

The complaint

Mr H complains through a representative that Western Circle Ltd trading as Cashfloat (Cashfloat) didn't carry out sufficient affordability checks before it granted loans which he couldn't afford to repay.

What happened

Mr H took five loans from Cashfloat and a summary of his borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£200.00	30/03/2019	24/04/2019	2	£126.49
2	£200.00	07/06/2019	08/07/2019	1	£233.60
3	£200.00	27/08/2019	01/11/2019	2	£142.41
4	£400.00	01/11/2019	04/02/2020	4	£144.44
gap in lending					
5	£300.00	16/05/2022	outstanding	3	£162.95

Cashfloat wrote to Mr H's representative with a final response letter and explained why it didn't consider an error had been made when providing these loans. However, as a gesture of goodwill Cashfloat offered to reduce Mr H's debt by £111.25. Unhappy with this offer, Mr H's representative referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator and in her latest assessment she concluded Cashfloat made a reasonable decision to provide loans 1 – 3 and loan 5. But for loan 4, she thought further checks were needed considering his borrowing history and the fact this loan was twice as much as the previous ones. Further checks would've highlighted that Mr H's monthly expenditure exceeded his income. The complaint was upheld about loan 4 only.

Cashfloat didn't agree with the outcome about loan 4, and I've summarised its response below:

- There had been some previous breaks in borrowing suggesting he wasn't caught in a cycle of debt.
- Cashfloat knew that Mr H lived at home with parents and so his low living costs didn't seem out of place.
- Proportionate checks were carried out which suggested a disposable income of £412 per month.
- While Mr H did borrow £400 he actually requested a loan of £500 and his loan repayments were at a similar monthly amount compared to loan 3.
- Loan 4 was repaid early.

Mr H's representative confirmed that he accepted the outcome.

As no agreement has been reached, the case has been passed to me for a decision. After the case was passed to me, I asked for some further information from both parties. Firstly, to clarify the redress the adjudicator recommended and secondly, Cashfloat confirmed the offer it made in the final response letter has been withdrawn.

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 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. The adjudicator didn't think this applied to Mr H's complaint.

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.

Industry regulations say that 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 accepted the outcome that had been reached by the adjudicator about loans 1 – 3 and loan 5. And Cashfloat also agreed with the outcome that had been reached about those loans. So, these loans no longer appear to be in dispute and I say no more about them.

Instead, this decision will focus on whether Cashfloat did anything wrong when loan 4 was granted.

Before the loan was approved, Cashfloat took details of Mr H's income and expenditure. Cashfloat recorded that Mr H worked full time and received a monthly salary of £1,000. Cashfloat says this figure was cross referenced with a third-party salary tool, and the results were positive, indicating Mr H's declared income was likely to be accurate.

Cashfloat also made enquiries about his living costs, which Mr H declared to be £320 per month. Cashfloat says that it was reasonable to rely on this lower figure because Mr H declared he lived at home with parents and had no dependants. Which I don't think was unreasonable.

It's worth saying here that Cashfloat says that in previous applications Mr H had declared larger monthly outgoings and thinking about those and what Cashfloat calls its "*trigger values*" that it calculated Mr H's outgoings to more likely be £588.72 per month. And Cashfloat says this left around £412 per month to cover the largest repayment due for this loan of around £144.

Before this loan was approved Cashfloat also likely carried out a credit search but the results of what it may or may not have seen for this loan haven't been provided due to only having access to the results for a period of 12 months.

However, in saying that, I do think the checks that Cashfloat checks needed to have gone further. This was Mr H's largest loan – he was borrowing double what he had previously taken, he was due to make repayments over the longest period of time – 4 months. And this loan was taken on the same day that loan 3 had been repaid. Added to which I consider that a salary of £1,000 a month to have been a modest one and so greater care was called for – even if Mr H was living at home with parents.

Given the factors I've mentioned above, I think Cashfloat needed to gain a full understanding of Mr H's actual financial position to ensure the loan was affordable and sustainable. This could've been done in several ways, such as asking for evidence of his outgoings, looking at bank statements and/or collecting any other documentation Cashfloat felt it needed to obtain to have satisfied itself the loan was affordable for Mr H.

As part of the information supplied to the Financial Ombudsman Mr H's representatives has provided copy bank statements. So given what I've said above I think it's entirely reasonable to review and see what the statements show.

From the statements it does seem that Mr H was already having problems managing his money. I say this because at the time loan 4 was granted, he was servicing at least 5 other payday loans which was costing him £758.21 per month. On top of this he was also using a flexible drawdown facility that was costing around £150 per month. So just on payday loans and the flexible facility, Mr H was due to pay out around £900 each month, before any living costs or his repayment to Cashfloat was accounted for. And his income did appear to be around £1,000 per month and therefore this loan was clearly unaffordable for him.

I am therefore upholding Mr H's complaint about the loan, and I've outlined below what Cashfloat needs to do to put things right for him.

Putting things right

In deciding what redress Cashfloat should fairly pay in this case I've thought about what might have happened had it not lent loan 4 to Mr H, 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 reconstruct now accurately. 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 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 loan 4.

- A. Cashfloat should add together the total of the repayments made by Mr H towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything Cashfloat have already refunded.
- 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 can use any refund due for loan 4, to offset the outstanding balance due for loan 5. If after doing this there is a surplus then this should be paid to Mr H.
- D. Cashfloat should remove any adverse information it has recorded on Mr H's credit file in relation to loan 4.

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

My final decision

For the reasons I've outlined above, I am upholding Mr H's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 August 2023.

Robert Walker
Ombudsman