

## **The complaint**

Mr H complains that Western Circle Ltd, trading as Cashfloat ("Western Circle"), lent to him when he could not afford it. He says it lent to him irresponsibly.

## **What happened**

The Provisional Decision I issued on 23 April 2024 has been automatically inserted into this Final Decision as a duplicate and forms part of it. That provisional decision gives the background to the complaint and my provisional findings. Both this decision and the provisional decision need to be read together as a whole.

I considered that Western Circle ought to put things right for Mr H in relation to loan 4 but not in relation to the other loans. Each party had time to respond. Both parties have responded.

## **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.

Mr H agreed with that outcome in my provisional decision. Mr H has not corrected anything that I outlined I'd discovered from his credit report (obtained by Western Circle) and from his copy bank account statements.

Western Circle did not agree about loan 4. Its points are summarised and responded to in the following paragraphs. Essentially Western Circle is saying that after a significant gap in lending between Mr H paying off loan 3 and applying for loan 4, it was proportionate and reasonable for it to have treated Mr H as a new customer.

However, it also said that it had reviewed Mr H's previous repayment record which it said had been good. Western Circle had said something similar in its FRL and so twice now it has indicated to me that the gap in lending did not lead to it treating Mr H's fourth application in isolation from the earlier lending relationship details. So, I consider that gap was bridged.

But in any event, Western Circle's other points lead me to think that it has not appreciated what I was saying in my provisional decision: that the credit search it did when Mr H applied for loan 4 in July 2023 informed it that Mr H's large debt (previously marked as delinquent) of around £23,000 had been defaulted soon after he'd taken the Western Circle loan 3. That was a significant event as it was such a large debt.

Adverse information on a credit file varies from customer to customer and this debt was very large and so I'd consider it a significant element revealed by the credit search not simply a relatively minor item of adverse information which a lender's risk strategy can afford to absorb. This default related to too large a debt.

A further point raised by Western Circle in response to my provisional decision was that it would have been viewed as satisfactory Mr H having taken five new credit accounts in the

previous six months before applying for loan 4. But I pointed out in my earlier decision that obtaining so much new credit in such a short time, combined with the default of a large debt all ought to have prompted Western Circle to carry out additional checks.

So, I reject Western Circle's submission that no additional creditworthiness checks were needed at loan 4. And in my provisional decision I summarised what those additional checks would have highlighted to Western Circle had it done them.

My view has not altered in relation to loan 4. I uphold Mr H's complaint about it and Western Circle needs to put things right for Mr H for loan 4.

Western Circle refers to previous Financial Ombudsman decisions several times and this is an example to demonstrate that we treat all complaint cases individually on their own facts.

***My Provisional decision dated 23 April 2024 - duplicated here.***

### ***The complaint***

*Mr H complains that Western Circle Ltd, trading as Cashfloat ("Western Circle"), lent to him when he could not afford it. He says it lent to him irresponsibly.*

### ***What happened***

*Mr H took four loans from Western Circle. The loan table here gives brief details. I've rounded up or down the repayment figures for ease. There was a break in lending after loan 3.*

<b>Loan</b>	<b>Approved</b>	<b>Amount</b>	<b>Repayment schedule</b>	<b>Term length</b>	<b>Repaid</b>
1	31 October 2021	£500	£235 three even payments	3 months	20 January 2022
2	29 January 2022	£300	£144 three even payments	3 months	21 April 2022
3	10 June 2022	£300	Payments 2 and 3 highest at £150.	4 months	21 October 2022
4	14 July 2023	£300	Payments 2 and 3 highest at £146	4 months	20 November 2023

*Mr H says that he's been left in a cycle of constantly needing these loans to keep on top of his bills and the loan repayments. He'd like a refund of all the interest he paid.*

*After Mr H had complained Western Circle sent to him its final response letter (FRL) on 8 November 2023 in which it said it did not uphold his complaint. However, Western Circle did make Mr H an offer to reduce his debt on loan 4 by £50.*

*Mr H referred it to the Financial Ombudsman Service on the same date as the FRL was received by him. One of our investigators looked at it. She did not uphold the complaint and so Mr H asked for a review by an ombudsman. The complaint was passed to me to decide.*

*Mr H had not given any further details or evidence or offered any explanations as to what else he wanted me to be aware of. But after I had reviewed the complaint, I did ask Mr H for bank account statements for April 2023 to mid-July 2023. He has sent those to us.*

### ***What I've provisionally 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 this type of*

*lending - including all the relevant rules, guidance, and good industry practice - on our website.*

*Western Circle 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. Western Circle's checks could've taken into account several different things, such as how much was being lent, the size of the repayments, and Mr H's income and expenditure.*

