

The complaint

Mr J complains that Madison CF UK Limited trading as 118 118 Money ("118") recorded negative information on his credit file and sold his debt to a third-party. He doesn't believe it's treated him fairly.

What happened

I recently issued my provisional decision about this complaint. I invited both parties to let me have any further evidence or submissions by the 4 October 2023. Below is an extract of what I said in my provisional decision.

What happened

Mr J held a credit card with 118. He missed the contractual payments that were due in February and March 2022, as he had cash flow problems due his clients not paying. He spoke with 118 on 22 March, to see what assistance it could give him and says that he left the call with the impression that as long as he made some payments towards his account each month, no adverse information would be recorded on his credit file, including a default.

Mr J spoke with 118 again on 4 May. He wanted to discuss making repayments towards the balance. He gave 118 more detail about his circumstances, including that he'd been sick and the situation with his clients hadn't improved. 118 said that it would need to go through an income and expenditure assessment to see if a payment arrangement could be supported and sustained to deal with the accumulated arrears. Mr J was in a hurry, so 118 said a budget sheet would be emailed to him to complete and return. The account was put on hold from collections activity for seven days.

On 12 April a notice of default had already been issued but Mr J says he didn't know about this at the time. He called 118 on 23 May to discuss the account and says that it was during this call that he found out the account had been defaulted on 11 May.

Mr J told 118 that he hadn't received the default notice and that he'd been assured that as long as he made payments each month, his credit file wouldn't be negatively affected. So, he'd arranged to pay £10 on 15 March, £20 on 22 March and £20 on 27 April, yet these had been recorded as missed payments on his credit file. He didn't think he'd been treated fairly in relation to this or the default that had followed.

118 investigated but it didn't think it had done anything wrong. It reiterated when the default notice had been issued and explained the onus was on Mr J to manage the account and a responsibility on it to report the account status accurately.

Mr J didn't agree so he referred his complaint to us. He was concerned 118 hadn't answered his complaint and had sold the account to a third-party. One of our investigators took a look at what happened but he didn't recommend that the complaint be upheld. In summary, he found:

The account was in three months arrears when 118 had sent the default notice. It

was entitled to issue the notice at this stage given industry guidance.

Mr J made some payments but these weren't the actual payments due. So missed payment markers were correct.

He'd looked at the contact notes and was satisfied 118 had been clear his credit would be negatively affected while the account remained in arrears and overlimit.

He noted that a 'hold' had been put on the account for 30 days on 22 March to give Mr J some breathing space and get in touch with payment proposals by no later than 21 April. However, Mr J had failed to make contact. A second 'hold' had been put on the account on 4 May for 7 days. But he'd also missed this deadline for responding. So, in the circumstances, the investigator didn't think the registration of the default and other adverse data was unfair.

Mr J didn't accept the conclusions. He asked that his complaint be reviewed by an ombudsman. As well as reiterating all the points above, he made the following additional points that were important to him – in summary:

The investigator had relied on the contact notes but hadn't requested and listened to the call where he'd been misled. This was material evidence that supported his complaint.

The investigator hadn't answered his complaint about 118 selling the account to another business.

He'd told 118 that he'd been going through a difficult period due to his health and bereavement. But no account had been taken of this when providing support.

The complaint was passed to me for a review and the investigator sent Mr J a copy of the call from the 22 March inviting him to comment.

Mr J added the following, in summary:

He'd made 118 aware of the personal circumstances that had led to him getting into financial difficulty but there wasn't any 1:1 support. He said he was stressed.

There was government guidance for financial institutions during covid. But 118 didn't afford him the opportunity of similar support, for example, a payment holiday or interest suspension.

He didn't have any other defaults or judgements on his credit file. He needed a clear record to tender for work and the default had affected his ability to get additional work. He'd previously been a good customer, repaying a loan before the end of the term.

He didn't dispute owing money, however, 118's processes and procedures were unfair. Material correspondence was sent 2 weeks after it was dated which was underhand.

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.

Missed payment marker

It's not in dispute that Mr J had not made the contractual payments due since February 2022. While I understand the reasons for this, the ICO guidance is clear in that anything less than the contractual payment may be recorded with the credit reference agencies. 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' is recognised good industry practice. This says,

"If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears.

