complaint

Mr C has complained about an instalment loan Madison CF UK Limited (trading as "118 118 Money") provided to him in 2017. Amongst other things, he's said that the loan was unaffordable as he already has a significant amount of debt elsewhere.

background

Mr C approached 118 118 Money for a loan in July 2017. Mr C was provided with a loan of £1000 and this was to be repaid over 24 monthly instalments of £98.37.

One of our adjudicators looked at what 118 118 Money and Mr C said. He thought that it was unfair for 118 118 Money to have provided this loan to Mr C. 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 Mr C 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 Mr C 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 Mr C 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 Mr C and that she has lost out as a result, I will go on to consider what is fair compensation.

<u>Did 118 118 Money complete reasonable and proportionate checks to satisfy itself that Mr C would be able to repay his loan in a sustainable way?</u>

The rules and regulations in place at the time 118 118 Money lent to Mr C required it to carry out a reasonable and proportionate assessment of whether Mr C 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 Mr C 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 Mr C 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 Mr C.

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 Mr C'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 Mr C. It says that it carried out a credit check and this together with the income and expenditure information provided by Mr C was reviewed by its systems and assessed against its scorecard. It says it used *"industry standard verification checks to validate the information"* provided by Mr C on the application. Finally it has also referred to the information contained on Mr C's loan agreement.

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

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 Mr C'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 Mr C'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 Mr C's application.

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

So I don't see how Mr C'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.

The credit check 118 118 Money carried out indicated that Mr C had relatively recently defaulted on a loan. And Mr C's loan required him to make loan payments for around two years. So the total charge for Mr C's credit was in excess of £1000. I'm also mindful that 118 118 Money says that Mr C was asked what the purpose of this loan was and he said that he 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 Mr C's financial position. So as well as asking Mr C about the details of his income and expenditure, I think that 118 118 Money needed to take steps to verify what it was being told by Mr C. It could have done this by asking for information such as bank statements, copies of bills, or even proof of Mr C's income.

118 118 Money has said that it was entitled to rely on what Mr C declared and he was told about the importance of providing accurate information during the welcome call it had him. This may be the case. But, in any event, 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. So the regulator's guidance indicates that when firms are relying on income and expenditure information, they have to take steps to verify what the borrower is declaring.

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 Mr C for an explanation regarding his relatively recently 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, Mr C would actually be consolidating with this loan. By failing to do so, 118 118 Money ran the risk of increasing Mr C's debt unsustainably.

I'd also question how could it possibly have worked out what Mr C's disposable income would be going forward without having any idea of which credit commitments he'd still be left with after he 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 Mr C 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 Mr C 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 shown 118 118 Money that it was unfair to offer this loan to Mr C.

Mr C has provided us with evidence of his financial circumstances at the time he applied for the loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr C 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 Mr C's financial circumstances were likely to have been at the time.

I think that it is important for me to start by saying that 118 118 Money was required to establish whether Mr C could sustainably make his 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 Mr C has provided in light of this.

The information I've been provided with shows Mr C wasn't working at the time he made his loan application. His income was made up of benefits – Enhanced Employment Support Allowance and Personal Independence Payments. 118 118 Money says it wasn't aware of this and that it would have automatically declined Mr C's application had it been aware his income was made up solely of benefits. So it didn't do anything wrong. But I think that this somewhat misses the point.

Whether 118 118 Money was aware of this is irrelevant as I think that it ought fairly and reasonably to have been aware of this, given a proportionate check would've involved verifying Mr C's income and involved ascertaining his actual financial position. Mr C being told about the need to provide accurate information doesn't alter this obligation. And given the considerable weight 118 118 Money has placed on its industry standard verification and its confidence its robustness, I'm surprised it didn't pick up that Mr C wasn't employed given he hadn't been for some time.

In contrast to 118 118 Money, I don't think that Mr C being on benefits, on its own, means that this loan shouldn't have been provided. But I do think that a proportionate check ought fairly and reasonably to have placed 118 118 Money on notice that Mr C was on a fixed income. And, in these circumstances, I think that it ought to have been particularly mindful of the greater risk of such expensive credit being unsustainable.

I say this because I think that there was a greatly reduced prospect of a consumer, in Mr C's position, being able to come into increased funds to alleviate any difficulty in sustaining repayments to credit – in the way an employed individual might've been able to. For example, as a result of working overtime or maybe getting a bonus. So I think that a proportionate check on Mr C's income should've raised some concerns. And even if these didn't cause 118 118 Money to decline the application outright, it should've prompted it to apply a higher level of scrutiny to Mr C's outgoings.

Having looked at Mr C's outgoings and applied that higher degree of scrutiny, I can see that a substantial proportion of, what was, his relatively low monthly income was going towards repaying existing creditors. Indeed it looks as though Mr C was having difficulty repaying his existing creditors – he'd already defaulted on one account - and he was borrowing from a number of high cost credit providers and other unsustainable sources in order to repay other creditors and to make ends meet.