*I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Western Circle 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.*

*Western Circle 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 the 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 H's complaint.*

*Western Circle has submitted to us all the documents used in assessing each loan application. These included a credit reference agency (CRA) report for each loan, an analysis document of Mr H's credit commitment situation, as well as Mr H's declared income and expenditure.*

*For general household expenditure (not fixed items like mortgages, rent and things) provided to it by Mr H, Western Circle tested the figures Mr H had given to it using 'CFS trigger values'. These were outlined in the Common Financial Statement (CFS). The CFS has been superseded by the Standard Financial Statement (SFS) and its website explains it as*

*'a universal income and expenditure statement, together with a single set of spending guidelines.'*

*Originally to be used for debt advice, the SFS sponsors explain:*

*'We also expect that the SFS will be used and recognised by all types of creditors including FCA regulated consumer credit lenders but also, central and local government creditors, utilities, and debt collection agencies.' The SFS '...includes a set of spending guidelines in three areas of 'flexible' spending. ...communications and leisure; housekeeping and personal costs as published by the Money Advice Service at least annually.'*

*I've reviewed all the affordability tables Western Circle has provided which included Mr H's declared income and outgoings, combined with its own research, and shows how Western Circle amended them where it felt necessary.*

## **Loan 1**

*For loan 1 which was taken on 31 October 2021, Mr H had declared a monthly income (after tax) of £2,000. Western Circle has said it used an electronic tool to verify that. The CRA reports show that Mr*

*H's mortgage was around £450 a month. He'd declared a total of £350 for payments to other short term loans (STL) and for other credit commitments. He'd included transport and food costs.*

*Mr H said that his total outgoings were £1,250 so his disposable income was £750. Western Circle increased his payments due to STLs from £200 to £315. Still Mr H appeared to have had enough income left over. So, the loan repayments for loan 1 looked affordable. And these were checks which I'd consider proportionate to the loan value, the loan term, and the fact it was Mr H's first application to Western Circle.*

*There was no requirement to get a CRA report but having done so I do not consider it would have been appropriate to pick up on information that report supplied to Western Circle.*

*I have reviewed the CRA report for loan 1. A large part of Mr H's debt was for a mortgage and these repayments had been paid satisfactorily since 2006.*

*There had been an unsecured loan taken in 2006 (original debt balance £27,000). Over the previous seven months leading up to Mr H applying for loan 1 he'd repaid around £109 a month towards that debt. He was in arrears and the outstanding balance remained at £23,797 so it was marked as being delinquent.*

*Mr H's revolving credit balance was £1,504 and his revolving credit limit was £290 so it looked like his current debt situation was that he was well over his limits and only repaying minimum repayments. But on closer inspection a large part (£1,350) was a credit card balance which had been defaulted in 2015 with an outstanding balance. It was with a debt collection agency.*

*Mr H had taken a £22,000 bank loan in 2009 ("the bank loan") and it was in default in September 2016 with a balance of £3,242. Its balance on the recent CRA report was £3,169 and had not changed for twelve months. So, it looked like he was not paying that off. But there were no County Court Judgments recorded against Mr H.*

*So, it seems that in 2015 and early 2016 something financially damaging occurred which had an impact at the time. But a relatively modest loan application over six years later to Western Circle would not lead me to think that it ought to refuse the loan. Historic debt and historic adverse entries are elements about which Western Circle likely would have been used to. And it appeared that Mr H had income sufficient to cover this Western Circle loan.*

*I consider that Western Circle carried out proportionate checks for Mr H's first loan and I do not uphold his complaint about it.*

## **Loan 2**

*Loan 2 was applied for a few days after loan 1 was repaid on time. It was for a smaller amount and so the repayments were smaller for the three-month term.*

*Mr H declared an income of £2,100 after tax and had outlined his mortgage, utilities and bills, his food costs, his payments to STLs all coming to £1,150. But the affordability report Western Circle had done for Mr H shows that it had increased his STL repayments by £630 to £730 so that the total figure for Mr H's outgoings was £1,780 in its own calculations.*

*That left a disposable income on Western Circle's affordability report of just under £220 which means that Loan 2 repayments looked to have been just about affordable. Loan 2 was repaid on time by Mr H.*

*I have reviewed the CRA report for Mr H for loan 2 and the headline figures had improved a little. Nothing significant had altered since Western Circle would have last seen a copy of his credit report – when it approved loan 1. I consider that Western Circle carried out proportionate checks for Mr H's second loan and I do not uphold his complaint about it.*

## **Loan 3**

*Loan 3 was for the same amount as loan 2 - £300 – but over a repayment structure of four months. Western Circle asked Mr H to send copies of his recent bank statements when he returned in June*

2022 a couple of months after repaying loan 2 for a third loan. Copies of those statements were forwarded to us by Western Circle.