If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as "defaulted".

The purpose of reporting arrears is to indicate that a customer is showing signs of potential financial difficulty. The guidance goes on to say that arrears are reported as missed payments through status codes such as 1, 2 etc which are based on the number of months missed.

The situation is different where there's a formal arrangement to pay. But that's not what happened here because Mr J didn't enter into a different arrangement with 118. Instead, he made small payments of varying amounts. These were neither his contractual payments or the result of a formal arrangement.

I've gone on to consider whether 118 misled Mr J about the impact this would have on his credit file. I have listened to the call that took place on 22 March 2022. A copy of the call was shared with Mr J.

Mr J asks what options are available to him and the advisor tells him that they can either set up an arrangement to pay on the account or place the account on hold for 30 days. Mr J opts for the latter option. He asks will this affect his credit file and is told it will whilst his account remains past due and overlimit, which it was at the relevant time. Given this, I don't agree 118 misled him about the consequences on his credit file. He may have misunderstood but I don't think that was as a result of 118 misrepresenting the situation to him.

The terms of Mr J's credit agreement also said,

"If you do not make your Minimum Payment by the payment due date, you will be in breach of this Agreement. If you miss a payment:

- (a) you may pay more overall;*
- (b) we may require you to repay any arrears immediately;*
- (c) we may report your breach to credit reference agencies so you may find it more difficult to obtain credit in the future;..."*

Given all of the above, I don't agree 118 wasn't entitled to report on the account negatively. Default

In the call of 22 March, 118 and Mr J agree that the account will be put on hold for 30 days and he'll revert by 21 April at the latest. Mr J doesn't get in touch by this date. 118 say that collections activity will resume after the hold. I note that 118 sent a default notice on 12 April which wasn't helpful given its own written communications said it wouldn't contact Mr J while the account was on hold, which included requesting payment from him. However,

I don't think this materially changes what happened with the default. Because even if the notice had been issued after the 30 days hold expired, Mr J wasn't in a position to satisfy the default. In a later call with 118 he says he's situation with being paid hasn't improved.

Relevant ICO guidance says that if a customer falls into arrears on their account, or does not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down. As a general guide this may occur where the account is 3 months in arrears, and normally by the time there are six months arrears. Here Mr J's account was already in three months in arrears by the end of April. So, I'm satisfied a default would have been legitimately triggered towards the end of the month. And as I've said, given Mr J's financial circumstances he wasn't in a position to suppress it – he told 118 that his clients had gone into liquidation, he'd lost £10,000 and that he can't make the payment that's due.

Thinking about everything as a whole, I don't find there's a basis for instructing 118 to remove the default.

I understand Mr J hasn't made any payments in the last twelve months.

Mr J says that 118 didn't send the default notice and other letters until later because of when he got them. He thinks it's guilty of poor practice. And he's highlighted such practice elsewhere. I can't be sure of when the letters were posted or if these were stuck in the postal system. But, given my overall findings that Mr J wasn't in a position to stop further arrears, I don't think this point affects the registration of the default.

Sale of debt to a third-party

The terms and conditions of the account entitle 118 to pass the debt to a third-party. I realise this wasn't what Mr J wanted, but I haven't seen anything compelling to explain why the debt shouldn't have been sold when his agreement allowed for this.

Support

I appreciate non-payment of the invoices would have been very difficult for Mr J – he says he's stressed. 118 should have sympathised and looked at what help it could offer. On this point, I can see that it said it was sorry to hear about the situation and it started to give details of the free debt advice charities. Mr J said he knew about them already and didn't need any more details. 118 also put two options to Mr J when exploring what it could do, and he opted for the account to go on hold and for him to revert to 118 by 21 April. However, Mr J didn't get back in touch by this date. I appreciate he may have had a lot going on at the time, but I don't think this means he wasn't offered appropriate support.

Mr J has mentioned other support he feels he should have got. But any forbearance or other change (even if a temporary) would have required an income and expenditure assessment to be carried out. This gives providers a detailed and accurate picture of a customer's financial situation, which includes any other creditors, commitments and money coming in to see if any formal arrangement can be accepted and sustained. Even if the default notice had been delayed until the end of April, Mr J didn't do go down the route of completing the assessment in March or get in touch by the 21 April.

