

The complaint

Mr G says Western Circle Ltd trading at the time as 'Cashfloat' irresponsibly lent to him.

What happened

In June 2020 I issued my provisional decision. In it I explained why I was intending to uphold Mr G's complaint about loans 6,7 and 8.

An extract of my provisional decision is set out below and forms part of my final decision.

'This complaint is about eight loans Cashfloat provided to Mr G between October 2017 and July 2019. Mr G's borrowing history is as follows:

<i>Date Taken</i>	<i>Date Repaid</i>	<i>Instalments</i>	<i>Amount</i>	<i>Highest Repayment</i>
03/10/2017	31/10/2017	2	£300.00	£188.74
28/02/2018	21/03/2018	3	£400.00	£187.54
21/03/2018	23/03/2018	2	£500.00	£341.78
27/03/2018	25/04/2018	3	£500.00	£239.91
03/05/2018	26/06/2018	4	£500.00	£187.33
10/08/2018	24/08/2018	3	£600.00	£318.68
03/12/2018	21/01/2019	3	£400.00	£184.52
12/07/2019	21/08/2019	2	£200.00	£144.95

There was a gap in lending between repaying loan 1 and taking out loan 2 of around four months. As Mr G had only taken out one loan before loan 1, I think this created a new lending relationship. So, in my view, Mr G had two chains of lending with Cashfloat, loan1 and then loans 2 – 8.

Mr G says that Cashfloat failed to carry out effective affordability checks before giving the borrowing. If they had been carried out the loans wouldn't have been given to Mr G who had to borrow from other lenders to pay back other loans.

In our adjudicator's latest assessment, he upheld Mr G's complaint and thought the loans from loan 6 onwards shouldn't have been given. Cashfloat disagreed with this view.

It said that Mr G's received higher than the average income and he was living with his parents at the time of giving these loans. So, it said it was reasonable to accept his non-discretionary outgoings were minimal. It also noted that the gaps in lending became longer at the end of the borrowing and Mr G's indebtedness reduced. Mr G's final loan was the lowest it had been at £200. Cashfloat also said that all Mr G's loans were repaid earlier than planned and that reasonable and proportionate checks had shown that the loans were affordable at each stage.

As the parties are not in agreement the complaint has been passed to me to make a final decision.

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.

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 G 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 anyloan 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 G 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 G's complaint. Having done this, I'm intending to agree with our adjudicator and uphold Mr G's complaint about loans 6, 7 and 8 but to explain why in some more detail.

There appears to be no ongoing dispute about loans 1-5 and I don't intend to uphold Mr G's complaint about these loans. It was still early on in the relationship and based on the income and the outgoings Mr G had declared I think it was reasonable to give Mr G these loans.

By the time Mr G borrowed loan 6, I think Cashfloat should have carried further and more in-depth checks. This was the fifth loan in a chain of borrowing and Cashfloat should have looked further into Mr G's circumstances.

Mr G has provided his statements from the time as well as a credit report. I have looked through the many pages of all this paperwork. I can see that at the time of Mr G taking out Loan 6 as our adjudicator said, Mr G had been spending a significant portion of his income on gambling. This is enough, in my view to uphold Mr G's complaint, but I can also see he had taken out a number of other short-term loans with other providers at that time too.

Taking this information into account I think by now Cashfloat should have been alerted to the fact that Mr G was likely having problems managing money and I don't think it should have given Mr G this loan.

And had Cashfloat carried out similar checks at the time of Mr G's seventh loan it would've likely seen that he had taken out a number of other short-term loans a few days earlier. So, again, I don't think his situation had greatly improved and therefore Cashfloat ought to have concluded that Mr G wasn't in a position to take on this loan.

Mr G took out Loan 8 on 12 July 2018. There had been a gap in lending between the time Mr G repaid loan 7 and took out Loan 8 of just under six months. In some cases, this might mean that the lender didn't need to carry out such detailed checks because this gap might have created a whole new chain of lending. But I don't think this was the case here. I think taking into account Mr G's previous lending and what it should have known about Mr G's financial circumstances, proportionate checks this time should have meant Cashfloat as a prudent lender should have verified the information it was receiving.

Mr G's bank statement from the time shows he was overdrawn by nearly £3,000 and that Mr G had been gambling and was still repaying other short-term loans. So, I don't think there had been any improvement to Mr G's overall financial position compared to when loans 6 and 7 were provided. So, I think if proportionate checks had been carried out it would

have noted that Mr G was likely having problems managing his money and I don't think this loan was affordable or the repayments sustainable for Mr G either.

I've thought about everything Cashfloat has said including what it said about Mr G repaying his loans earlier than planned. I don't think this necessarily shows the loans were affordable. The fact Mr G did go onto repay the loan successfully and earlier than planned doesn't mean he did so from sustainable sources. Indeed, the fact that he then returned for further lending shortly after repaying his loans, in my opinion shows that it was more likely than not Mr G was having wider financial problems and if he had to borrow from elsewhere to meet his repayments that wasn't sustainable.

So, I'm intending to uphold the complaint about loans 6,7 and 8 and Cashfloat should put things right.'

I asked both parties to come back to me with any further information it might wish me to consider before making my final decision.

What I've decided – and why

I've re-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.

I sent both parties a copy of my decision. Mr G came back to me to say he was happy to accept my findings. Cashfloat hasn't responded. So I see no reason to depart from the findings set out in my provisional decision. I am upholding loans 6,7 and 8.

putting things right – what Cashfloat needs to do

- refund all interest and charges Mr G paid on 6, 7 and 8;
- 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 6,7 and 8 from Mr G's credit file;

† HM Revenue & Customs requires Cashfloat to take off tax from this interest. Cashfloat must give Mr G 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 partially upholding Mr G'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 G to accept or reject my decision before 24 August 2020.

Nicola Woolf
Ombudsman