £76.94. Ms H told the lender that the loan was to be used for home furnishings. If Ms H made each payment when it was due, she'd pay £1,846.56 in total. The loan was repaid from the proceeds of Loan 2.

118 118 gathered some information from Ms H about her income and expenses before it agreed the loan. It also carried out a credit check.

Ms H told 118 118 she lived with her partner and had one dependent. Her annual income was £21,000, her living costs were £1,066 and her credit commitments were £150.

I'd calculated that Ms H's net monthly income after tax and national insurance was around £1,463. Ms H provided some bank statements from 2017 to this Service and I could see that Ms H's actual net monthly income during 2017 ranged from £1,041 to £1,436.

I couldn't see that 118 118 had asked for evidence of Ms H's income and living costs. I thought it would have been proportionate for 118 118 to have taken steps to verify Ms H's actual income and expenditure in line with CONC 5.3.1(4).

CONC 5.3.1(4) said:

If a firm takes income or expenditure into account in its creditworthiness assessment or its assessment required under CONC 5.2.2R (1):

1. (a)

the firm should take account of actual current income or expenditure and reasonably expected future income or expenditure (to the extent it is proportionate to do so) where it is reasonably foreseeable that it would differ from actual current income or expenditure over the anticipated repayment period of the agreement;

2. *(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;*

I'd also reviewed 118 118's credit checks. I'd noted that these showed that Ms H had seven active credit accounts with a £12,193 total balance. There were no payday loans. But Ms H had two loans on which her total monthly payments were £281. She also had two credit cards with a total balance of £937. So, she needed to make monthly minimum payments on these two accounts totalling around £47. I'd also noted that one of Ms H's credit card balances exceeded the card's credit limit two months before the loan application and she'd taken out a cash advance on it in the month prior to the loan application. I thought all this might have concerned 118 118.

I also thought 118 118 was likely to have seen from its checks that Ms H's spending on credit commitments was more than double the amount she'd declared to 118 118 at around £328. And if her declared outgoings were added to this amount, 118 118 was likely to have seen from the information it held that Ms H didn't have enough disposable income to repay its loan. So, I thought Ms H would have needed a larger disposable income for the loan to be sustainable. And, I didn't think 118 118 had made a fair lending decision to provide Loan 1 to her.

Loan 2

118 118 provided Ms H with Loan 2 in January 2018, just seven months after Loan 1. The loan was for £1,581.97. 118 118 used £831.97 from the loan proceeds to repay Loan 1 and Ms H received £750. The interest rate was 71.09%, (99.9% APR). The loan was to be repaid by 24 monthly repayments of £121.46. If Ms H made each payment when it was due, she'd pay £2,915.04 in total. The loan was repaid from the proceeds of Loan 3.

118 118 again gathered some information from Ms H about her income and expenses before it agreed the loan. It also carried out a credit check.

Ms H's personal circumstances appeared to have changed. She told 118 118 she was single and had no dependents. Her monthly income was shown as £2,200, her living costs were £980, and her credit commitments were £230. I thought 118 118 might have queried the change in Ms H's income and circumstances. But I couldn't see any information about this. I also thought 118 118 should have taken steps to verify Ms H's income and expenditure in line with CONC 5.3.1(4).

I'd reviewed 118 118's credit checks. I'd noted that these showed that Ms H had 11 active credit accounts and three accounts had been opened in the previous six months. There was a total credit balance of £14,675. In addition to the loans and credit cards shown in the checks before Loan 1, Ms H had taken a new loan just two weeks before her application for Loan 2. This was for £2,130 with monthly payments of £74. She'd also taken a new credit card around six weeks before her loan application for Loan 2 and had a £325 balance on this. She'd also taken cash advances totalling £100 in the previous month on that card. Ms H had also taken out another new credit card around four months prior to the loan application and the balance of £373 was near the credit limit of £400. The balances on Ms H's existing two credit cards were also near their respective credit limits. I thought all this might have concerned 118 118. Ms H's credit balances were increasing, she'd taken out three new

accounts recently including the new loan for £2,130 just two weeks prior to her loan application, three of her credit cards were near their respective credit limits and she was having to take cash advances with her credit card. I thought all this suggested that Ms H's finances were under pressure.

