

## **The complaint**

Mr B has complained through a representative that Western Circle Ltd trading as Cashfloat ("Cashfloat") gave him a loan he couldn't afford to repay.

Mr B also raised other complaint points such as the loan cost wasn't disclosed.

## **What happened**

Mr B was granted one loan of £800 on 30 June 2022. Mr B was contracted to make six monthly repayments of £229.75. While Mr B had some problems repaying the loan, he did settle it on 30 January 2023.

Cashfloat considered the complaint and didn't uphold it as the checks it conducted showed the loan to be affordable. Unhappy with this response, Mr B's representatives referred the complaint to the Financial Ombudsman.

The complaint was then reviewed by an investigator who upheld it. She said the credit check results received by Cashfloat showed Mr B already had 13 active loans and he had missed a payment on one of them. Mr B had also recently taken a new credit card and had almost spent the credit limit, he was over his limit on another card and hadn't made a payment in the previous month. The investigator concluded Mr B was likely experiencing financial difficulties and so couldn't take on this loan.

Cashfloat didn't agree with the investigator's outcome, and I've summarised its response below.

- Only one loan was granted to Mr B by Cashfloat.
- It provided examples of some of the accounts it was aware of from the credit search which showed they had small balances on them.
- Cashfloat says there may have been a dispute raised between Mr B and a different creditor which means any missed payment may not have been as a result of financial difficulties.
- Mr B opening the number of accounts was a sign that he was trying to rebuild his credit score.

These points didn't change the investigator's mind and so the complaint has been passed to me to decide.

## **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 B 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 B'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 B. These factors include:

- Mr B 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 B 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 B 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 B. The investigator didn't think this applied to Mr B's complaint and I would agree, as only one loan was approved.

Cashfloat was required to establish whether Mr B 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 B was able to repay his loan 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 B's complaint.

Mr B, when engaging with his representative set out a number of other complaint points. The investigator in her view outlined why she thought Cashfloat had acted fairly when he told it that he was struggling to pay. She wasn't going to make a finding on the other aspects of the complaint as she needed more information from Mr B – she invited Mr B to submit any further evidence.

No new submissions or comments were made by either Mr B or his representative and so I've not focused on the ancillary complaint points which have been raised. Instead, this decision has focused on Cashfloat's decision to lend.

Cashfloat took details of Mr B's income and expenditure and carried out a credit search before this loan was granted. Cashfloat recorded that Mr B worked full time and received a monthly salary of £2,808. Cashfloat says it cross referenced Mr G's declared monthly income and the result was positive – indicating to Cashfloat that what Mr B had declared was likely to be accurate. For a first loan I consider this to be a proportionate check.

Cashfloat also made enquiries about his living costs, which Mr B declared to be £575 per month. It's worth saying here that Cashfloat says that it assessed Mr B's monthly expenditure using what is called "*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 B's monthly outgoings were likely to be £1,667 and to that it added a further buffer of £100. These were the figures used for Cashfloat's affordability assessment. Even using the larger monthly outgoings, along with the buffer, Cashfloat still concluded there was sufficient disposable income for Mr B to be able to afford the loan repayments.

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. 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.

Having reviewed the credit checks I can see that Mr B had around £11,600 of debt – spread across 31 active accounts. Cashfloat was put on notice that Mr B had 4 defaults recorded on his credit file. However, these had all been recorded in 2016 or 2017 and they had either been settled or Mr B was making regularly monthly repayments towards the balances. It also seems that two of the defaulted creditors sought County Court Judgements (CCJ) against Mr B in 2017 but both had now also been settled.

I think it's fair to say that around 2017 Mr B had found himself in a difficult financial position to the extent that a number of accounts had defaulted – but I don't think Cashfloat would've been overly concerned by them given they had been recorded around 5 years before he applied for the loan. The sight of the defaults and the CCJs wouldn't have led to further checks.

However, I think it's fair to say that Cashfloat was aware of a lot of open credit accounts. Mr B had 8 active credit cards owing just over £4,300. In addition, one of Mr B's credit cards was now in excess of the credit limit and there is an indication that perhaps Mr B hadn't made his payment to it either. He also appeared to be overdrawn on a bank account which didn't have an overdraft. So, there were signs that Mr B was having or starting to have difficulties managing his existing credit commitments.

Another concern, that Cashfloat ought to have considered was that Mr B had at least 9 outstanding loans that he was paying – costing him at least £632 per month but the credit check suggests the payments could be as high as £932 per month. There was also indication that some of these loans were being taken shortly after Mr B had settled other loans – which in my view and expenditure would indicate that Mr B was having difficulties managing his finances.

I've considered what MoneyBoat says that some of the loans were coming towards the end of the term. But equally, Mr B had opened 6 new loans since December 2021. Given, the amounts stipulated in the credit file, it's likely the loans were either instalment loans, home credit or other forms of high-cost credit that had been advanced.

There was also a recent loan that the investigator highlighted that had a "?" being reported and the file showed that the balance on the loan hadn't decreased – indicating that a missed payment may have occurred. I agree with Cashfloat that the "?" means a dispute had likely been raised by Mr B and so it doesn't automatically mean that the missed payment was due to financial difficulties. But I can't ignore the fact that Mr B appeared to not have made a payment towards the loan.

While two of the loans had been opened in 2019, the majority had been opened within the months leading up to this loan being approved. And some of the loans coincided when Mr B repaying other loans. The number of loans, to me does point towards wider financial difficulties – I accept that he may have been using the loans to build his credit score, but I'm

not convinced this was the case here given the other adverse information that Cashfloat was being told about.

In the circumstances, the sheer number of other loans, other credit accounts and the emergence of adverse payment information ought to have led Cashfloat to have concluded that Mr B couldn't sustainably repay the loan. In these circumstances, I think it ought to have realised it was unlikely Mr B would've been able to sustainably repay this loan.

Overall, I'm upholding Mr B's complaint and I've set out below what Cashfloat needs to do in order to put things right for Mr B.

### **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 B, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr B may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 B 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 B 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 lent to Mr B.

- A. Cashfloat should add together the total of the repayments made by Mr B towards interest, fees and charges on the loan.
- B. It should calculate 8% simple interest\* on the individual payments made by Mr B which were considered as part of "A", calculated from the date Mr B originally made the payments, to the date the complaint is settled.
- C. Cashfloat should pay Mr B the total of "A" plus "B".
- D. Cashfloat should remove any adverse information it has recorded on Mr B's credit file in relation to the loan.

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

### **My final decision**

For the reasons I've outlined above, I am upholding Mr B's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 July 2024.

Robert Walker  
**Ombudsman**