

The complaint

Mr L says Western Circle Ltd, trading as Cashfloat ("Cashfloat"), irresponsibly lent to him. Mr L says Cashfloat didn't carry out sufficient checks to make sure the lending was affordable for him. He had problems with gambling and had other short-term loans as well as borrowing from Cashfloat.

What happened

This complaint is about five short-term loans Cashfloat provided to Mr L between September 2018 and February 2019. Mr L's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount
1	25.09.2018	25.09.2018	2	£500.00
2	01.10.2018	11.10.2018	3	£500.00
3	21.11.2018	07.12.2018	2	£200.00
4	28.12.2018	24.01.2019	3	£600.00
5	07.02.2019	16.02.2019	2	£250.00

The second of our adjudicators who assessed the case upheld Mr L's complaint in full and didn't think any of the lending should have been given because Cashfloat's own checks showed Mr L was in financial difficulty.

As Cashfloat didn't respond to the second adjudicator, the complaint remains unresolved and it has been passed to me for 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. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Cashfloat needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr L

could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Cashfloat should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- 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).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Cashfloat was required to establish whether Mr L could sustainably repay his loans – not just 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 a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define 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 a lender should realise, 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 all of the arguments, evidence and information provided in this context and what this all means for Mr L's complaint. After doing so, I've decided to uphold the complaint. I'll explain why.

Cashfloat has given us copies of its own credit checks that it carried out before agreeing to each loan. The check for loan one shows that Mr L had 11 active accounts and had opened 40 new accounts in the previous six months. There were also a considerable number of searches for Mr L totalling 50 in the 12 months prior to the lending. Those checks also showed Mr L had borrowed around £1,400 with other short-term credit providers in the previous three days. Mr L had a history of taking short-term loans, repaying them and returning for more borrowing within a short timeframe.

The information gathered by Cashfloat didn't tally with the information Mr L had given to Cashfloat about his monthly income and expenditure. So, I think Cashfloat should have sought more information and evidence from Mr L about his financial circumstances. It could

have asked for – but not limited to, copies of his pay slips and evidence of his outgoings by requesting copies of bills or bank statements – as examples.

If it had done so, I think Cashfloat would have seen that Mr L was making a regular number of transactions on on-line gambling websites. I think from the information it had and which it could have cross-referenced with Mr L, Cashfloat would have concluded Mr L was having problems managing his money and there was a very real risk that he wouldn't be in the position to sustainably make the loan repayments for this loan and any subsequent loans. And this is one of Mr L's complaint point so I think it's likely.

So, like the second adjudicator, I don't think the borrowing should have been given and I'm upholding the complaint about all of the loans and Cashfloat should put things right.

Putting things right – what Cashfloat needs to do

- refund all interest and charges Mr L paid on loans one to five;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- remove any negative information about loans one to five from Mr L's credit file;

† HM Revenue & Customs requires Cashfloat to take off tax from this interest. Cashfloat must give Mr L a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr L's complaint. Western Circle Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 August 2020.

Catherine Langley
Ombudsman