

## The complaint

Mr J has complained through a representative that Madison CF UK Limited trading as 118 118 Money (118 118) mis-sold him loans he couldn't afford to repay. Mr J says that he was taking out new loans in order to cover repayments to other loans that he had.

## What happened

Mr J had two loans from 118 118 and a summary of the lending can be found in the table below.

loan number	loan amount	agreement date	repayment date	term (month)	monthly repayment
1	£2,500.00	17/08/2018	04/05/2019	24	£198.05
2	£2,000.00	20/08/2019	13/02/2020	12	£205.20

118 118 issued its final response letter about Mr J's complaint on 31 December 2021 and it concluded it had made reasonable decisions to lend.

118 118 explained it took details of Mr J's income and expenditure as well as carrying out a credit check. It went on to say it, *"...reviewed not only by our system and assessed against our scorecard but also, where required, manually reviewed by our Underwriting team. We use industry standard verification checks to validate the information provided by the applicant."*

Mr J's complaint was considered by one of our adjudicators and he didn't uphold it. He said 118 118 lent responsibly because there were no signs that Mr J was having or likely to be having financial difficulties. Mr J also had sufficient disposable income to be able to afford the repayments, he was committed to making.

118 118 didn't respond to the adjudicator's assessment.

Mr J's representative didn't agree with the outcome. In response it said (in summary):

- The credit report generated before loan 1 shows concerning information such as missed payments and defaults.
- 118 118 didn't verify Mr J's finances.
- Mr J's representative is concerned that he was able to settle loan 1 with a large lump sum payment and it was also concerned about the increase in monthly cost for loan 2. The representative says this suggests a reliance on short term loans.
- Had 118 118 money looked at Mr J's bank statements it would've seen a number of betting transactions.

As no agreement could be reached, the complaint was passed to me. I then proceeded to issue a provisional decision where I explained why I was intending to uphold Mr J's complaint in full.

A copy my provisional findings follow this in italics and form part of this final decision.

### ***What I've provisionally 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.*

*We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.*

*Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:*

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

*The rules and regulations in place required 118 118 to carry out a reasonable and proportionate assessment of Mr J's ability to make the repayments under the loan agreements. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".*

*The checks had to be "borrower-focused" – so 118 118 had to think about whether repaying the loans would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loans wouldn't cause Mr J undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.*

*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 the loan repayments on Mr J. Checks also had to be "proportionate" to the specific circumstances of the loan applications.*

*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 consumer (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 applications.*

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

- *the lower a consumer'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 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).*

*I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr J's complaint.*

### **Loan 1**

*For this loan, 118 118 asked Mr J for his monthly income, which he declared as being £2,200 and Mr J declared that he had outgoings of £1,430 per month. 118 118 was therefore aware that Mr J had around £770 per month in disposable income in which to make the loan repayment of £198.05.*

*Based solely on the information Mr J provided about his income and expenditure 118 118 could've reasonably believed he would be in a position to afford the repayments he was committed to making.*

*118 118 also carried out a credit search and it's provided the full results to the Financial Ombudsman. The results provided by 118 118 do suggest that Mr J was having some financial difficulties.*

*Firstly, 118 118 knew that Mr J had at least 13 active credit accounts of which three had been opened within the previous six months. He also had just over £10,000 worth of debt which was around 69% of the total credit available to Mr J.*

*118 118 was also aware that there were at least 2 defaults on his credit file, one relating to a communication contract (likely a mobile phone) and the other was a bank account. However, these defaults were added to the credit file around two years before this loan was approved.*

*While, this information is concerning, these defaults, in my view don't show that Mr J was having immediate problems or would likely impact his ability to make the loan repayments.*

*However, there was some other concerning information about missed payments. 118 118 was put on notice that Mr J was likely having immediate financial difficulties. I say this, because one credit account had by June 2018 – so two months before the loan was approved – been three repayments in arrears. Another account had also been in arrears earlier on in the year.*

*Knowing this information and the fact that Mr J was committing to pay 118 118 for two years ought to, in my view, have led 118 118 to carry out further checks. I don't think the checks it carried out before this loan were proportionate because it was on notice that Mr J was likely having immediate repayment problems.*

*I do think, given what 118 118 knew at the time that it should've tried to have a complete understanding of Mr J's financial position, perhaps by obtaining copies of Mr J's bank statements.*

*Mr J's representative has provided the Financial Ombudsman with bank statements in the months leading up to this loan being approved. So, I don't consider it unreasonable to view these to see what 118 118 may have discovered about Mr J's finances by carrying out what I consider to be a proportionate check.*

*It seems that the income that Mr J declared to 118 118 was fairly accurate. However, there are a number of gambling transactions each month, indeed, adding up what Mr J spent in the month before this loan was approved, he actually spent almost his entire income on such transactions.*

*This left an insufficient amount of money to be able to firstly pay his living costs which I can*

see as well as to service the debts that he already had. Let alone have enough money to repay 118 118.

