The complaint

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

What happened

Cashfloat provided Mr K with loans as follows:

Loan	Date taken	Date paid	Loan amount	Instalments	Highest Repayment
	LENDING	CHAIN	ONE		
First loan taken	08/11/2017	20/11/2017	£500.00	4 months	£198.44
	LENDING	CHAIN	TWO		
Start of second loan chain	13/12/2018	28/12/2018	£200.00	1 month	£224.00
2	10/01/2019	28/02/2019	£500.00	2 months	£315.85
3	05/03/2019	30/04/2019	£750.00	3 months	£360.58
4	12/09/2019	27/12/2019	£750.00	4 months	£257.51
5	11/01/2020	17/02/2020	£600.00	4 months	£255.45
6	13/03/2020	04/08/2020	£750.00	5 months	£300.40

When Mr K first complained to Cashfloat, it didn't uphold his complaint, But it offered him a one-off payment of £150 as a goodwill gesture to settle his complaint.

Mr K didn't feel this offer went far enough to put things right and so he brought his complaint to this Service.

Mr K mainly said that Cashfloat didn't do proper checks before it provided him with these loans. He told us that he had struggled financially to meet his credit commitments and he had a gambling addiction which he thinks came about as a result of trying to fund his loan repayments. Mr K believed that if Cashfloat had done proper checks it would've seen that these loans weren't affordable for him and shouldn't have been provided.

Our adjudicator thought that, at the point of loan 4 in lending chain two, proportionate checks would most likely have shown that Mr K was having problems managing his money. Our adjudicator thought that Cashfloat should've become aware that Mr K was borrowing from other short-term lenders and spending a lot of his income on gambling. Our adjudicator said that Cashfloat ought to have realised it was unlikely Mr K would've been able to sustainably repay this loan or any further loans.

And he felt that Cashfloat should have realised that, by loan 6, Mr K's overall pattern of borrowing showed that he had become persistently reliant on short-term loans. So our adjudicator upheld Mr K's complaint about loans 4, 5 and 6 and he set out the steps he said Cashfloat should take to put things right.

Cashfloat disagreed with our adjudicator's view. In summary, Cashfloat said it believed that the checks it did were proportionate and the gaps in lending between loans 3 and 4 showed that Mr K wasn't reliant on short-term borrowing, his credit profile was generally good, its checks showed only one other outstanding loan when he took out loan 6 and his living arrangements meant he had adequate disposable income to pay for all these loans. So Cashfloat felt that the lending it provided was all affordable for him.

As the complaint hasn't been resolved, it 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 K 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 K 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 K's complaint.

Like the adjudicator, I think the gap of around 13 months between Mr K's first loan with Cashfloat in November 2017 and the next loan he applied for was long enough for Cashfloat reasonably to think that Mr K had been able to put his finances in order as it didn't look like he had been dependent on high cost short term loans during this period.

This meant that when his borrowing started again, and Mr K applied for a loan in December 2018, he was effectively starting over. So I think it was fair for Cashfloat to treat this as a new 'chain' of borrowing and assess his lending requests accordingly.

I've taken into account what Cashfloat says about the other gaps in lending. But I don't agree with Cashfloat when it says that the gap after loan 3 was sufficient to say this broke the lending chain.

I accept that in *some* circumstances it might be fair to say a gap of over 4 months could be long enough to suggest that it would be fair to treat the borrower's next loan application as if he was starting afresh. But I don't think that's a reasonable assumption here.

I say this because Mr K had been paying Cashfloat loans more or less continuously from mid-December 2018 until the end of April 2019 – and the loan amounts borrowed had been steadily increasing – along with the loan terms. When he applied for loan 4, this was for the same amount as his last loan – which had been the largest loan taken to date. I think it was also significant that he extended the loan term by a month – most likely to reduce the size of the monthly repayments he was signing up to, even though this added potentially to the overall loan cost. And by now he was borrowing (for the second time) a loan that was 50% more than the amount he had first borrowed from Cashfloat some 22 months earlier.

So, overall, I don't think this gap in lending was enough to suggest that Mr K's financial circumstances had improved during the period when he hadn't been actively borrowing from Cashfloat.