Mr H had given no information about his outgoings this time but had said to Western Circle that his income had increased to £2,300 each month after tax. Western Circle's affordability calculation came out to be much the same as for the previous loan. This included all his outgoings and his credit commitment and STL costs - £1,683 - leaving a disposable income of over £500.

But I've reviewed Mr H's bank statements as well as his CRA report for loan 3 and these are the details I could see:

- His income was £2,080 per month and so was £220 less than he declared £2,300. So, his disposable income was more like just under £400 not over £500.
- The bank statement covers the period end of May to early June 2022. It looks to me like Mr H had many expenses and made a lot of purchases (mainly animal and veterinary orientated). But there's nothing in those bank statement pages which lead me to think that Western Circle ought to have been alerted to any financial concerns surrounding debts
- The CRA report for loan 3 was like the one it would have seen before.

Overall, I consider that Western Circle carried out proportionate checks for Mr H's third loan and I do not uphold his complaint about it.

#### **Loan 4**

There followed a significant gap in lending after Mr H repaid loan 3 in October 2022. This leads me to think that when Mr H returned to Western Circle for loan 4 in July 2023 it was reasonable of it to treat Mr H as a new customer.

Although I do note that in the FRL Western Circle has said that it looked at Mr H's previous records it had when assessing loan 4, which indicates that it viewed all the earlier records as relevant. This review of Mr H's declared finances for loan 4 was supplemented in the same ways as the other loans – trigger values, an affordability report and CRA research.

Loan 4 was for a modest sum of £300 repayable over 4 months of which the highest two monthly repayments were around £146. The affordability report Western Circle did showed that Mr H's overall outgoings including his mortgage, general expenses and his other STL repayments came to £1,503 a month which Western Circle had increased from Mr H's declared amount of £1,203.

That led to Western Circle calculating that on a declared income of £2,300 Mr H's disposable income was just under £500 and so he was able to afford the monthly repayments for loan 4.

One concern is that Western Circle knew for Loan 3 that his income was less than the declared £2,300 a month and here for loan 4 Mr W had declared the same. So, I think that ought to have been checked.

A further concern is that the CRA report for loan 4 revealed that the unsecured loan taken in 2006 (original debt balance £27,000) and which had been in arrears for a while, had been defaulted in July 2022. That would have been during the term of Loan 3. And following the repayment of that loan 3, Mr H had taken several further loans before coming back to Western Circle for loan 4. Plus, there had been many more searches for credit than he had done before.

So, with that recent default and the multiple new loans and searches, plus the doubt over Mr H's income figure, I do consider that additional checks ought to have been carried out.

I don't think that Western Circle did that.

So, I asked to see copies of Mr H's bank statements for the period April to mid-July 2023. I asked him also to send in any second bank account statements he may have. Mr H only sent one set. So, if Mr H does have another account, I've no evidence of it.

Reviewing the bank statements the income for April, May and June 2023 was steady at just under £2,200 after tax. So, I am satisfied that Western Circle was using approximately the correct income figure.

Mr H was spending a great deal on transactions mainly to do with animals and pets and I had noticed this on the earlier statements. So, his discretionary spending was high but not debt related. In addition, the statements show that in June 2023 alone Mr H was repaying four loans which amounted

*to around £584 per month. And Mr H had taken two loans from two different high-cost lenders on 6 June 2023 for £300 and £400. And Mr H had taken a further loan for £500 on 30 June 2023 from another lender.*

*So, by 14 July 2023 when Mr H approached Western Circle for the £300 loan, if Western Circle had carried out the further check prompted by the poor recent CRA record, then it would have realised his application was approximately the fourth loan request in a month, having just repaid (or was in the middle of repaying) four others. And my view is that Mr H was getting loans from several lenders to repay other lenders and borrowing to repay debt is a clear sign of unsustainability.*

*Reviewing all details together I consider that Western Circle ought not to have lent to Mr H in July 2023 and I plan to uphold the complaint about loan 4.*

This is the end of the duplicated provisional decision.

### **What Western Circle should do to put things right**

In deciding what redress Western Circle should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr H at loan 4, 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 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 Western Circle's liability in this case for what I'm satisfied it has done wrong and should put right.

I direct that Western Circle does as follows:

- refund all interest and charges Mr H paid on loan 4;
- pay interest of 8% simple a year\* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative information about loan 4 from Mr H's credit file;

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

### **My final decision**

My final decision is that I uphold the complaint in part and I direct Western Circle Ltd trading as Cashfloat, to do as I have outlined above in the 'putting things right' part of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 June 2024.

Rachael Williams  
**Ombudsman**