The complaint

Miss F has complained that Western Circle Ltd trading as Cashfloat ("Cashfloat") gave her a loan that she couldn't afford to repay because she was left with insufficient funds each month.

What happened

A summary of Miss F's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£400.00	11/08/2023	outstanding	3	£223.95

Cashfloat wrote to Miss F with a final response letter and explained why it didn't consider an error had been made by providing the loan and so it didn't uphold her complaint. Miss F then referred the complaint to the Financial Ombudsman.

An Investigator considered the complaint, and concluded the checks carried out by Cashfloat were proportionate and showed the loan to be affordable. Miss F didn't agree with the assessment saying in summary:

- Cashfloat failed to correctly assess the sustainability of the loan – considering the high interest rate and Miss F's existing commitments.
- Repaying this loan added to the financial pressure Miss F was under.
- Miss F's defaults and County Court Judgements (CCJs) should've raised concerns.

These comments didn't change the investigator's mind and as no agreement could be reached 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 Miss F could afford to pay back the amount she'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 Miss F'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 Miss F. These factors include:

- Miss F 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);
- Miss F 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);
- Miss F 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 Miss F. The investigator didn't think this applied to Miss F's complaint and I agree, as there was only one loan.

Cashfloat was required to establish whether Miss F could *sustainably* repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss F was able to repay her 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 Miss F's complaint.

Miss F has said that she may have wanted to submit further evidence for consideration, but she didn't let the investigation know what it is that she wanted to send it and when it would be received. As no other evidence has been provided and I'm satisfied I have sufficient information to be able to come to a decision on the lending decision and so that is what I've done.

Cashfloat recorded that Miss F worked full time and received a monthly salary of £3,000. Cashfloat didn't just rely on the information Miss F had provided, instead it used an income checking tool. Cashfloat says the results it received were positive – indicating the amount Miss F had declared was likely to be accurate. For a first loan, this income check was reasonable and proportionate.

Cashfloat also made enquiries about her living costs, which Miss F declared to be £480 per month. It's worth saying here that Cashfloat says that it assessed Miss F'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. It also carried out a credit search to workout Miss F's existing credit commitments – which I'll come on to later in this decision.

Having carried out the additional checks, Cashfloat increased Miss F's monthly outgoings to £1,277. To this it then added a further 'buffer' of £300. But even with the increased monthly costs Cashfloat had still calculated that the loan repayments were affordable for Miss F.

As I said above, 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.

Cashfloat was also entitled to rely on the information it was given by the credit reference agency and so I've looked at the results Cashfloat received to see whether there was anything contained within them that would've either prompted it to have carried out further checks or possibly have declined Miss F's application.

The credit report showed Cashfloat that Miss F had seven active accounts – including a current account, vehicle finance, three credit cards a loan and a product called "*credit sale*". All of these accounts were up to date with no adverse payment information recorded about them. That wouldn't have suggested to Cashfloat that Miss F was having or likely to be having current financial difficulties when she applied for this loan.

The results Cashfloat received showed it that the information Miss F had provided it as part of her application – specifically about her existing credit commitments wasn't accurate. Miss F declared she didn't have any existing credit commitments, but Cashfloat worked out across seven active accounts Miss F's likely monthly repayments were £562.74 – and this is the amount it used as part of its affordability assessment.

I think it was right and fair for Cashfloat to substitute into the affordability assessment the amount of monthly credit commitments it worked out from the credit report and having looked at the credit report – the amount it calculated Miss F had to pay each month looks about right.

But even if I am wrong about that, and the investigator's conclusion were that Miss F's commitments were more likely around £860 per month – it still wouldn't change the outcome because whichever figure is used Miss F had sufficient disposable income to afford her repayments.

Miss F says that Cashfloat ought to have realised that the loan wasn't sustainable given she had defaults and a CCJ. The credit check showed no defaults being recorded within the last three years, but Cashfloat was aware of three defaults recorded between May 2019 and August 2019.

In addition, Cashfloat was told about an active CCJ that had been reported in October 2019. So, it is fair to say Cashfloat was aware of these defaults and CCJ but I have to consider, what if any impact these ought to have had on the affordability assessment.

I've considered the CCJs and defaults in light of what Miss F has said, but I've also considered these were historic information. The defaults and CCJ had been reported around four years before the loan had been approved and so I think it would've been reasonable for Cashfloat to not consider these further because the defaults and the CCJ were not a likely reflection of Miss F's current financial position. I've therefore concluded that the CCJs and defaults wouldn't have led Cashfloat to carry out any further investigation into Miss F's circumstances beyond what it did.

Overall, I don't think the credit check results would've prompted further checks or to have led Cashfloat to decline the application.

Based on the checks that Cashfloat did do, I'm satisfied these were proportionate to the circumstances. I say this because it was the first loan where the checks indicated Miss F would be able to afford to make her payments as and when they became due.

There also wasn't anything in my view which would've led Cashfloat to be believe that it needed to investigate Miss F's circumstances further before lending to her and it therefore follows I do not uphold Miss F's complaint.

Other considerations

From the statement of account, I can see that Miss F made payments outside of the contracted payments she was due to make to Cashfloat. She made three payments between the loan inception and 27 September 2023.

When Miss F didn't make her October 2023 payment it appears Cashfloat levied a late fee of £15 – which is outlined in 'cost of credit' part of the credit agreement. So, I don't think Cashfloat was wrong to charge this – after all it said it would if payments weren't made as expected.

In November 2023, Miss F told Cashfloat that she had been made redundant and so her income had decreased and so was experiencing financial difficulties. Cashfloat says it has been working with Miss F to try and repay the balance in a mutually affordable way. This doesn't seem an unreasonable course of action to have taken.

As a result of Miss F not making her payments in line with the credit agreement, the total amount that is now due to Cashfloat has increased, as outlined below. But, the total amount she is being asked to pay is in line with the cost cap regulations and the credit agreement.

Miss F has raised the cost of loan as being high. Miss F was provided with a payday loan and so this would be caught by the industry wide cost cap that was introduced by the regulator.

In the circumstances of this complaint, as Miss F was advanced £400 the most Cashfloat could collect would be £800. But I can see from the credit agreement that Miss F was required to pay Cashfloat a total of just over £671 – which is well within he cost cap.

However, as I've said above, Miss F hasn't been able to repay the loan in line with the credit agreement, and Cashfloat has levied a late fee and then additional interest taking the total amount Miss F will need to repay to settle the account to £800.

This is within the cost cap and so I can't say that either Cashfloat incorrectly applied the interest rate it would charge or has charged Miss F more than it is allowed to, under the regulations it must adhere to.

I'm sorry to hear that repaying the loan has proved difficult for Miss F but Cashfloat appears willing to work with her to repay the balance through a mutually agreeable repayment plan and I would encourage her to discuss her current situation with Cashfloat in order for a way forward to be agreed. I would also remind Cashfloat of its obligation to treat Miss F fairly and with forbearance.

Finally, I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Cashfloat lent irresponsibly to Miss F or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've outlined above, I am not upholding Miss F's complaint.
Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 2 May 2025.

Robert Walker
Ombudsman