Overall, I think if 118 118 had carried out a proportionate check it would've likely discovered that Mr J couldn't afford the commitments, he was due to make. As this is the case, I'm intending to uphold Mr J's complaint about this loan.

## **Loan 2**

Mr J had repaid loan 1 considerably earlier than 118 118 was expecting. He then returned for a slight smaller loan - £2,000 but the monthly repayment actually increased because the loan was to be repaid over a shorter time period – 12 months compared to two years.

I've also considered that there was a break of three months between loan 1 being repaid and loan 2 being granted. But, given the amount borrowed, the term and what Mr J declared about his financial situation at the time, the gap hasn't led me to change my view of the complaint.

118 118 carried out the same sort of checks for this loan as it did for loan 1. It asked for Mr J's income – which he declared to be £2,265 and Mr J declared that he had £1,284 a month of outgoings.

The credit file information 118 118 obtained has once again been provided. It was again put on notice about the two defaults in 2016 and while Mr J's debt had decreased slightly, the percentage of credit he was using had actually increased from 69% to 81%. Still under the limit, but a sizeable increase within the last year.

118 118 was also given information to show that Mr J in 2019 had opened some sizeable loan accounts. He had in January 2019 taken on a significant hire purchase contract and in the month before this loan was approved, he had taken on another loan of nearly £3,000. Finally, the credit file data suggests that Mr J was close to his overdraft limit on his current account.

Given, Mr J had taken some significant loans, and indeed, one quite large loan in the months before this one was approved like loan 1 I think this ought to have been enough to have prompted 118 118 to have carried out a full review of Mr J's finances.

Once again, Mr J's representative has provided copies of his bank statements in the months before this loan was approved and I also don't think it is unreasonable to review these.

In the month the loan was approved Mr J income was close to half what he had declared to 118 118. He received around £1,200. And just on his direct debt payments alone these came to over £720 a month before any of his living costs were considering such as food and petrol or the payment to 118 118.

I appreciate, 118 118 wouldn't have known this, but in the following month after the loan was approved it seems that Mr J received no salary at all. So, this does suggest that the smaller income in August 2019 wasn't a one off but a sign that Mr J had ongoing financial problems.

While, I can still see gambling transactions in the months leading up to this loan being approved they aren't the same value or frequency as when loan 1 was advanced. However, these transactions adding together with Mr J's smaller income and his significant direct debt payments has also led me to conclude this loan wasn't affordable for Mr J either.

I'm therefore also intending to uphold Mr J's complaint about this loan as well and I've

*outlined below what 118 118 needs to do in order to put things right for Mr J.*

### **Response to the provisional decision**

Both Mr J (and his representative) as well as 118 118 were asked to provide anything further for consideration as soon as possible but no later than 6 June 2022.

Neither Mr J nor his representative responded to the provisional decision.

118 118 confirmed that it accepted the findings in the provisional decision.

The deadline for a response has now passed, and I see no reason not to issue the final decision for this complaint.

### **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.

As no new comments, information or evidence have been provided I see no reason to depart from the findings that I reached in the provisional decision.

I still think 118 118's checks didn't go far enough before these loans were approved. Had it carried out a proportionate check, such as reviewing Mr J's bank statements it would've seen that he couldn't afford to take on either of his loans. I'm therefore upholding Mr J's complaint, in full.

I've set out below what 118 118 needs to do in order to put things right for Mr J.

### **Putting things right**

I think it is fair and reasonable for Mr J to repay the principal amount that he borrowed in respect of Loans 1 and 2, because he's had the benefit of that lending. But as I have concluded 118 118 shouldn't have provided this loan, it should look to remove the interest and fees from the amounts due under the loan agreement.

118 118 should:

- remove all interest, fees and charges applied to both loans;
- treat any payments made by Mr J as payments towards the capital amount borrowed;
- If and when Mr J has paid more than the capital, then any overpayments should be refunded to him with 8%\* simple interest from the date the overpayments arose to the date of settlement; and
- remove any negative information about these loans from Mr J's credit file.

\*HM Revenue & Customs requires 118 118 to deduct tax from this interest. 118 118 should give Mr J a certificate showing how much tax it's deducted, if he asks for one.

**My final decision**

For the reasons I've explained above and in my provisional decision, I'm upholding Mr J's complaint.

Madison CF UK Limited should put things right for Mr J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 6 July 2022.

Robert Walker  
**Ombudsman**