

The complaint

Mr H complains Western Circle Ltd trading as Cashfloat (Cashfloat) didn't carry out sufficient affordability checks. Had it done so, then Mr H says Cashfloat wouldn't have provided him with these loans.

What happened

Our adjudicator partly upheld Mr H's complaint about loans 3 - 5. Cashfloat didn't agree with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision explaining the reasons why I was also intending to partially upholding Mr H's complaint about loans 4 and 5. A copy of the background to the complaint and my provisional findings follow this and form part of this final decision.

Both Cashfloat and Mr H were asked to provide any further evidence and or comments they wanted this service to consider before 10 September 2021.

What I said in my provisional decision:

Mr H took five loans between August 2019 and March 2020. I've included some of the information we've received about these loans in the table below.

| loan number | loan amount | received date | repayment date | number of payments | largest repayment |
|--------------------|--------------------|----------------------|-----------------------|---------------------------|--------------------------|
| 1 | £300.00 | 07/08/2019 | 24/08/2019 | 3 | £136.82 |
| 2 | £500.00 | 28/08/2019 | 23/10/2019 | 2 | £334.35 |
| 3 | £600.00 | 25/10/2019 | 03/12/2019 | 3 | £295.29 |
| 4 | £500.00 | 12/12/2019 | 23/03/2020 | 4 | £246.29 |
| 5 | £500.00 | 26/03/2020 | 23/04/2020 | 3 | £243.43 |

Our adjudicator didn't think it was wrong for Cashfloat to have granted loans 1 and 2. But the adjudicator thought that loans 3 - 5 shouldn't have been lent. He said the pattern of lending ought to have prompted Cashfloat to carry out further checks, which would've shown it that Mr H couldn't afford these loans.

Mr H appears to have accepted the adjudicator's findings.

Cashfloat disagreed with the adjudicator's assessment about loans 3 - 5. In summary, it said;

- *Mr H didn't have any problems repaying his loans*
- *the monthly repayments due for loans 3 – 5 decreased with each loan*
- *Mr H had sufficient disposable income to afford the repayments he was due to make*
- *it wouldn't be proportionate to have asked for bank statements given it was early on in the lending relationship and*

- a member of staff spoke to Mr H before loan 5 was granted to understand why he was taking the loan.

As no agreement has been reached, the case has been passed to me for a 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 the relevant rules, guidance and good industry practice - on our website.

Cashfloat had to assess the lending to check if Mr H could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Cashfloat's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr H's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Cashfloat should have done more to establish that any lending was sustainable for Mr H. These factors include:

- Mr H 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 particular level of income);
- Mr H having a large number of 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);
- Mr H 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 for Mr H.

Cashfloat was required to establish whether Mr H could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr H was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

The Financial Conduct Authority's (the industry regulatory) in the Consumer Credit Sourcebook ("CONC") states payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr H's complaint.

Mr H doesn't appear to disagree with our adjudicator's findings that Cashfloat wasn't wrong to lend loans 1 and 2. So, it seems this lending isn't in dispute and so I no longer think that I need to make a finding about it. But, for completeness, I don't disagree with the findings that

the adjudicator reached in relation to these loans.

But I have kept these loans in mind when thinking about the overall lending relationship between Cashfloat and Mr H. Instead, this decision will focus on whether Cashfloat did anything wrong when it granted loans 3 - 5.

Loan 3

As the adjudicator has pointed out, in their view, there was now a pattern of Mr H taking new loans close to when a previous loan had been repaid. This, they thought, ought to have led Cashfloat to carry out further checks which would've shown it that Mr H couldn't afford to take on this loan, or any of the later loans.

I've considered what the adjudicator said, as well as the comments by Cashfloat, but I don't agree a pattern had been formed by this loan and based on what I've seen I'm not intending to uphold it.

Overall, I don't think the loan activity was quite enough to suggest Mr H had become reliant on the loans and therefore further checks were needed. Afterall, this was only the second time a loan had been taken out quickly after a previous loan had been repaid, so while a pattern was starting to emerge, I don't think, at this point it was well established. While, this was Mr H's largest capital loan, given the term, Mr H's contractual monthly repayments had actually decreased compared to the previous loan.

For this loan, based on what I've seen I think Cashfloat carried out proportionate checks. Mr H declared he had a monthly income of £2,274 with monthly outgoings of £425. These outgoings seemed reasonable given what Mr H declared to Cashfloat about his living arrangements.

