

The complaint

Mr B says Western Circle Ltd, trading as Cashfloat, lent to him irresponsibly.

What happened

Mr B took out four instalment loans from Cashfloat. A summary of his borrowing follows.

loan	taken out	repaid	value	term in months	highest monthly repayment
1	28/08/2018	09/10/2018	£500	3	£252.11
2	11/10/2018	25/10/2018	£550	3	£256.17
3	02/11/2018	03/01/2019	£700	4	£279.53
4	15/01/2019	19/01/2019	£400	2	£247.11

Mr B says he should never have been given these unaffordable loans. Repaying them has caused problems as he had to borrow more money.

Our adjudicator did not uphold Mr B's complaint. She said the lender's checks were proportionate and did not reveal anything that ought to have prompted further reviews, or have led to different lending decisions.

Mr B disagreed. In summary, he asked when would further checks be appropriate – he had defaults on his credit file; he took out new higher-value loans days after repaying previous loans; he was gambling; his credit cards were maxed out and he only ever made minimum repayments.

He asked for an ombudsman to review the complaint and so it was passed to me. I reached a different conclusion to the adjudicator, so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send in any comments by 14 April 2022.

Extract from my provisional decision

In the early stages of a lending relationship less thorough checks might be reasonable and proportionate. However, in line with the relevant regulations, we expect a lender to have proper regard for any information it gathers from the checks it decides to do. And this is why my findings differ from the adjudicator's.

Cashfloat says it asked Mr B for information about his income and expenditure when he applied for the loans. It checked his declared income using an external income verification service. It validated his declared expenses against national statistics, using the higher value of the two. It also carried out a credit check each time to understand his credit history and existing commitments. From these checks combined it calculated Mr B's monthly disposable income to be in excess of £1,400 on each occasion which showed the loans were affordable for Mr B.

I think the initial checks Cashfloat carried out were proportionate. But I'm not persuaded that it had proper regard for the information it gathered. I'll explain why.

Loan 1

Whilst the credit check Cashfloat carried out did not show Mr B to be heavily indebted (it reported he had seven active accounts with a total debt of £941) and there were no defaults registered in the last 12 months, I think there were entries that ought to have triggered a fuller financial review.

The check showed Mr B had only six months before been reliant on payday loans for an 18-month period. He had taken out 19 short-term high-cost loans suggesting he had most likely been trapped in a debt cycle and was borrowing to repay. Given the recency of this financial instability, and the fact Mr B was looking to borrow £500 when Cashfloat had calculated that he had over £1,400 of disposable income each month, I think the lender needed to do further checks to get the assurances it needed that Mr B's finances were not under excessive pressure.

I've looked at copies of Mr B's bank statements in the months before the loan. I am not saying Cashfloat had to do exactly this but it's a way for me to understand what further checks would most likely have shown. I can see that Mr B was spending a significant amount on gambling – in excess of his monthly income for the two months before he applied. So I think that Cashfloat, as a responsible lender, would have concluded Mr B was having problems managing his money and wouldn't have thought it likely Mr B would repay his loan sustainably.

It follows I think Cashfloat was wrong to give loan 1 to Mr B. And given the reason for this I think it was wrong to approve all subsequent applications based on their proximity to loan 1. It needed to stop lending to Mr B, at least until it had evidence that Mr B's finances had stabilised.

I then set out what Cashfloat would need to do if I went on to uphold Mr B's complaint.

Mr B responded to my provisional decision saying he had nothing further to add.

Cashfloat disagreed with my provisional findings and outcome. It said, in summary, it agreed with the adjudicator's earlier assessment that the checks were proportionate given the age of the lending relationship and the loan values. It asked how I could reach a different conclusion when we are all working to the same Financial Conduct Authority (FCA) rules. It argued that as its checks showed an adequate amount of positive information it would have been unreasonable to ask for additional information. It said if Mr B's finances were under excessive pressure there would have been more telling signs on his credit file.

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. I've followed it here.

I've carefully considered Cashfloat's response to my provisional decision, but its comments do not change my conclusion. I'll explain why.

The lender argues its checks were proportionate and the results provided enough positive information for it to conclude that asking for additional information would be unreasonable. I disagree. Cashfloat points out – and I acknowledged this in my provisional decision – that the credit check at the time of loan 1 showed Mr B wasn't heavily indebted and there were no recent defaults. It also highlights he wasn't overdrawn and had available credit on his cards. I accept this, but it doesn't negate the more concerning information on his credit file.

It showed Mr B had only six months before been reliant on payday loans for an 18-month period. He had taken out 19 short-term high-cost loans. As I've said there was also the fact that Mr B was looking to borrow £500 when Cashfloat had calculated that he had over £1,400 of disposable income each month. So I remain of the view a fuller financial review was needed.

Cashfloat argues that if Mr B's finances were under excessive pressure this would have been reflected on his credit check. But this wasn't the case in his individual circumstances. As I've set out above further checks would have showed significant financial instability because Mr B was gambling heavily.

Given Cashfloat would most likely have learnt this had it carried out proportionate checks, it follows I find it was wrong to have given any further loans unless it knew Mr B's finances had stabilised. It has not evidenced it carried out proportionate checks to know this for loans 2 to 4. It argues that the results of the credit check for loan 4 show Mr B was managing his money responsibly but, for the same reason I found this to an inaccurate conclusion at the time of loan 1, I don't think it can fairly argue it knew the loans to be affordable without having checked his finances in more detail to understand whether or not he was still gambling heavily.

The lender also asked how I could reach a different conclusion when we are all working to the same Financial Conduct Authority (FCA) rules. But as it knows the FCA doesn't set out the exact checks a lender must carry out, rather it sets out a framework to follow. But it is clear that a lender must have due regard for all information it gathers. And I think in this case Cashfloat failed to react to indications that Mr B's finances might be under duress and therefore carry out further checks – which would have most likely showed he was struggling financially.

It follows I find Cashfloat was wrong to lend to Mr B.

Putting things right - what Cashfloat needs to do

- refund all interest and charges Mr B paid on his loans;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†;
- remove any negative information about the loans from Mr M's credit file.

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

My final decision

I am upholding Mr B's complaint. Western Circle Ltd, trading as Cashfloat, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 May 2022.

Rebecca Connelley
Ombudsman