

The complaint

Mr E initially complained about Western Circle Ltd trading as Cashfloat (Cashfloat) because he was unhappy his loan application was declined in November 2020. Mr E also raised other concerns around how his data was handled and how Cashfloat had treated him.

Mr E also complained that Cashfloat had been irresponsible in providing him with previous loans and he says he became reliant on this lending.

What happened

Mr E was approved for six loans between February 2018 and March 2020. I've included some of the information we've received about these loans in the table below.

loan number	loan amount	agreement date	repayment date	term (months)	largest monthly repayment
1	£500.00	16/02/2018	26/06/2018	4	£211.80
2	£200.00	11/10/2018	26/10/2018	1	£224.00
3	£500.00	10/11/2018	25/03/2019	4	£216.78
4	£700.00	31/03/2019	25/07/2019	4	£273.44
5	£700.00	20/09/2019	24/01/2020	4	£291.07
6	£400.00	21/03/2020	30/04/2020	3	£200.78

Mr E applied for, and was then declined for a loan in November 2020, and this is when Mr E raised his complaint about Cashfloat's decision not to lend to him. As part of this complaint, Mr E was also unhappy with the following – which is taken from one of Mr E's emails:

1. *Inconsistency of Underwriting*
2. *Prior lending causing me financial hardship and pressuring repayments.*
3. *Breach of loan Contract entered into on Saturday then not honoured despite acceptance.*
4. *Accessing my bank account.*
5. *Defamation*
6. *Breach of Equalities (sic) Act 2010*
7. *Ignoring DMHEF*
8. *Refusing to provide SAR in print.*
9. *CEO failing to acknowledge any of my correspondence despite repeated requests to.*
10. *Refusing to follow FCA rules on TCF.*

The adjudicator reviewed Mr E's complaint, and the assessment was split into two parts. In the first part he dealt with the complaint about unaffordable lending.

He concluded that loans 1 – 4 should not be upheld but loans 5 and 6 should be. The adjudicator explained that by loan 5, Cashfloat had evidence to show that Mr E was having problems managing his money.

The adjudicator used the information Cashfloat gathered when it declined the November 2020 loan, to show that in the period of time leading up to loan 5 being granted two County Court Judgements (CCJ) were recorded on Mr E's credit file as well as one other account being recorded as being in default. So, the adjudicator thought that Mr E would likely have problems repaying these loans.

The adjudicator then addressed Mr E's concerns around the declined loans applications in November 2020. He provided a detailed timeline of what happened from the time that Mr E applied for the loan and he covered off what evidence both Mr E and Cashfloat had provided. He also covered off each of Mr E's concerns (listed 1 – 10 above) – both parties have seen these, so I don't intend to repeat the response to each point here.

The adjudicator didn't uphold Mr E's complaint about the declined loan application. He said, that Mr E may have expected the loan to have been approved, given his recent history, and there would've been a number of factors that led to the loan being declined. He accepted that the process could've been clearer about what was happening with the loan application, however he concluded that this was all done fairly quickly. Overall, he couldn't say it was wrong of Cashfloat to decline the loan.

Mr E confirmed receipt of the assessment and he didn't provide any further comments. It is therefore reasonable to say that Mr E agreed with the findings that the adjudicator had reached.

Cashfloat disagreed with the adjudicator's assessment about loans 5 - 6. In summary, it said:

- Mr E had a higher than average salary which left him with a sufficient amount of disposable income to be able to afford the repayments he was committed to making;
- for the sixth loan, further checks were carried out and Cashfloat asked to see a copy of his wage slip;
- there were breaks between some of the loans, and his final loan was £300 smaller than the fifth loan and
- given Mr E only borrowed over a short period of time and he had an above average income there seemed little chance that these loans would cause harm.

The adjudicator went back to Cashfloat to explain why its comments hadn't changed his mind. He reiterated, that in the months leading up to loan five, two CCJs totalling nearly £7,000 had been recorded on his credit file and there was also a recent default. And while a wage slip may have been taken, that wouldn't have given Cashfloat a full picture of Mr E's expenditure.

As no agreement has been reached, the case has been passed to me for a final decision.

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 the relevant rules, guidance and good industry practice - on our website.

Cashfloat had to assess the lending to check if Mr E 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 E'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 E. These factors include:

- Mr E 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 E 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 E 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 E.

Cashfloat was required to establish whether Mr E 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 E 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 E's complaint.

Mr E doesn't appear to disagree with the adjudicator's findings that Cashfloat wasn't wrong to lend loans 1 - 4. So, it seems this lending isn't in dispute and so I no longer think that I need to make a decision about it. But, for completeness, I don't disagree with the findings that the adjudicator reached in relation to these loans.

Loans 5 and 6

When loan five was approved, Cashfloat asked Mr E about his income and expenditure, he declared he had an income of £5,000 and monthly outgoings of £2,519. So, it may have been reasonable for Cashfloat to have believed, based on this information that he would've been able to afford the monthly commitment for this loan of around £292.