I've seen what 118 118 Money has said about Mr C's existing high-cost credit commitments and that there appears to have been an intention for the funds from this loan to consolidate them. But as I've already explained that 118 118 Money doesn't appear to have confirmed which, if any, of Mr C's existing would be consolidated.

So I think that 118 118 Money is attempting to make this argument with the benefit of hindsight. And for the reasons I've explained above, this means that 118 118 Money ran the risk of increasing Mr C' high-cost credit indebtedness by leaving him having to make payments to this loan as well as his existing ones.

I'd also point out that I would've had concerns with 118 118 Money's overall argument even if I were to accept that Mr C did intend to consolidate his existing high-cost short term credit commitments. I say this because CONC5A.3.2 limits the total amount a borrower has to repay a high-cost short term credit provider to no more than twice the amount they initially borrowed.

So if I were to accept 118 118 Money's argument about the purpose of this loan, it will have effectively transitioned Mr C from a product where the total amount he could pay (including late payment and default fees) was capped to twice the amount initially borrowed, to a product where the amount he had to pay was uncapped. Mr C had to pay around 1.4 times the amount he borrowed in interest.

Given the interest rate 118 118 Money charged on this loan and half of the total amount of credit was due to be repaid halfway into the term, there is an argument for saying that the loan 118 118 Money provided Mr C was itself high-cost short term credit. And it should be subject to the cap in CONC5A.3.2 as a result.

I suspect that 118 118 Money's argument against this isn't that the credit it provided isn't high-cost but that it isn't short-term. And, in these circumstances, if I accept that the loan was to be used to repay Mr C's high-cost short term credit commitments, 118 118 Money will have transitioned Mr C from high-cost short term credit to high-cost medium or long term credit.

I'd even go as far as saying that it is arguable that providing this type of credit in these particular circumstances for this particular purpose is, in itself, unlikely to be fair. But this isn't a matter for me to decide here, as I'm required to decide what's fair and reasonable in the circumstances of this case – not whether it would ever be fair for a lender to transition a customer from a loan where the total amount they could repay is capped to one which isn't and potentially could cost them substantially more.

And I don't think deciding this issue is crucial to me deciding what's fair and reasonable in the circumstances of Mr C's particular case. I say this because, in any event, the information 118 118 Money would more likely than not have obtained if it'd carried out a proportionate check would have shown that this loan was clearly unsustainable for Mr C.

I've also thought about the arguments 118 118 Money has made about Mr C being able to make minimum payments to his credit card. In its view, our adjudicator incorrectly assessed Mr C's commitments. And if he'd correctly assessed this, he would've seen that the payments to this loan were 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 substantially 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 remain satisfied that if 118 118 Money would've ascertained Mr C's actual financial position as it ought to have done if it'd carried out proportionate checks it would've seen that he couldn't sustainably make the payments to this loans once his outgoings were deducted from his actual income – rather than the income recorded.

So in these circumstances, I think that reasonable and proportionate checks would have alerted 118 118 Money to the fact that Mr C 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 Mr C 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 Mr C 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 Mr C's wouldn't be able to sustainably repay the loan. So 118 118 Money shouldn't have provided the loan to Mr C.

As Mr C is being expected to pay interest and charges on a loan proportionate checks would more likely than not have shown he'd be unable to sustainably repay, I think that he 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 Mr C

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 Mr C in the position he'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. Mr C *was* given the loan in question and he'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 Mr C back in the position he would be in if he 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, Mr C received the funds for this loan and he's used them. So I think it's fair that he pays back what he borrowed. In reality it's the interest Mr C has to pay 118 118 Money on the loan that is the problem, as he's kept having to find additional funds (usually through borrowing elsewhere) to pay this interest – given he's actually had the loan funds. And he then had to borrow again, on a number of occasions, to either repay others or cover the hole left in his finances and he incurred more interest and charges when he did this. So I think that 118 118 Money should ensure Mr C pays no interest and charges as a result of this loan.

The statement of accounts 118 118 Money has provided shows that Mr C made, at least, 8 payments of £98.37. But the statement of account was produced some six months ago. And it's possible that further payments from Mr C now mean that he's cleared what he initially borrowed. As this case, 118 118 Money should treat any payments made after Mr C paid the amount he received as overpayments. And to start with, I think that 118 118 Money should refund these overpayments. Should it be the case that no overpayments were made once the payments Mr C have made are taken into account then no refund will be due as no interest and charges will have been paid.

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. I see no reason to depart from our usual approach here and awarding 8% per year simple interest, on any interest and charges paid (in other words any payments over and above the amount of money Mr C received) if they were, is fair and reasonable in the circumstances of this case.

Mr C'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 Mr C'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 Mr C'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 Mr C made should be deducted from this amount. Any payments made after the total exceeds the amount of money Mr C was given (in other words £1000) should be treated as overpayments;
- add interest at 8% per year simple on the above overpayments from the date they were paid by Mr C, if they were, to the date of settlement†;
- remove any adverse information recorded on Mr C'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 Mr C 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 Mr C's complaint. Madison CF UK Limited (trading as "118 118 Money") should put things right in the way set out above.

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

Jeshen Narayanan
ombudsman