

The complaint

Mr G says Western Circle Ltd trading as Cashfloat lent to him irresponsibly. He says that Cashfloat didn't make proper checks, if it had done then it would have seen he was in financial difficulty and not lent to him.

Mr G also says that he had problems contacting Cashfloat during the Covid-19 pandemic and it used his work email address. These issues caused him some trouble and upset.

What happened

This complaint is about six payday loans Cashfloat provided to Mr G between January 2019 and March 2020.

loan number	date started	amount borrowed	term (months)	date ended
1	24/01/2019	£200	1	31/01/2019
2	03/02/2019	£400	2	29/03/2019
3	10/04/2019	£700	3	30/04/2019
4	02/05/2019	£800	3	06/05/2019
5	07/05/2019	£1,000	4	10/09/2019
6	01/03/2020	£600	3	01/04/2020

Our adjudicator partially upheld the complaint. He said that by loan 4 Cashfloat should have made better checks. If it had done this it would have seen that Mr G was having problems managing his money and not lent to him. So, it should pay compensation in respect of loans 4 to 6.

Cashfloat disagreed with the adjudicator's opinion. It said that the checks it made were proportionate. It verified the information Mr G provided with third parties such as credit reference agencies, which showed it the loans were affordable.

Mr G agreed with the adjudicator's opinion.

As no agreement has been reached the complaint has been passed to me.

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 irresponsible 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 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've decided to uphold Mr G's complaint in part and have explained why below.

Mr G didn't disagree with our adjudicator's opinion not to uphold his irresponsible lending complaint about loans 1 to 3 and the complaints he's made about his contact with Cashfloat. Because of this I don't think there is any ongoing disagreement about these issues. So, I won't comment further on them, save to say I agree with what the adjudicator said for the same reasons. And loans 1 to 3 were part of the borrowing relationship Mr G had with Cashfloat. So, they are something I will take into account when considering the other loans he took.

At loan four Mr G had now taken four loans in a relatively short period of time. The amount he had borrowed had increased from £200 to £800. This was a very large increase over the few months he had been lending from Cashfloat. And I think this does indicate that Mr G's financial problems may be worsening.

So, I think Cashfloat could've realised at that time that Mr G may have had some longer term financial problems rather than just using the loans to help with a temporary cash flow problem. Cashfloat should've also become concerned about whether it knew enough about Mr G's true financial situation.

I think that it would've been proportionate to fully review Mr G's financial situation And I think that Cashfloat needed to verify the information it found out where possible. This is to make sure Mr G was in position to make the repayments sustainably.

I don't think Cashfloat did this. I've taken on board what it said about the checks it did. But it didn't really get to the bottom of why Mr G was borrowing these increasing amounts over a relatively short period of time. I think it needed to do this before continuing to lend. So I need to think about what Cashfloat would've seen if it had carried out proportionate checks.

Mr G has provided some information about his financial circumstances which include his bank statements. I accept that they may not be exactly what Cashfloat would've seen at the time. But I think it would've found out similar information if it had made proportionate checks, so I think it's reasonable to rely on this information.

The information I have shows that Mr G was spending a significant amount of his income on gambling. And I think that if Cashfloat would've seen this, it wouldn't have thought it was responsible to lend to Mr G because of this. This is because Mr G's ability to repay the loans was dependent on his gambling returns. I don't think this was sustainable.

I think that Cashfloat would've found out this information if it had made proportionate checks. So I think that Cashfloat shouldn't have given loans 4 to 6 to Mr G and I think he's lost out as a result of this. So, I'm upholding Mr G's complaint about loans 4 to 6.

Putting things right

In deciding what redress Cashfloat should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr G from loans 4 to 6, 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 G may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they 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 they 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 impossible to now accurately reconstruct. From what I've seen in this case, I certainly 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 G 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 G would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Cashfloat's liability in this case for what I'm satisfied it has done wrong and should put right.

Cashfloat shouldn't have given Mr G loans 4 to 6.

If Cashfloat has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Cashfloat is not able to buy the debts back then Cashfloat should liaise with the new debt owner to achieve the results outlined below.

A) Cashfloat should add together the total of the repayments made by Mr G towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

B) Cashfloat should calculate 8% simple interest* on the individual payments made by Mr G which were considered as part of "A", calculated from the date Mr G originally made the payments, to the date the complaint is settled.

C) Cashfloat should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr G as though they had been repayments of the principal on all outstanding loans. If this results in Mr G having made overpayments then Cashfloat should refund these overpayments with 8% simple interest*

calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Cashfloat should then refund the amounts calculated in “A” and “B” and move to step “E”.

D) If there is still an outstanding balance then the amounts calculated in “A” and “B” should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr G. However, if there is still an outstanding balance then Cashfloat should try to agree an affordable repayment plan with Mr G. Cashfloat shouldn't pursue outstanding balances made up of principal it has already written-off.

E) Cashfloat should remove any adverse information it has recorded on Mr B's credit file in relation to loans 4 to 6.

*HM Revenue & Customs requires Cashfloat to deduct tax from this interest. Cashfloat should give Mr G a certificate showing how much tax Cashfloat has deducted, if they ask for one.

My final decision

For the reasons I've explained, I partly uphold Mr G's complaint.

Western Circle Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 21 May 2021.

Andy Burlinson
Ombudsman