Given it was still quite early on in the lending relationship, I think it was reasonable for Cashfloat to have relied on the information Mr H provided and the income and expenditure figures show that Mr H had sufficient disposable income to afford the repayments he was committed to making. So, as it stands, I'm intending to not uphold Mr H's complaint about this loan.

Loans 4 and 5

Mr H borrowed a smaller sum for loan 4 compared to loan 3. But again, he returned for a loan fairly quickly after repaying his third loan. This was now the third time that Mr H had returned for further borrowing, so it could've been a sign that he was having wider financial difficulties, or at least an ongoing need for funds.

For loan 4, Mr H declared he had an income of £2,300 per month and monthly outgoings to £420. So again, if Cashfloat relied on the information Mr H provided then it would've thought he had more than enough disposable income to be able to afford the repayments he was committed to making.

But, for this loan Cashfloat carried out a credit search and I think, there were signs that Mr H's financial position was deteriorating. When he started borrowing from Cashfloat, the credit checks showed that he had fairly low levels of debt and a small number of outstanding loans. But by loan 4, his financial position had fundamentally changed.

But loan 4, Cashfloat was aware of the following;

- *Mr H was using 102% of his available credit, indicating he was above a credit limit on account(s)*
- *The number of active accounts had increased from 4 to 9*
- *Mr H had been on average opening 2 new credit accounts a month in the last six months*
- *There was 1 delinquent account within the last 12 months*
- *7 credit searches in the last three months.*

So, I think the information Cashfloat had from the credit check results, indicated to it that Mr H was seeking and was being granted credit at a fairly high rate of two accounts per month over the last six months. The results, of the credit checks, in my view ought to have prompted Cashfloat to have carried out furthermore in-depth checks such as verifying the information Mr H had provided.

Cashfloat could've gone about doing this a number of ways. It could've asked to see copies of Mr H's bank statements (as I've done here) or it could've asked to see copies of wage slips and evidence of his outgoings such as copies of bills.

Having looked at Mr H's bank statement from the time this loan was approved, I don't think he could afford to take on this loan. Firstly, Mr H appears to be making repayments to at least three other payday loans companies, these payments needed to be considered and it looks like the payments for these was around £700 a month. And in the month before he had repaid over £900 to such lenders. So, its arguable whether given this high amount of outstanding short-term loans whether further loans ought to have been granted.

But, in addition to this Mr H is spending significant amounts on betting and gambling websites, in the month before, he spent more than his income on such websites, and then in the month the loan was approved, he again spent more than his income on gambling. And on top of this Mr H still had his other credit commitments and living costs that needed to be paid. So, in my view proportionate checks would've shown Cashfloat that Mr H couldn't afford to take on any further lending.

I still think Cashfloat ought to have been verifying Mr H's information by the time loan five was granted, and had it done so it would've seen a broadly similar financial position compared to loan 4. So, the only conclusion I can draw from this is that Mr H would've been unable to afford the repayments he was due to make towards loans 4 and 5.

Overall, I'm intending to uphold Mr H's complaint in part because I don't think Cashfloat should've granted loans 4 and 5.

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.

Mr H has confirmed that he has received the provisional decision and accepted the outcome that I was intending to reach.

Cashfloat hasn't responded and therefore hasn't provided any further comments or evidence for me to consider.

Therefore, based on what I've seen and what I said in the provisional decision, I still think Cashfloat was wrong to have provided Mr H with loans 4 and 5 because it had information

from the credit checks which showed it was unlikely he would be in a position to afford the repayments he was committed to making.

I've outlined below what Cashfloat needs to do to 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 had it stopped lending to Mr H from loan 4, 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 H 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 H 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 H 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 H loans 4 and 5 and I've set out below what I'm intending to ask Cashfloat to do to put things right.

- a) Cashfloat should add together the total of the repayments made by Mr H towards interest, fees and charges on these loans.
- b) Cashfloat should calculate 8% simple interest* on the individual payments made by Mr H which were considered as part of "A", calculated from the date Mr H originally made the payments, to the date the complaint is settled.
- c) Cashfloat should pay Mr H the total of "A" plus "B".
- d) Cashfloat should remove any adverse information it has recorded on Mr H's credit file in relation to loans 4 and 5.

*HM Revenue & Customs requires Cashfloat to deduct tax from this interest. Cashfloat should give Mr H a certificate showing how much tax it deducted, if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision, I'm upholding Mr H's complaint in part.

Western Circle Ltd trading as Cashfloat should put things right for Mr H as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 October 2021.

Robert Walker
Ombudsman