

## **The complaint**

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

## **What happened**

Mr M took one loan from Cashfloat for £900 on 5 August 2022. Mr M was due to make six monthly repayments with his largest payment being £255.80. Mr M has had some difficulties repaying the loan and an outstanding balance remains.

Cashfloat wrote to Mr M with a final response letter in September 2022. Cashfloat didn't uphold the complaint because it said, in summary it had carried out proportionate checks which showed Mr M would be able to afford the loan repayments. Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who concluded Cashfloat made a reasonable decision to lend the loan because it carried out a proportionate check which showed Cashfloat that Mr M would be able to afford the largest repayment he was due to make.

Mr M didn't agree and I've read in full what Mr M says about his other lending and seen the copy of the credit files he has provided.

The adjudicator went back to Mr M and explained why his comments and additional information hadn't changed his mind. Mr M then explained that Cashfloat had carried out a credit search prior to the loan being advanced.

After Cashfloat confirmed a credit search was carried out, this still didn't change the adjudicator's mind and this was communicated to Mr M. In response, the following points were made:

- The wage slip Mr M gave Cashfloat as part of his application included a discretionary bonus.
- Had Cashfloat checked his credit file it would've seen the outstanding payday loans.
- Mr M's credit file shows, in June 2022 a loan being repaid and then immediately taking out a larger loan from another provider.

As no agreement was reached, the case was passed to me and I issued my provisional decision explaining the reasons why I was intending to uphold Mr M's complaint. Both parties were asked to provide anything further for consideration as soon as possible, but in any event no later than 17 July 2023.

Mr M let us know he was happy with the proposed outcome.

Cashfloat also emailed to let us know that it was going to accept the outcome. It helpfully provided a breakdown of the refund which it says is owed to Mr M.

After the redress is calculated Mr M is still likely to have an outstanding balance of £191.08 to pay. Cashfloat also confirmed it would be happy for this amount to be repaid through a repayment plan.

A copy of provisional findings follows this in smaller font and forms part of this final decision.

### **What I said in my provisional decision:**

*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 M could afford to pay back the amount 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 M'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 M. These factors include:*

- *Mr M 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 M 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 M 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 M. The adjudicator didn't think this applied to Mr M's complaint because only one loan was advanced.*

*Cashfloat was required to establish whether Mr M could sustainably repay the loan – 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 M was able to repay his loan 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 M's complaint.*

*Before the loan was approved, Cashfloat took details of Mr M's income and expenditure. Cashfloat recorded that Mr M worked full time and received a monthly salary of £2,350. But Cashfloat also took a copy of Mr M's July 2022 wage slip that showed he received an income of £2,505. But Mr M is correct in saying that this month he received a bonus – which increased his normal monthly salary.*

*Cashfloat says that this showed Mr M was in a steady job and therefore his income was*

unlikely to decrease in the coming months. However, it is clear, from the wage slip that this bonus wasn't guaranteed. And it does seem, that it is the amount of £2,350 that Cashfloat used for its affordability assessment – and I think that was reasonable.

Cashfloat also made enquiries about his living costs, which Mr M declared to be £1,880 per month. It's worth saying here that Cashfloat says that it added a 'buffer' of £200 to this total. And based on the income amount of £2,350 this left Mr M £270 in which to make his loan repayments of £255. While this appears to show the loan was affordable, given what else Cashfloat knew about Mr M's circumstances – Cashfloat was leaving in effect only £15 each month for six months. That isn't a lot.

Before this loan was approved Cashfloat also carried out a credit search and it has provided the results it received from the credit reference agency. It is worth saying here that although Cashfloat carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Cashfloat couldn't do is carry out a credit search and then not react to the information it received. Cashfloat was also entitled to rely on the results it was given as it didn't have anything to suggest the results were in anyway inaccurate.

Having reviewed the credit check results, I do think Cashfloat ought to have been concerned by the information that was provided. Firstly, Cashfloat was told that taking account of the rent that was being reported on the credit file, two mobile phone contracts and utilities (likely gas and electric) Mr M would need to pay £951 per month.