Mr J has also referenced help over covid. Tailored support guidance was issued to businesses to help customers experiencing financial difficulties, as a direct result of the pandemic. But this specific support didn't apply by this point in 2022.

I appreciate Mr J sharing personal details of his health and the loss he suffered in 2022. But

these matters weren't brought to 118's attention in the initial call and until later. So, I don't consider 118 made a mistake in the support it did attempt to offer.

Other matters

I have noted that Mr J has referenced the third party that owns his debt. He's explained he spoke to it about his complaint. I can understand why he would have done that given that's who his relationship is with. But I won't be making any comment or findings in relation to that third-party, as this review and decision purely relates to 118.

My provisional decision

My provisional decision is that I don't intend to uphold this complaint.

118 didn't have anything further to add.

Mr J did. By way of summary, he said:

- He hadn't been offered Government suggested support schemes for people in financial difficulty. He wasn't given a payment holiday when he was struggling with medical issues and had bereavement.
- Predated letters arrived too late for him to do anything with
- 118 sold the debt to a third-party and failed in the process. It had failed to tell the credit reference agencies formally that it had sold the debt. This had caused him difficulty as two defaults were recorded (one by 118 and one by the third-party). He'd had to resolve this issue himself. But neither 118 nor the debt purchaser had been helpful. The presence of two defaults had resulted in him being declined for credit, work contracts and paying expensive insurance premiums.
- He had raised a separate complaint with us about the third-party debt purchaser. But wanted to know if 118 had explained why they failed in their responsibility to inform the credit reference agencies that the debt had been sold. The credit reference agencies and debt purchase indicated this is 118's fault.
- He'd spent 126 hours on this matter. He appreciated the initial ruling, but his next step would be a legal challenge.
- He wanted the default removed and proper redress paid, as he considered there had been a dereliction of duty.

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.

Having done so, I won't be departing from the conclusions I reached in my provisional decision.

I said in my provisional decision, Mr J was offered support. I discussed what happened in the calls in relation to sign posting and the 'holds' that were placed on his account to enable him to get back to 118. So, it's not the case that he wasn't given any support. I was satisfied specific measures relating to the pandemic had ceased to apply when he was in touch with 118. I haven't changed my mind on this.

I understand Mr J remains unhappy with the circumstances that led to 118 recording the default. But he hasn't provided anything compelling as to why the default was recorded wrongly. It's important to understand that there was no formal arrangement to pay less than the contractual amount, instead Mr J made ad hoc payments. 118 said it would impact the credit file.

The account at a point was legitimately three months in arrears, which in line with ICO guidance is sufficient to trigger a default. Mr J believes communications were sent deliberately late. But I can't be satisfied. In any event, I think he knew enough about the status of the account to know it was behind in payments and that this situation couldn't continue without consequences. The terms and conditions referenced in my provisional decision support this position.

I also found that looking at Mr J's overall circumstances, he hadn't appeared to have been in a position to have satisfied the default. So, with this in mind, there wasn't a basis to require its removal. I haven't seen anything persuasive to refute this.

I realise Mr J still isn't happy with 118 selling his account. However, the terms of his agreement permitted this. There's not much more I can add.

Mr J has highlighted in his submissions that two defaults were recorded as 'live' on his credit file in relation to the same debt. He says he's had to try and resolve this matter himself over the course of many hours. I can see that he believes 118 is responsible for the situation arising. He's also raised concerns about the third-party debt purchaser. I make two comments on these points. Firstly, the issue with the two defaults isn't something that Mr J raised as part of his original complaint referred to 118, when he was given referral rights to come to our service. So, I have no power to decide on this as part of my review. Secondly, I cannot deal with the complaint he has about the third-party, because this case is only about 118 and the original complaint.

I understand Mr J feels he was let down by 118 in relation to the subject matter of this complaint and he feels very strongly about what happened. But taking all of the above into consideration, I adopt my provisional decision as part of this final decision and won't be requiring 118 to take action here.

My final decision

For the reasons I have given, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 2 November 2023.

Sarita Taylor
Ombudsman