

The complaint

Mrs C complains that Western Circle Ltd (trading as Cashfloat) lent to her in an irresponsible manner.

What happened

Mrs C was given six loans by Cashfloat between January and May 2017. Mrs C explains that she was in financial difficulty and borrowing from other lenders and using the money for gambling.

Mrs C's complaint has been assessed by one of our adjudicators. He didn't think Cashfloat should have agreed to give loans 4-6 to Mrs C on the basis of her borrowing pattern up to that point. So he asked Cashfloat to pay Mrs C some compensation.

Cashfloat didn't agree with that assessment and replied to say in summary that Mrs C successfully repaid her loans and its checks showed that she had enough disposable income to meet the repayments on all the loans. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs C accepts my decision it is legally binding on both parties.

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 that Mrs C 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 a consumer. These factors include:

- 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 *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 Mrs C could sustainably repay her 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 Office of Fair Trading guidance on Irresponsible Lending, and later the Consumer Credit Sourcebook ("CONC"), 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 Mrs C's complaint.

Cashfloat asked Mrs C for some information about her income and his expenditure before agreeing the loans. And it gathered further details about Mrs C finances by performing a credit check before each loan too. I think these were a reasonable set of checks for loans 1-3 given the length of the relationship that Mrs C had with Cashfloat, and considering the loans she was asking to take. On the basis of what I could reasonably expect Cashfloat to do there was nothing to suggest that it shouldn't have given Mrs C loans 1 to 3.

But simply performing proportionate checks isn't enough. A lender must also react appropriately to the information that they have in addition to the checks. And I think that at the point of loan 4 Mrs C borrowing pattern was a cause for concern and suggested that she wasn't responsibly managing her money.

Mrs C asked for loan 4 only a few days after repaying loan 3 and for an increased amount. This should have alerted Cashfloat that Mrs C might not be able to repay her loan without borrowing again. Cashfloat said that an underwriter called Mrs C to check her financial circumstances and she didn't say that she was in difficulty. I don't think that it was enough to rely on what Mrs C was saying at this point as her borrowing pattern suggested otherwise. So it follows that I think it would have been proportionate to have asked Mrs C for further evidence about her finance. If Cashfloat had done these checks it would have seen that Mrs C was facing financial problems.

And the situation, as shown by Mrs C's borrowing history, didn't improve over the remaining time that Mrs C borrowed from Cashfloat.

So I agree with the adjudicator and I don't think that Cashfloat should have agreed to give loans 4-6 to Mrs C.

Putting things right

I don't think Cashfloat should have agreed to give loans 4-6 to Mrs C. So for each of those loans Cashfloat should;

- Refund any interest and charges paid by Mrs C on loans 4-6.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mrs C's credit file in relation to loans 4-6.

*HM Revenue & Customs requires Cashfloat to take off tax from this interest. Cashfloat must give Mrs C a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Mrs C's complaint and direct Western Circle Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 10 August 2020.

Emma Boothroyd
Ombudsman