

The complaint

Mr M has complained that Western Circle Ltd trading as Cashfloat (“Cashfloat”) didn’t carry out sufficient affordability checks before it granted loans to him. Mr M says, if Cashfloat had done better checks, it would’ve seen that he already had a significant amount of other debt.

In addition, Mr M was also unhappy with the service he received following his complaint, which included Cashfloat not responding to his emails.

What happened

A summary of Mr M’s borrowing can be found in the table below;

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£300.00	06/04/2023	15/05/2023	4	£131.60
2	£550.00	20/05/2023	outstanding	7	£162.95

Mr M has had some problems repaying his final loan and based on the most recent information, an outstanding balance remains due.

Cashfloat wrote to Mr M with a final response letter and explained why it didn’t consider an error had been made by providing these loans. Mr M initially went back to Cashfloat to explain why he disagreed with the findings it had made. He also reiterated why he preferred contact through email. Cashfloat again explained why it wasn’t going to uphold the complaint – but it said as Mr M had expressed a preference for email communication, it asked him to respond to the email with his proposal to repay what was owed.

Mr M then referred the complaint to the Financial Ombudsman where it was considered by an investigator. He didn’t uphold the complaint, because he thought Cashfloat had carried out sufficient checks before it lent to him.

Mr M didn’t agree with the assessment, and I’ve summarised his response below;

- Cashfloat carried out a credit search before it advanced the loans which would’ve shown it that he had a “*poor financial history*”. Mr M said he could provide a copy of his credit report.
- Mr M says he was granted two loans in “*quick succession*”.
- These short-term loans are a risk for people who are already in a poor financial position.
- No mention was made about the lack of response from Cashfloat to the emails that Mr M had sent and led to a late payment marker being applied.
- There was a discrepancy in the application in relation to his employment start date – although it was an inputting error, the error suggested he had an extra year’s worth of employment which was wrong.

The investigator went back to Mr M to say he'd considered what he provided but hadn't changed his mind about the outcome. The investigator then addressed the service Mr M had received when he approached them for help.

Mr M disagreed saying, the crux of his complaint was that Cashfloat didn't need to do any more thorough check into his background even though it undertook a complete credit search.

The complaint was then passed to me, and I issued a provisional decision explaining why, in further detail, I was intending to not uphold Mr M's complaint.

Both parties were asked for any further submissions as soon as possible, but in any event, no later than 7 February 2024. Cashfloat responded to say it accepted the findings in the provisional decision. We've not heard from Mr M.

A copy of the provisional findings follows 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 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 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 investigator didn't think this applied to Mr M's complaint and I would agree, as there were only two loans taken within a short period of time.

Cashfloat was required to establish whether Mr M 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 M was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

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 these loans were 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 £2,044 for both loans.

Cashfloat says his declared income was cross referenced with a third-party salary tool, and the results were positive, indicating a high degree of accuracy. It was therefore reasonable for Cashfloat to have relied on what Mr M declared and the results of its checks.

Mr M says that for loan 2, the employment start date was incorrect, which in effect gave him an additional year of service with his employer. I've looked at the information and I can see the discrepancy. However, I don't think that would've made any difference to Cashfloat's checks, and I say this because at this point in the lending relationship it was fair for it to have relied on what it was given – and even if it would've thought it needed to double check the employment start date that wouldn't have impacted on Cashfloat's decision to lend, because Mr M had declared for both loans the same income.

Cashfloat also made enquiries about his living costs, which Mr M declared to be £1,011 per month for loan 1 and £1,089 for loan 2. It's worth saying here that Cashfloat says that it assessed Mr M's monthly expenditure using what is calls "trigger values" – taken from a well-known debt charity and these values take account of an applicant's job, location, homeowner status, to name a few factors.

Having used these trigger values it estimated Mr M's monthly outgoings were at a maximum likely to be £1,274 and to that it added a further buffer of £300 – these were the figures used for Cashfloat's affordability assessment. Even using the larger monthly outgoings, along with the buffer, there was still sufficient disposable income for Mr M to be able to afford the repayments for both loans.

Mr M has suggested that these loans were taken out in quick succession, and I would agree to the extent that loan 2 was taken 5 days after he had repaid loan 1. But I disagree that ought to have prompted further checks. Mr M repaid loan 1 much more quickly than planned and he appeared to do so without any obvious problems – which Cashfloat could reasonably consider showing a good repayment history.

So, when he returned for a second loan, I don't think the quick uptake would've been of a concern for Cashfloat. I'm not persuaded at this moment in time that it would've been proportionate for it to conduct further checks. Perhaps, had Mr M taken further loans within a relatively short period of time that may have prompted Cashfloat to carry out further checks.

Before the loans were approved, Cashfloat also carried out a credit search and it has provided the Financial Ombudsman with a copy of the results it received from the credit reference agency for each loan. I want to add that, although Cashfloat carried out credit searches, there wasn'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 – if necessary.

Cashfloat was also entitled to rely on the information it was given by the credit reference agency. This does mean the information Cashfloat may receive could be different to what Mr M can see in his full credit report. In this complaint, I've looked at the results Cashfloat received from the credit reference agency to see whether there was anything contained within it, that would've either prompted Cashfloat to have carried out further checks or possibly have declined Mr M's application.

