

The complaint

Mr F complained that Western Circle Ltd (trading as 'Cashfloat') irresponsibly provided him with an unaffordable loan when he already had multiple other short-term loans outstanding.

What happened

Mr F took out a Cashfloat loan as follows:

Loan	Date Taken	Date Repaid	Instalments	Loan Amount	Highest Monthly Repayment
1	18/10/2019	13/12/2019	3	£300	£158.17

When Mr F complained to Cashfloat it didn't uphold his complaint so Mr F brought his complaint to us. One of our adjudicators reviewed what Mr F and Cashfloat told us about this loan and didn't feel this was a complaint we should uphold.

Mr F disagreed and asked for an ombudsman to look at his complaint. He mainly said that Cashfloat should have noticed that he had numerous active short-term loans reported on his credit file at the time.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"Cashfloat provided Mr F with a high-interest loan intended for short-term use so it needed to make sure that it didn't provide the loan irresponsibly. In practice, this means that it should have carried out proportionate checks to make sure Mr F could repay the loan 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 Mr F'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).*

Cashfloat was required to establish whether Mr F could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. 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. The lender had to think about the risk of adverse consequences or financial difficulty for the borrower – not just the risk to the lender.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr F's complaint.

Cashfloat says it agreed to Mr F's application after carrying out all the proper checks. It told us it relied on information Mr F provided about his monthly income (which it took steps to verify) and his expenditure as well as information obtained from a credit reference agency – which it has sent me.

Looking at the information Cashfloat had gathered before agreeing this loan, I think it's fair to say that Cashfloat could see that Mr F had a long established record of taking out short term loans and its credit checks showed that Mr F had at least six other short term or unsecured high cost loans outstanding when he applied to borrow this loan from Cashfloat – all taken out within the previous three months or so. I think the information Cashfloat saw should've made Cashfloat realise that it looked like Mr F was having serious problems managing his money. And I think that concern is supported by other information it saw showing that Mr F had recently gone over the credit limit on a second credit card – he'd been over the account limit on another credit card for the last six months.

I'm not suggesting that having other outstanding credit is necessarily a bar to taking out a loan. And I appreciate that it isn't unusual for borrowers of this type of loan to have other credit on their record and sometimes an impaired credit history. But I think Cashfloat should've realised that having multiple other short term loans outstanding when he applied for this loan, along with the other indications that he was having trouble managing his money, suggested that Mr F was in financial difficulty and he had become over-reliant on using this sort of borrowing to supplement his income. It could also have seen that the cost of Mr F's existing credit commitments was already around half his take home pay – which suggested his borrowing had gone beyond a sustainable level.

Despite what its affordability assessment appeared to show, I think it was apparent that the information evident in the credit checks Cashfloat obtained contradicted what Mr F had told the lender so it should've been clear to Cashfloat that it couldn't rely on its affordability assessment. And overall, even though this was a relatively small loan, I still don't think it was reasonable for Cashfloat to conclude that it was likely that Mr F would be able to pay this loan sustainably.

The fact that Mr F repaid the loan doesn't mean he was able to do so in a sustainable way.

For the reasons I've explained, I don't think Cashfloat should've granted this loan to Mr F and so, as things stand, I'm planning on upholding his complaint.

I haven't seen enough to make me think that Cashfloat acted towards Mr F in any other way that wasn't fair and reasonable. So I'm not planning to award any additional redress. But I'm planning to tell Cashfloat it needs to take steps to put things right."

What the parties said in response to my provisional decision

Mr F accepted what I'd said in my provisional decision and had nothing further to add.

Cashfloat disagreed with the conclusions I'd drawn from looking at Mr F's credit history and summarised its position as follows:

"Mr F has received one small loan from Cashfloat and had no other advance against income loans listed as open on his credit file. His credit file displayed no late payment markers throughout the history of the report and his total indebtedness was significantly lower than average. We believe Cashfloat has lent responsibly to Mr F and have followed both the rules of the FCA and also those of previous FOS decisions."

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 taken this into account in deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and Cashfloat for the detailed consideration it has given to its response to my provisional decision.

I'd like to assure Cashfloat that I've thought carefully about everything again before coming to my final decision. And whilst I am addressing what seem to me to be the main points of concern they've raised, I have read thoroughly and taken into account everything they have asked me to reconsider.

The fact that Mr F had no other short-term loans open on his credit file and there were no late payment markers doesn't mean he was on top of his financial situation.

I'm grateful to Cashfloat for drawing my attention to the fact that it was apparent that Mr F had at least four unsecured loans open when he applied for this loan – not six as mentioned in my provisional decision. I apologise for that error but it doesn't affect my overall view. Cashfloat was able to see that during the three months running up to him applying for this loan Mr F had taken out five other unsecured loans – he'd repaid one of those shortly before applying for this loan but the four loans still outstanding were costing him £596 each month. That figure alone amounted to more than a quarter of his take home pay and this didn't include Mr F's contractual monthly repayments to his credit cards – both over limit and maxed out throughout the 8 months period Cashfloat saw reported on in its credit checks.

I think that with this level of spending on credit, together with the pattern of lending and Mr F's use of credit cards, it should've been apparent to Cashfloat that he had become over-reliant on expensive credit and it was evident that he was in financial difficulty.

With the loan Cashfloat provided, this boosted his monthly credit spending to more than a third of his net pay. I think that this was such a significant proportion of Mr F's monthly income Cashfloat couldn't reasonably say that it was likely that he would be able to meet his debt servicing costs in a sustainable way and its loan would be detrimental to Mr F's financial situation as it would add unsustainably to his total debt burden.

For these reasons, it's still my view that, in this particular instance, Cashfloat provided this loan irresponsibly when it was unaffordable for Mr F.

I appreciate that Cashfloat takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

Our normal approach to redress is intended to put Mr F, as far as possible, in the position he would've been in had he not taken the loan. But the money has been spent. So I think it is fair and reasonable for Mr F to repay the capital amount that he borrowed, because he had the benefit of that lending.

But he has had to pay interest on a loan that shouldn't have been provided to him.

So I think it is fair and reasonable for Cashfloat to refund everything Mr F has paid over and above the capital amount that he borrowed, with interest.

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 F, 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 F may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 F 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 F 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.

Cashfloat should:

- A. Add together the total of the repayments made by Mr F towards interest, fees and charges on this loan, not including anything it has already refunded.
- B. Calculate 8% simple interest* on the individual payments made by Mr F which were considered as part of "A", calculated from the date Mr F originally made the payments, to the date the complaint is settled.
- C. Pay Mr F the amounts calculated in "A" and "B".
- D. Whilst it's fair that Mr F's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So Cashfloat should remove any negative information recorded on Mr F's credit file regarding the loan.

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

My final decision

I uphold Mr F's complaint and Western Circle Ltd trading as Cashfloat should take the steps set out to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 April 2022.

Susan Webb
Ombudsman