

complaint

Mr B complains that Western Circle Ltd trading as Cashfloat gave him loans that he couldn't afford to repay. He asks that it refunds interest and charges.

background

Mr B took out nine loans with Western Circle between September 2016 and September 2017. He says Western Circle was irresponsible to offer the loans. He says he had a lot of short term loans at that time and was gambling heavily. The adjudicator recommended that the complaint should be upheld, saying:

- The checks made by Western Circle before the first four loans were proportionate. The information it received suggested the loans were affordable.
- Western Circle should have made more checks before loans five to nine. By this time Mr B was borrowing regularly. It should have made full enquiries about his income, expenditure and financial commitments and reviewed supporting statements. If it had done so, it would have known that Mr B's expenditure, financial commitments and gambling meant the loans weren't affordable.

The adjudicator said that Western Circle should refund interest and charges on loans five to nine, with interest at 8%, and remove adverse information about the loans from Mr B's credit file.

Western Circle didn't agree. It said that there was a risk assessment to be done for each loan and it didn't accept that the risk was any different because someone had taken 4 loans it was an analysis of the affordability of repayments. It said the adjudicator hadn't taken into account that Mr B had repaid some loans early. It said it didn't have to consider gambling as part of Mr B's costs according to the FCA Handbook.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did Western Circle, each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay in a sustainable way?
 - If not, would those checks have shown that Mr B would have been able to do so.
- Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr B's indebtedness in a way that was otherwise unsustainable or harmful?
- Did Western Circle act unfairly or unreasonably in some other way?

If I determine that Western Circle did not act fairly and reasonably in its dealings with Mr B and that he has lost out as a result, I will go on to consider what is fair compensation.

Before lending money to a consumer a lender should take proportionate steps to understand whether the consumer will be able to repay what they're borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves didn't set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key element was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being lent and when the sum being borrowed was due to be repaid.

Loans 1 to 4

Mr B took out the first loan, of £600, in September 2016. The loan was repayable in four instalments of about £190. He repaid the loan a few days early. Mr B took out the second loan in January 2017 and this was repayable in two instalments of around £129. This loan was also repaid early. But the following day Mr B applied for loan three for £400 which was repayable in three instalments of around £198. This loan was repaid early and two days later Mr B asked to borrow £200 repayable over two instalments of around £135. This loan was also repaid early.

Mr B provided his monthly income and expenditure each time he applied for a loan. He told Western Circle his monthly income was £1,570 and his expenditure was £570. Western Circle also ran a credit check and for loans 1-4 I don't think it showed anything that would suggest further checks were necessary. I think, given Mr B's stated income and the amount of the instalments, the checks made by Western Circle for the first four loans were proportionate. The information it received suggested the loans were affordable.

Loan 5

Mr B repaid loan four on 30 April and two days later on 2 May applied for a loan of £400. This was repayable in two instalments of £265.52 which was the largest amount Mr B had been required to repay so far. By this point I think that what Western Circle knew about Mr B from his borrowing pattern suggested that he wasn't using the loans as a temporary, short term solution and he may have been reliant on this sort of credit.

The information provided by Mr B when he applied for loan five suggested it was affordable. But I think Western Circle should have made further checks. This was Mr B's fifth loan and he asked for it two days after repaying the previous loan.

I have taken into account Western Circle's comments about the point in the loan chain being an arbitrary marker for further checks. But I don't agree. I think that what Western Circle knew about Mr B by this stage was that he was frequently taking loans and although he was making repayments his pattern of borrowing was at odds with the level of disposable income he claimed to have.

I think, in the circumstances, Western Circle should have asked for information to gain a full understanding of Mr B's financial circumstances. This doesn't have to be bank statements it could be other evidence of outgoings and I think it would have been reasonable to ask Mr B

why he needed to borrow so often given his declared level of disposable income. I've looked at Mr B's bank statements as this is best evidence available to me of his income and expenditure at that time.

Mr B's income was about £1680 which was slightly more than he had declared to Western Circle. His living costs were £795 and he had credit costs of £185 he also had short term lending of £175. However, he was gambling significantly and the transactions on his bank statements show that he was spending more than he could comfortably afford.

While gambling can be recreational I think Mr B's pattern of spending should have alerted Western Circle to a possible problem. A significant proportion of his monthly income was spent on gambling. He was borrowing from short term lenders and family and friends. I think Western Circle should have considered whether Mr B was borrowing to repay other debts. I don't think further borrowing was affordable or sustainable.

Loans 6 to 9

Mr B position didn't improve during the time that he took out the remaining loans with Western Circle. I think that proportionate checks would have established Mr B's difficulties and as a responsible lender, had it done those checks, Western Circle wouldn't have agreed to lend. I have taken into account Western Circle's comments that it wasn't required to take into account gambling transactions by the FCA's handbook. But looking at the pattern of lending and what Western Circle ought to have discovered about Mr B continuing to lend to him after the fourth loan was unsustainable and harmful.

I don't think Western Circle should have agreed to lend to Mr B after, and including, the fifth loan (taken out in May 2017). So for each of those loans Western Circle should:

- Refund all interest and charges that Mr B paid on the loans;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove any negative information about the loans from Mr B's credit file.

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

my final decision

My decision is that I uphold this complaint. I order Western Circle Limited to make the changes to Mr B's credit file and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 November 2018.

Emma Boothroyd
ombudsman