Cashfloat has told us that each loan application goes through various stages of checking, the final stage appears to include using credit reference agencies to check the information Mr E had provided about his credit commitments. But, Cashfloat also says it;

“... also carry out a comprehensive credit check, to see if there are any negative markers such as recent defaults or IVAs/CCJS.”

I think it is fair to say, that Cashfloat would've had a fairly good idea of Mr E's outgoings and what information would've been contained within the credit report. Cashfloat has told us it doesn't have a copy of the credit report results it received when this loan was approved.

But, Cashfloat has given to the Financial Ombudsman a copy of the report that was generated when Mr E made an unsuccessful application for credit in November 2020. And this report, that was generated in November would've contained information that would've likely been visible to it at the time of this loan application in September 2019 (loan five).

Looking at the November 2020 report there was some concerning information, Cashfloat ought to have been aware that Mr E had one CCJ reported within eight weeks of this loan being approved, and another one around six months before loan five was advanced.

This is significant adverse data, and it shows that not only had Mr E had some recent difficulties that led to the accounts being defaulted, but those lenders then took the decision to pursue this debt through the courts.

In additional two accounts termed as '*Finance House*' were significantly in arrears, and were likely to be defaulted in the coming months – which is what happened, and I've gone into more detail about these account below, when discussing loan six.

So, the credit searches would've given Cashfloat an overview of a customer who was in current financial difficulties and who was already struggling to maintain his credit commitments that he had with other creditors. So, I don't see how advancing further funds could've been sustainable for Mr E.

Loan six was approved in March 2020, and Mr E's credit file was still showing similar signs of financial distress. Since loan five, two further accounts termed as '*Finance House*' had defaulted at the end of September and October 2019. And the CCJs were still active, so I don't think, by March 2020 that Mr E's financial position had improved, indeed with the further defaults you can reasonably conclude that his financial position was deteriorating.

While for the sixth loan Cashfloat may have looked at Mr E's wage-slip, which may have showed his income, it doesn't provide an overall view of his financial situation. The credit report I've seen, is quite clear that Mr E had in the past, and was having now, quite significant financial difficulties. For the same reasons as loan five, I don't think this loan should've been granted either.

I've taken on board what Cashfloat says about there being gaps between some of the loans and I agree with it – and it's quite right to point out that loan six was for a smaller sum compared to loan five, but this doesn't change my mind on the outcome of the complaint.

The reason why the complaint about these loans is being upheld is because it's likely, that the credit checks that Cashfloat says it does for each loan would've showed it that he was having problems managing his money. The gaps and decreasing amount, don't negate Cashfloat's obligation to react to the information that it was likely provided with.

And as the complaint hasn't been upheld due to the pattern of lending, then these gaps aren't linked to the reasons why these two loans have been upheld.

And for the same reasons as the gap, while Mr E may earn an above average income that doesn't mean these loans were affordable or could be repaid sustainably, this is especially

true given what Cashfloat ought to have been aware of the CCJ'S and recently defaulted accounts.

I've outlined below, towards the end of this decision what Cashfloat will need to do in order to put things right for Mr E.

Declined loan

I can see from the information and evidence provided by Mr E that he was unhappy and frustrated as to why his loan application was declined in November 2020. The adjudicator who reviewed the complaint didn't think, given what he had seen that he could uphold this part of Mr E's complaint.

Mr E agreed with the adjudicator's assessment, and no further comments were provided. So I would infer from this that this was happy with the assessment. Indeed, the adjudicator did answer all of Mr E's points about why he was unhappy with the conduct of Cashfloat.

So it seems this element of Mr E's complaint is no longer dispute, what I would say and which is in line with what the adjudicator said, I can understand why Mr E may have felt the loan was initially approved, given he'd signed an agreement. But this was followed up fairly quickly with an email letting him know the underwriters were going to be considering his application.

Ultimately, Cashfloat has said that the loan didn't meet its lending criteria, and so it was under no obligation to lend to Mr E. I can see that Mr E has spent time and has put together a lot of information as to why he feels Cashfloat made a mistake when it declined the loan. But like the adjudicator, I don't think this is the case so I'm not going to be upholding this part of Mr E's complaint.

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 E from loan 5, 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 E 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 E 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 E 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 E loans 5 and 6 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 E towards interest, fees and charges on these loans.
- B. Cashfloat should calculate 8% simple interest* on the individual payments made by Mr E which were considered as part of "A", calculated from the date Mr E originally made the payments, to the date the complaint is settled.
- C. Cashfloat should pay Mr E the total of "A" plus "B".
- D. Cashfloat should remove any adverse information it has recorded on Mr E's credit file in relation to loans 5 and 6.

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

My final decision

For the reasons I've explained above, I'm upholding Mr E's complaint in part.

Western Circle Ltd trading as Cashfloat should put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 March 2022.

Robert Walker
Ombudsman