At the very least I would have reasonably expected 118 118 to have taken steps to verify Ms H's actual monthly expenditure to gain a more thorough understanding of her financial position in order to satisfy itself that she could sustainably repay Loan 2. 118 118 didn't say that it took steps to do this.

So overall, I didn't think the checks 118 118 had carried out on this occasion were reasonable and proportionate. Ms H was entering into an expensive loan and her finances in its credit check were showing signs of possible strain. 118 118 was required to establish whether Ms H could make her loan repayments without experiencing adverse consequences and not just to ascertain whether the loan repayments were technically affordable on a strict pounds and pence calculation. It could have done this by, for example, requesting bank statements from Ms H, asking for copies of bills and/or receipts for her expenses and by asking her for more information about her existing credit commitments. 118 118 didn't say that it took steps to do this.

Although I didn't think that 118 118 had carried out reasonable and proportionate checks before Loan 2, that in itself didn't mean that Ms H's complaint about Loan 2 should succeed. I also needed to be persuaded that what I considered to be proportionate checks would have shown 118 118 that Ms H couldn't repay Loan 2 sustainably.

What would reasonable and proportionate checks have shown?

Ms H had provided this Service with some bank statements from around the time of her application for Loan 2. I wasn't suggesting that these were the checks that 118 118 should have done. But I thought looking at these gave me the best picture of what the lender should have seen. In the absence of anything else from 118 118 showing what this information would have shown, I thought it was perfectly fair, reasonable and proportionate to place considerable weight on the statements as an indication of what Ms H's financial circumstances were more likely than not to have been at the time. Had it sought some verification of Ms H's spending, I thought 118 118 would've been in a better position to understand Ms H's financial situation before it decided to lend to her.

I'd reviewed Ms H's bank statements for the two months before Ms H's application for Loan 2. Ms H's monthly income varied between £1,429 and £1,436 and so was substantially lower than she'd declared. And the total of Ms H's living costs and credit commitments appeared to be significantly higher than her income. Overall, I could see that Ms H's financial circumstances appeared to be strained. Her current account (with no overdraft arrangement) was almost overdrawn on several occasions. And on 21 December 2017, she'd borrowed a high cost loan for £2,000 to support her income.

I thought that if 118 118 had made additional checks, it was likely to have seen that there was a significant risk that Ms H wouldn't have been able to sustainably repay Loan 2. It seemed to me there was a risk that Ms H would need to borrow to meet her repayments on this loan, as she had recently been doing for her existing costs. I thought 118 118 would likely have realised that Ms H was having difficulty managing her finances. And I didn't think further checks would have provided any assurance that she could repay the loan sustainably. So, I didn't think that 118 118 had made a fair lending decision when it agreed

to lend to her as it was likely that agreeing more credit for her would simply add to her debt levels.

Loan 3

118 118 provided Ms H with Loan 3 in July 2018, just six months after Loan 2. The loan amount for Loan 3 was almost £500 higher than Ms H's previous loan and her monthly repayments had increased by around £37. I thought 118 118 ought to have been concerned about Ms H's need to borrow again for the third time in 13 months. The loan was for £2,054.42. 118 118 used £1,354.42 from the loan proceeds to repay Loan 2 and Ms H received £700. The interest rate was 71.3%, (99.9% APR). The loan was to be repaid by 24 monthly repayments of £158.84. If Ms H made each payment when it was due, she'd pay £3,812.16 in total. The loan was repaid from the proceeds of Loan 4.

118 118 again gathered some information from Ms H about her income and expenses before it agreed the loan. This appeared to be the same as the information it had gathered before Loan 2. Again, I thought 118 118 ought to have taken steps to verify Ms H's income and expenses in line with CONC 5.3.1(4).

