

## The complaint

Mrs R complains that Western Circle Ltd, trading as Cashfloat, lent to her irresponsibly.

## What happened

Using information Western Circle has provided, here is a brief table of approved loans. I understand that all loans have been repaid.

<i>loan</i>	<i>date taken</i>	<i>date repaid</i>	<i>amount borrowed</i>	<i>term</i>	<i>highest repayment (rounded)</i>
1	04/07/2017	31/08/2017	£300	2m	£201
2	01/09/2017	30/11/2017	£400	3m	£197
3	16/03/2018	29/06/2018	£300	3m	£163
4	02/07/2018	28/09/2018	£500	4m	£201
5	28/09/2018	09/10/2018	£500	4m	£206
6	04/12/2018	29/03/2019	£600	4m	£263

Mrs R complained to Western Circle and in December 2020 it issued to her its final response letter (FRL). It did not uphold her complaint but it offered her a sum to settle the complaint. After more correspondence, Western Circle changed the offer to a sum which was the equivalent of the loan 6 interest Mrs R had paid to it. Mrs R has not accepted that and brought her complaint to this Service.

One of our adjudicators looked at the complaint and having reviewed the copy credit search result reports obtained by Western Circle before each loan approval, he thought that Mrs R was already struggling with debt before loan 1 was approved. So, he thought that Western Circle should not have lent to her at all and thought that it should put things right for Mrs R for each of the six loans.

Western Circle disagreed and some of its reasons are listed here (paraphrased by me):

- it challenged what the adjudicator had said about her credit situation: it thought that Mrs R's credit situation improved as the lending relationship went on;
- having other loans is not a bar to applying for Western Circle loans; and
- the loans were affordable and sustainable; and
- Mrs R repaid all her loans on time so she was not in financial trouble; and
- she and her partner had good levels of income; and
- the relatively modest gaps between loans 2 and 3 and loans 5 and 6 indicate she was not reliant on its loans.

The complaint remained unresolved and was passed 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 have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Western Circle needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs R could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

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 Western Circle should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a level of income);
- having many loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

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

Western Circle was required to establish whether Mrs R could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs R's complaint.

Western Circle has provided to us details of Mrs R's declared information on her application forms, the details of the loan agreements including the scheduled repayments and whether Mrs R repaid early, plus the credit reports obtained before approving each loan.

Western Circle is right that we'd expect less detailed checks to have been carried out early in the lending relationship, but Western Circle had detailed credit reports about her and so that information was relevant at the time the approval decisions were made. The information revealed as to what Mrs R owed each month to the other lenders' does indicate to me that Mrs R was not going to be able to afford these Western Circle loans. And this seems to have been the case from loan 1.

I can see details of unsecured loans and short term loans which amounted to about £1,440 a month, over and above her substantial mortgage commitment repayments. This, plus the usual expenditure Mrs R had informed Western Circle about and these new loans, lead me to think that Mrs R would have struggled to repay the loans commencing from loan 1. And I come to this conclusion using the information Western Circle had before approving loan 1.

Or, even if Mrs R had been able to afford the Western Circle repayment, I think it would have been tight for her, and one element of the creditworthiness assessment the FCA expects Western Circle to have carried out included consideration of the overarching picture. Its not always solely a pounds and pence calculation, but also an assessment from the borrower's perspective, recognising that Mrs R had a history of applying for other loans and short term loans, and at the time she applied to Western Circle, Mrs R had several other loans and short term loans which were outstanding.

And I disagree that the credit reports show that Mrs R's credit situation improved. It appeared to fluctuate but it did not change a great deal and the level of debt appeared to remain relatively consistent.

Repayment of Mrs R's loans on time, or early, is not necessarily, of itself, an indication that Mrs R was in a good position to be able to shoulder additional debt. So, I don't accept Western Circle's point about that.

Western Circle did know Mrs R's salary and employment situation, and it noted that her partner also had a good level of income alongside her. But I note that Western Circle conceded that her partner's income was not used when calculating the affordability for Mrs R. So, I consider this to be a moot point and I need not say more on it.

The gap in the lending relationship between loans 2 and 3 was not enough to break that lending chain and Western Circle would have seen from the credit report it obtained before it approved loan 3 that she continued in debt with other lenders. And so, I don't consider that the short gap was some sort of indication to Western Circle that Mrs R was in a stronger financial position than before and so able to afford loan 3.

I uphold Mrs R's complaint for loans 1 to 4.

I have also looked at the overall pattern of Western Circle's lending history with Mrs R, with a view to seeing if there was a point at which it should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so, it ought to have realised that it shouldn't have provided any further loans.

Given the circumstances of Mrs R's case, I think that this point was reached by loan 5 and I have considered the short gap between loans 5 and loan 6 when coming to this conclusion. Plus, Western Circle has, effectively, conceded in relation to loan 6 by making the offers it has made to Mrs R about refunding her the interest.

- leading up to Loan 5 Mrs R was provided with a new and larger loan relatively quickly after settling the previous one. So Western Circle ought to have realised it was more

likely than not Mrs R was having to borrow further to cover the hole repaying her previous loan was leaving in her finances;

- Mrs R wasn't making any real inroads to the amount she owed Western Circle. Loan 6 was taken out 17 months after Mrs R's first. And it was for a larger amount. Mrs R had paid large amounts of interest to, in effect, service a debt to Western Circle over an extended period.

I think that Mrs R lost out because Western Circle continued to provide borrowing from loan 5 onwards because:

- these loans had the effect of unfairly prolonging Mrs R's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period.
- the sheer number of loans was likely to have had negative implications on Mrs R's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I am upholding the complaint about Loans 5 and 6 and Western Circle should put things right.

### **Putting things right**

In deciding what redress Western Circle should fairly pay in this case I've thought about what might have happened had it never lent to Mrs R at all, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs R 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 Mrs R in a compliant way at this time.

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

Western Circle ought to do as follows:

- refund all interest and charges Mrs R paid on Loans 1 to 6;
- 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 payment information about Loans 1 to 4 from Mrs R's credit file;

- the number of loans taken from 5 onwards means any information recorded about them is adverse. So all entries about loans 5 and 6 should be removed from Mrs R's credit file.

\* HM Revenue & Customs requires Western Circle to take off tax from this interest. It must give Mrs R 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 R's complaint and direct that Western Circle Ltd does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 23 August 2021.

Rachael Williams  
**Ombudsman**