Having reviewed the credit checks for loan 1 I can see that Mr M had around £25,000 of debt – which isn't an insignificant amount of debt. But it has to be said that the majority of that debt relates to defaulted accounts.

I do accept that there were at least 6 accounts marked as being in default and this all happened between March 2019 and January 2020. So clearly, around this time Mr M did

experience financial difficulties because a number of creditors felt the appropriate course of action was to default his accounts.

But in my view, these defaults were recorded too long before either loan – more than three years. I don't think they gave Cashfloat much cause for concern. I also don't think it would be enough to say it is evidence of wider financial difficulties at the point when loan 1 was approved. Moreover, in the marketplace that Cashfloat operates in, it is unlikely that all applicants will have a perfect credit score or file. So, the sight of the defaults wouldn't in my mind have prompted further checks.

For loan 1, Cashfloat wasn't told of any active loan accounts, and it seemed that Mr M's debt was made up of the defaulted balances and then seven credit cards. All these were within the credit limits and while there were some cash advances – the most recent being in December 2022 that wouldn't have been enough to suggest there were financial difficulties, when there was no consistent pattern to the cash advances.

For loan 2 – the credit file shows a similar picture, which isn't surprising considering this credit search was carried out around a month after the first one. There isn't any new adverse credit file data and the same active accounts are shown, including the defaulted ones as well as Mr M's seven active credit cards. It did know this time around, that Mr M had one payday loan outstanding which was going to cost him £145 per month. But given the lack of any other active payday loans in the credit report, I don't think Cashfloat would've been overly concerned about this loan, especially because its loan still looked affordable.

I appreciate Mr M, in his complaint letter to Cashfloat, provided an overview of his active accounts that he had at the time. But I'm satisfied that Cashfloat has proportionately responded to the information it received from the credit reference agency – which is what I would've expected it to do.

The overall lending pattern including the amounts that were borrowed wouldn't, in my view, have triggered further checks from Cashfloat or led it to conclude that the loans were unsustainable.

Based on the checks that Cashfloat did do, I'm satisfied these were proportionate to the circumstances of each loan. I say this because Mr M's borrowing history – including the amounts borrowed, the way Mr M repaid his loan, as well as what Cashfloat discovered through its checks - wouldn't, in my view have led it to believe that it needed to go further, such as reviewing his bank statements or obtaining any other information. In my view, to have reviewed the bank statements would've been disproportionate in the circumstances.

There also wasn't anything else, such as the way Mr M repaid his first loan, that would've led Cashfloat to believe that it needed to conduct further checks or to have declined his applications for credit.

Cashfloat carried out proportionate checks before both loans were granted and it was reasonable for Cashfloat to have relied on the information Mr M provided to it and the results of its own checks. There also wasn't anything to suggest that Mr M was having either current financial difficulties or to indicate the loan repayments would be unaffordable or unsustainable for him. So, I don't think that Cashfloat's decision to lend was unfair or unreasonable. It therefore follows, that I don't think it is appropriate that Cashfloat refund Mr M any of the interest he paid on the loans.

An outstanding balance does remain due and I would remind Cashfloat of its obligation to treat Mr M fairly and with forbearance, if necessary.

Help and support

I can see from the emails that Cashfloat attempted to call and speak to Mr M on 14 July 2023 and a voicemail was left. Mr M then contacted Cashfloat on 17 July 2023 to let them know he was away and he preferred to be contacted by email – and he made further points

about the outcome he was seeking and why he said Cashfloat had made an error.

Mr M hadn't heard from Cashfloat and so chased for a response on 24 July 2023 asking what was happening because he was aware that he shortly needed to make a payment. Mr M then emailed on 31 July 2023, again asking for an update on his complaint because it had been two weeks since he had heard anything. While Mr M said he was aware Cashfloat had a maximum of 56 days to deal with his concerns, Mr M said he wouldn't be making any further payments until this matter was resolved to his satisfaction.

Following Cashfloat's first final response letter on 2 August 2023, which Mr M responded to, it went back to him on 7 August 2023 and reiterated why the complaint wasn't upheld in regard to the affordability aspect. It said that as Mr M requested email communication, that he responds to the email with a proposal for a repayment plan. My understanding is a repayment plan has been set up – which is a reasonable and fair course of action to have taken.

It looks like Cashfloat did receive Mr M's emails and addressed them in the final response letter, within the time frame that would be expected – 56 days. I acknowledge Mr M may have been unhappy with the delays in responding to him, but Cashfloat was investigating the complaint.

I therefore don't think Cashfloat needs to take any action in relation to this element of the complaint.

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.

As neither party had any new submissions to make, and Cashfloat agreed with the outcome I was intending to reach. I see no reason to depart from the findings that I made in the provisional decision.

I still don't think Cashfloat was wrong to have given either loan and it also doesn't need to take any other action in relation to the help and support it offered Mr M at the time.

I do not uphold Mr M's complaint an outstanding balance may still be due and I would remind Cashfloat of its obligation to treat Mr M fairly and with forbearance.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 March 2024.

Robert Walker
Ombudsman