118 118 had also carried out a credit check. I'd reviewed the credit report and could see that Ms H had ten active accounts and her total credit balance had reduced to £12,746. Ms H's revolving credit had reduced by over £1,000. It appeared that some of the balances had been repaid in the month prior to the loan application. But two months prior to the application, three of Ms H's credit card accounts were over their respective credit limits and on two of the cards, payments had recently been missed. So, I thought the checks still suggested that Ms H's finances were under pressure. And in view of the fact that Loan 3 was Ms H's third loan in 13 months from 118 118 and her loan balance and monthly payments were increasing, I didn't think its checks were sufficient to get a clear picture of Ms H's finances at the time and for 118 118 to be confident that Ms H could repay the loan sustainably.

We'd received Ms H's bank statements for the period 21 June 2018 to 20 September 2018 from her. I'd looked at these to see what 118 118 was likely to have seen if it had made better checks. Although I'd not seen the whole month's transactions before Loan 3, I could see from the statements I'd reviewed that Ms H's financial situation didn't appear to have improved. Her monthly income of £1,385 wasn't sufficient to meet her regular expenses and credit commitments. So, again I thought there was a significant risk that Ms H wouldn't have been able to sustainably repay the loan and further credit was likely to add to her indebtedness. I didn't think further checks would have provided any assurance that she could repay Loan 3 sustainably. So, I didn't think that 118 118 had made a fair lending decision when it agreed to lend Loan 3 to her.

I could see that Ms H had continued to borrow high cost credit shortly after taking out Loan 3. Within four weeks, she'd taken out another high cost loan for £1,500, and I thought this was foreseeable.

So, I thought 118 118 should reasonably have concluded that it treated Ms H unfairly when it agreed to lend Loans 1 to 3 to her. And, subject to any further representations by Ms H or 118 118, I intended to uphold Ms H's complaint about Loans 1 to 3. As 118 118 upheld Ms H's complaint about Loan 4 in its final response letter, my proposed award also included our usual directions for that loan in case these hadn't yet been actioned.

Putting things right – what 118 118 needs to do

I understand that Loan 1 was repaid from the proceeds of Loan 2, Loan 2 was repaid from the proceeds of Loan 3, Loan 3 was repaid from the proceeds of Loan 4 and that Loan 4 hasn't been fully repaid. In order to put Ms H back into the position she would have been had Loans 1 to 4 not been agreed for her, 118 118 needs to ensure that Ms H only repays the total amount of money she received as a result of having been given Loans 1 to 4. So, 118 118 needs to:

1. Add up the total amount of money Ms H received as a result of having been given Loans 1 to 4. For the avoidance of doubt this added up amount should not include any interest, charges, document or any other administration fees;
2. The payments Ms H made (to Loans 1 to 4) should be deducted from this amount;
3. Any payments made, if any, after the total amount repaid exceeds the amount of money Ms H was given should be treated as overpayments and refunded to Ms H;
4. Interest at 8% per year simple should be paid on any overpayments made, if they were, from the date they were paid by Ms H to the date of settlement;*
5. If the total amount of money paid by Ms H doesn't exceed the total amount of money she received as a result of having been given Loans 1 to 4 (and for the avoidance of doubt any outstanding balance shouldn't include any interest, charges and document or other administration fees), 118 118 should treat Ms H positively and sympathetically regarding repayment of the balance. This might mean agreeing a mutually agreeable repayment plan with her; and
6. Remove any adverse information recorded on Ms H's credit file as a result of Loans 1 to 4;

As 118 118 has sold the outstanding debt on Loan 4 to T, it should buy it back if it is able to do so or chooses to do so and then take the steps listed above. If 118 118 isn't able to buy the debt back or chooses not to, then it should liaise with T to bring about steps 1. to 6. above.

*HM Revenue & Customs requires 118 118 to take off tax from this interest. 118 118 must give Ms H a certificate showing how much tax it has taken off if she asks for one.

Neither Ms H nor 118 118 has responded to my provisional decision.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Given that Ms H and 118 118 have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold this complaint and require 118 118 to take the steps set out above under the heading "Putting things right - what 118 118 needs to do".

My final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Madison CF UK Limited, trading as 118 118 Money, to put things right as I've set out above under the heading "Putting things right – what 118 118 needs to do".

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 29 April 2022.

Roslyn Rawson

Ombudsman