

## The complaint

Mr M complains that Western Circle Ltd (trading as 'Cashfloat') acted irresponsibly when lending to him.

## What happened

Between September 2019 and January 2020 Cashfloat provided Mr M with four loans.

Here's a table setting out loan details:

Loan	Date Taken	Date Repaid	Instalments	Loan Amount	Maximum Repayment
1	16/09/2019	24/10/2019	3	£300.00	£155.31
2	24/10/2019	21/11/2019	2	£200.00	£137.26
3	27/11/2019	16/12/2019	4	£400.00	£158.34
4	05/01/2020	27/02/2020	4	£400.00	£170.84

Mr M said that Cashfloat shouldn't have provided him with these loans as he had other payday loans outstanding already and this lending made his financial situation worse. Mr M believed that if Cashfloat had done proper checks it would've seen that these loans weren't affordable for him.

Our adjudicator thought that she hadn't seen enough to say that loans 1-3 shouldn't have been provided. But, at the point of loan 4, she felt that proportionate checks would most likely have shown that Mr M was having problems managing his money. Our adjudicator thought that Cashfloat would've become aware that Mr M was borrowing from multiple other short-term lenders and spending on gambling around the time he took out loan 4. Our adjudicator said that Cashfloat ought to have realised it was unlikely Mr M would've been able to sustainably repay this loan. So our adjudicator upheld Mr M's complaint about loan 4 and set out the steps Cashfloat should take to put things right.

Cashfloat disagreed. In summary, Cashfloat acknowledged that its credit checks showed Mr M had three other payday loans outstanding when he applied for loan 4 but said Mr M's credit profile indicated that his money problems were in the past. It wasn't aware of his spending on gambling but believed that the checks it did were reasonable and proportionate and showed the loan was affordable for him.

So the complaint comes to me to decide.

## 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've carried out proportionate checks to make sure Mr M 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 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.

Cashfloat was required to establish whether Mr M 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.

Taking all this into account, I've carefully considered all of the arguments, evidence and information provided and thought about what this all means for Mr M's complaint.

Cashfloat has told us about the checks it did before lending to Mr M. It asked him to provide details of his income and to tell Cashfloat what he normally spent each month. And Cashfloat also carried out checks on Mr M's credit file.

Our adjudicator didn't think she had enough evidence to say loans 1,2 and 3 shouldn't have been provided. I've looked at the information gathered, including income and expenditure

information from the time, and I agree that there isn't enough to say Cashfloat shouldn't have provided these loans to Mr M. As far as I can see, Mr M hasn't disagreed with the adjudicator's recommendation in relation to these loans so I don't think I need to say any more about them.

Like our adjudicator, I don't agree it was reasonable for Cashfloat to provide loan 4 to Mr M. Here's why I say this.

Although loan 4 looked comfortably affordable on the figures Mr M gave, Cashfloat was aware that he was still paying three other short-term loans that dated back a number of years – Mr M had needed to agree new payment terms because he couldn't afford the contractual repayments he'd signed up to make. Cashfloat could see that he was four payments in arrears on one of those loans. As well as this, Cashfloat's credit checks showed other defaults.

I think this information should've prompted Cashfloat to carry out more thorough checks into Mr M's financial situation before agreeing to lend because it looked to be at odds with what Mr M had told Cashfloat about his financial circumstances.

I think Cashfloat should have taken steps to verify what Mr M was saying about his financial circumstances. Cashfloat hasn't shown me it did this. So I can't fairly say that it carried out a proportionate check before agreeing to lend to Mr M.

Mr M has provided his bank statements so I've looked through these to see what Cashfloat was likely to have found out. In the absence of other evidence, I think these give a reasonable picture of Mr M's finances at the time. And had Cashfloat looked in more depth at Mr M's finances it would likely have seen that he was facing serious problems managing his money. On top of the historic short-term loans it knew about, I think it would have learnt that Mr M was actively borrowing from multiple other short-term loan providers and regularly spending significant amounts on what appear to be gambling transactions.

This means I don't think it was reasonable for Cashfloat to think that it was likely Mr M would be able sustainably to repay his borrowing – so it shouldn't have provided this loan.

### **Putting things right**

In deciding what redress Cashfloat should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Mr M, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly if a relationship existed between him and Cashfloat which he may not have had with others.

If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing).

But even if he had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is now impossible to reconstruct accurately.

From what I've seen in this case, I don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. So it wouldn't be fair now to reduce Cashfloat's liability in this case for what I'm satisfied it has done wrong and should put right.

So here's what Cashfloat needs to do.

- A. Add together the total of the repayments made by Mr M towards interest, fees and charges on loan 4, not including anything it has already refunded.
- B. Calculate 8% simple interest\* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
- C. Pay Mr M the amounts calculated in "A" and "B".
- D. Remove any adverse information Cashfloat has recorded on Mr M's credit file for loan 4.

\*HM Revenue & Customs requires Cashfloat to take off tax from this interest. Cashfloat must give Mr M 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 partly upholding Mr M's complaint.

Western Circle Ltd (trading as 'Cashfloat') should take the steps I've set out to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 March 2021.

Susan Webb  
**Ombudsman**