DRN-4591522

The complaint

Mr A has complained through a representative that Madison CF UK Limited trading as 118 118 Money ("Madison") didn't carry out sufficient affordability checks before it lent to him.

What happened

A summary of Mr A's borrowing can be found in the table below.

loan number	credit agreement amount	amount received	agreement date	repayment date	number of monthly instalments	monthly instalment
1	£3,000.00	£3,000.00	11/07/2019	19/01/2020	24	£178.43
2	£3,970.00	£1,500.00	19/01/2020	14/07/2020	24	£234.11
3	£4,964.00	£1,750.00	14/07/2020	04/07/2022	24	£294.65

Mr A used funds lent from loans 2 and 3 to settle loans 1 and 2. Therefore, the column called "amount received" is the amount of new money that Mr A received for each loan application. While the "credit agreement amount" shows the total amount Mr A owed in each credit agreement (before interest).

Following Mr A's complaint Madison wrote to his representative and explained that it hadn't done anything wrong when it approved the loans because Mr A's applications were deemed affordable. Unhappy with this response, Mr A's representative referred the complaint to the Financial Ombudsman.

Madison's final response letter also dealt with a credit card account. However, the complaint about the credit card has been dealt with separately and under a different reference number.

In our investigator's latest assessment, he didn't uphold Mr A's complaint about his first loan. But he did uphold the complaint about loans 2 and 3. For loan 2, the investigator said Madison ought to have carried out further checks considering the reason why Mr A had told Madison that he needed the first loan, as well as by the time of loan 2 Mr A's overall debt had grown significantly.

Our investigator went on to conclude that this should've prompted Madison to have carried out further checks, and those checks would've shown that Mr A didn't have sufficient disposable income to afford his repayments for loans 2. The investigator also concluded that there was no change in Mr A's finances when loan 3 was approved and so that loan ought to not have been granted either.

Madison didn't agree, saying in summary;

- the hire purchase (HP) and Mr A's overdraft were not contained within the credit file data it received
- Mr A's credit file showed that he was managing his existing credit commitments well for both loans 2 and 3

- he also had sufficient disposable income with which to afford the loan repayments
- Mr A did declare loan 1 was for debt consolidation however, the approval of the loan was not conditional for this reason

As Madison didn't agree, the complaint has been passed to me to decide.

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.

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

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

The checks had to be "borrower-focused" – so Madison had to think about whether repaying the loan would be sustainable. In practice this meant it had to ensure that making the repayments on the loan wouldn't cause Mr A 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 Madison to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr A. 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 Mr A (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 A's complaint.

Loan 1

The investigators didn't uphold Mr A's complaint about this loan and neither his representative nor Madison appear to disagree with this outcome. I therefore no longer think this loan is in dispute and so I say no more about it. Instead, this final decision will focus on what Madison did when loans 2 and 3 were granted.

Loan 2

Some of the capital that was advanced to Mr A for this loan went towards repaying the first loan that he had. So, although Mr A's total loan value was nearly £4,000, he only received £1,500 of 'new' money and his monthly repayment amount increased as well.

Mr A was asked to provide details of his income and he declared this to be £4,166 per month and Madison didn't verify this amount.

Initially based on the documentation provided by Madison it didn't appear that any expenditure information was gathered from Mr A. But in response to the investigator's assessment new information was provided that showed some expenditure information was gathered by Madison before this loan was granted.

Madison says it used information from the credit file as well as "average figures" to determine what Mr A's outgoings likely were. Madison worked out that Mr A's rent plus his credit commitments and other living costs came to around £1,875 per month. So even with the loan repayment of around £234 per month, Mr A had sufficient disposable income to afford his repayment.

Madison, as part of its affordability assessment carried out a credit search and it has provided the Financial Ombudsman with the results it received from the credit reference agency. I want to add that although Madison carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Madison needed to do was consider the results it was given.

Based on the credit check results it knew that in addition to the first loan, Mr A had opened another new loan account with a different credit provider in September 2019 and this was costing him £168 per month to service.