In addition, Mr M had a mail order account which was costing around £30 per month to service, and he had three credit cards. The total credit limit available to Mr M across the three cards was £1,900 and he was utilising £1,896 of this limit. And he had been at or near his limit on these cards for some months – which perhaps is an indicator that he wasn't making any headway into paying down his debt.

Cashfloat were also aware that Mr M had three bank loans and three loans issued by "Finance House". And these Finance House loans are likely to be home credit and / or payday loans taking account the term and monthly repayment. The total Mr M needed to pay each month to service these six loans comes to £667.

So just taking account of the information contained within the credit file results, Cashfloat already knew that Mr M was committing to spending £1,743 of his income each month. But this excludes costs for example on food, transport, other utilities, council tax, any other membership and or subscription costs that Mr M may have had and which were not visible on his bank statement.

Indeed, if you use his income, minus what is seen in the credit file and then from this take away the costs for transport and food as declared in his application form this left Mr M £327 a month before the loan repayment and after the loan repayment, he was left with £72. In which to cover any other costs – such as council tax. And, as part of the application process Mr M declared there was no other household income, and he was responsible for two dependants. In my view, this is extremely tight to be able to argue that the loan was affordable for Mr M.

So, while the above credit accounts appeared to be being repaid without any undue difficulty – as there were no adverse payment markers. Given the number of active loans Mr M had (as well as a history of taking other short-term loans) as well as the very tight affordability this ought to have led Cashfloat to consider whether it knew enough about his finances. Overall, given that Mr M was committed to paying at least £255 each month for the next six months I do think Cashfloat had to think carefully whether extending further credit was the right thing to do.

Given the factors I've mentioned above, I think Cashfloat needed to gain a full understanding of Mr M'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 in order to have satisfied itself the loan was affordable for Mr M. This might've helped verify information provided and revealed whether there was any other information that Cashfloat might've needed to consider about Mr M's financial position.*

*But this isn't the end of the matter, for me to be able to uphold this loan I must be satisfied that had Cashfloat carried out further checks it would've likely discovered that Mr M wasn't able to afford this loan. As part of the information supplied to the Finance Ombudsman Mr M 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.*

*On top of the loans that Cashfloat was told about in the credit report the bank statements also show payments for council tax, a Television licence and a water bill – these three alone – come to £256 per month. Which when added together with just the credit file commitments and the loan repayment this only left Mr M £96 each month to cover transport and food costs. Which Mr M had already declared cost him £280 per month – which I don't think is unreasonable. And so, based on this evidence the loan clearly wasn't affordable for Mr M.*

*Overall, I do think, Cashfloat was on notice that perhaps Mr M was already overextended, and so further checks would've highlighted that this loan was unaffordable for Mr M once all of his living costs were factored in.*

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

### **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.

Both parties have accepted the provisional decision and so I see no reason to depart from those findings. I still think Cashfloat shouldn't have granted the loan because the credit check results it was given indicated that Mr M may have been overindebted and so further checks ought to have been carried out. Had it done so, it would've discovered that Mr M couldn't afford his repayments.

I've outlined below what Cashfloat has agreed to do in order to put things right for Mr M.

### **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 to Mr M, 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 M may have simply left matters there, not attempting to obtain the funds from. 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 M 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 M 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 M the loan.

If Cashfloat has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Cashfloat can't buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Cashfloat should remove all interest, fees and charges from the balance on the loan, and treat any repayments made by Mr M as though they had been repayments of the principal of the loan. If this results in Mr M having made overpayments then Cashfloat should refund these overpayments with 8% simple interest\* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- B. However, if there is still an outstanding balance then Cashfloat should try to agree an affordable repayment plan with Mr M. But I would remind it of its obligation to treat Mr M fairly and with forbearance.
- C. Cashfloat should remove any adverse information recorded on Mr M's credit file in relation to the loan.

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

### **My final decision**

For the reasons I've explained above and in the provisional decision, I uphold Mr M's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 August 2023.

Robert Walker  
**Ombudsman**