Cashfloat told us about the checks it did before lending to Mr K. 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 K's credit file.

It looks like our adjudicator didn't think he had enough evidence to say any of the loans Mr K had taken out prior to loan 4 in chain two shouldn't have been provided. I've looked at the information Cashfloat gathered in advance of providing all these earlier loans, including income and expenditure information from the time, and I don't think that I've seen enough to say Cashfloat shouldn't have provided these loans to Mr K. As far as I can see, Mr K appears to be happy with what our adjudicator said in his view, 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 K – or any of the loans that followed. Here's why I say this.

Based on what Mr K had told Cashfloat about his living arrangements and his financial situation, Cashfloat understood that he had ample disposable income each month and only limited responsibility for usual household costs. So, given Mr K's apparent ongoing and increasing need for expensive credit, I think Cashfloat should by now have realised that Mr K's borrowing seemed to be at odds with what Mr K had told Cashfloat about his circumstances.

I think this information should've prompted Cashfloat to carry out more thorough checks into Mr K's financial situation before agreeing to lend. I think Cashfloat should have taken steps to verify what Mr K 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 K.

Mr K 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 useful insight into Mr K's finances at the time. And had Cashfloat looked in more depth at Mr K's finances it would likely have seen that he was facing serious problems managing his money.

I think it would have learnt that Mr K was regularly spending significant amounts on what appear to be gambling transactions and had it seen those transactions, that Cashfloat should have concluded it was unlikely that Mr K would be able to repay this loan in a sustainable manner. And I think that concern would've been borne out by what else more in-depth checks should have revealed – including information that showed Mr K was actively borrowing from other short-term loan providers and despite this he still needed to make full use of the £2,000 overdraft he had on his current account. This didn't however prevent Mr K also having some debit payments returned and I think Cashfloat would have found out that he was incurring additional bank charges on top of his arranged overdraft fees.

This means I don't think it was reasonable for Cashfloat to think that it was likely Mr K would be able sustainably to repay his borrowing – so it shouldn't have provided this loan or any of the loans that followed.

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

I think that this point was reached by loan 6. I say this because:

- this was Mr K's sixth consecutive loan with Cashfloat since he taken out loan 1 in chain two around fifteen months or so earlier– and there had been no significant breaks in lending

- whilst the loan amounts had been variable, by loan 6 it was evident that Mr K wasn't making any real inroads into the amount he owed. Loan 6 was the third time that Mr K had borrowed £750 – an amount equal to the largest loan amount he had taken - and I think a pattern of dependency was apparent in respect of his borrowing, especially as Cashfloat's own checks showed he was also still paying another short term loan

- at this point, Cashfloat ought to have known that Mr K was not likely borrowing to meet a temporary shortfall in income but to meet an ongoing need and that Mr K's indebtedness was increasing unsustainably.

I think that Mr K lost out when Cashfloat provided loan 6 because this loan had the effect of unfairly prolonging Mr K's indebtedness by allowing him to take expensive credit over an extended period of time.

In coming to my decision, I've taken into account that Mr K repaid some loans early – but this doesn't necessarily mean that he was able to do so in a way that was sustainable for him. And I've also thought carefully about what Cashfloat has said about declining some of his later loan applications as a precautionary measure – but this isn't enough to persuade me that the loans it did provide were sustainably affordable for Mr K.

For the reasons I've explained more fully above, I'm upholding the complaint about loans 4, 5 and 6 and Cashfloat should put things right.

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 K, 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 K 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 K 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 K 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 K towards interest, fees and charges on loans 4, 5 and 6 not including anything it has already refunded.

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

C. Pay Mr K the amounts calculated in "A" and "B".

D. Remove any adverse information Cashfloat has recorded on Mr K's credit file for loans 4 and 5. The pattern of lending by the point of loan 6 means any information recorded about this loan is adverse. So all entries about loan 6 should be removed from Mr K's credit file.

*HM Revenue & Customs requires Cashfloat to take off tax from this interest. Cashfloat must give Mr K a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr K's complaint about loans 4, 5 and 6.

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 K to accept or reject my decision before 31 August 2021.

Susan Webb
Ombudsman