This I think is important because although I accept what Madison says about no conditionality being attached to the reason why the first loan was granted –for debt consolation. What it does show, is that only two months after being granted a loan of £3,000, Mr A was in a position where he needed to borrow another £3,500 from another provider and then six months after the first loan needed to return to Madison for further funds.

In addition to this, it knew that Mr A had six active credit cards owing almost £7,000 but I would add that he appeared to be on top of his payments as there hadn't been any adverse payment markers recorded against these on his credit card. It's also worth saying here that the amount of total debt Mr A now had was over double what Madison had been told he had outstanding when loan 1 was approved. The picture being painted by the credit check results was one of Mr A taking more loans and becoming further indebted.

In addition, Madison didn't appear to have checked Mr A's income. It seems from the response it gave the investigator to his view that some of the figures used for the expenditure were averages, rather than what Mr A actually spent on a particular element - for example his rent payment.

Overall, given he was recommitting to Madison for up to another two years when he applied for loan 2, I think further checks ought to have been carried out. These additional checks ought to have extended to verifying the information that Mr A had provided.

Madison could've gone about doing this several ways. It could've asked to see a copy of his payslip, copy bills, bank statements or any other documentation it felt that it needed to obtain. I'm satisfied that Madison didn't take these extra steps and so I've used the bank statements provide by Mr A's representative to see what Madison may have discovered had it carried out what I consider to be proportionate checks.

Further checks would've shown not only was Mr A utilising an overdraft of nearly £2,000 on his current account. There was also evidence that Mr A was having problems managing his existing credit commitments because just over a week before he received the Madison loan a communication direct debit was returned twice in the same month as unpaid due to him not having sufficient funds in the account.

Madison would've also likely discovered his income wasn't as high as Madison believed it to be – his income was actually around £2,700 per month. His rent was also significantly higher as well with a standing order going out each month for £1,300 (although Mr A's share of that was around £1,000). And I don't know why this didn't show in Madison's credit file search, but I am also satisfied that Mr A was making payments towards a HP agreement which was costing him £449 per month.

Indeed, at the start of each month Mr A had a number of direct debt / standing orders to cover loan payments, rent, utilities and council tax. The cost of these equalled Mr A's income This was without the payments he was due to make to Madison for this loan and his other living costs for the month including, food, credit card bills and travel costs.

Had Madison carried out what I consider to be a proportionate check, it would not have approved this loan.

Loan 3

Madison carried out the same sort of checks before this loan was granted as well. It used the same income for Mr A which it says wasn't checked. And it carried out the same affordability assessment which determined he had sufficient disposable income with which to afford the loan repayments. Madison worked out that Mr A had £2,185 of disposable income after its loan payment was factored in.

The credit search results that Madison received showed that Mr A's overall indebtedness had increased again by the time of loan 3 and was now over £14,000. But apart from the second loan no new credit had been extended since loan 2 had been granted.

But for the same reasons as loan 2 and like the investigator pointed out in his assessment, there wasn't any change in Mr A's financial position by the time this loan was granted. So further checks ought to have been carried out for the same reasons as loan 2. Had those further checks, been conducted Madison would've drawn the conclusion that this loan wasn't affordable either when taking account of Mr A’s income of around £2,800 per month, his existing credit commitments and his living costs.

I’ve also thought about whether Madison acted unfairly in some other way and I haven’t seen any evidence that it did.

I’ve set out below what Madison needs to do in order to put things right for him.

Putting things right

I’ve concluded Madison was irresponsible to have provided Mr A with loans 2 and 3. I think it’s fair that Mr A repays the credit he borrowed as he’s had the use of the money but I don’t think it’s fair that he pays any interest or, fees associated towards the loans. Madison should:

- remove all interest, fees and charges applied to loans 2 and 3;
- treat any payments made by Mr A as payments towards the capital amount;
- If Mr A has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement,
- But if there’s still an outstanding balance, Madison should come to a reasonable repayment plan with Mr A; and
- remove any negative information about loans 2 and 3 from Mr A’s credit file.

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

My final decision

For the reasons given above, I uphold Mr A’s complaint in part.

Madison CF UK Limited trading as 118 118 Money should put things right for Mr A as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 15 May 2024.

Robert Walker
Ombudsman