

complaint

Mr O complains about the loans he took out with Western Circle Ltd trading as Cashfloat. He says that he had no option but to borrow multiple times due to spiralling debt problems. He says Cashfloat didn't adequately assess his loan applications, if it did it would've seen that he was borrowing from other lenders and so it wasn't right to lend to him.

background

Mr O took out 10 loans with Cashfloat from October 2015 to July 2017. Some of the information Cashfloat has given us is in the table below:

number	started	amount borrowed	monthly repayments	ended
1	06/10/2015	£250.00	1 of £294	28/10/2015
2	02/11/2015	£350.00	3 of £167	01/12/2015
3	02/12/2015	£450.00	2 of £290	24/12/2015
4	24/12/2015	£650.00	3 of £329	27/05/2016
5	31/05/2016	£500.00	3 of £246	26/08/2016
6	26/08/2016	£500.00	3 of £253	28/11/2016
7	30/11/2016	£300.00	3 of £147	28/02/2017
8	01/03/2017	£300.00	3 of £146	26/05/2017
9	30/05/2017	£400.00	2 of £273	28/07/2017
10	04/07/2017	£450.00	3 of £215	27/10/2017

- loan 2 was repaid early, Mr O made repayments of £167 and £257
- loan 3 was repaid early, Mr O made a repayment of £527
- loan 4 was repaid late, Mr O made three repayments of £300 and one of £200
- loan 9 was repaid early, Mr O made repayments of £273 and £231
- loan 10 was repaid late, Mr O made repayments of £215 and £50

Cashfloat has looked at Mr O's complaint and said that it shouldn't be upheld. It said that it used the information Mr O provided, together with information from credit reference agencies, to see if the loans were affordable. It said that these checks showed that Mr O could comfortably afford the loan repayments.

Our adjudicator thought that Mr O's complaint should be partially upheld. He noted that the loan applications showed that Mr O didn't have any other debt. But Cashfloat's credit reports showed that Mr O had borrowed from other lenders. So Cashfloat should've looked into this further. And later on it should have fully reviewed Mr O's finances. Cashfloat didn't do this so he didn't think that it had made proportionate checks for any of the lending.

He thought if Cashfloat had made these checks then it wouldn't have agreed to lend to Mr O for loans 5 to 10. This is because he didn't think that Mr O could afford the repayments. And this would've been apparent to Cashfloat had it completed better checks.

Mr O didn't disagree with the adjudicators findings.

Cashfloat didn't agree with our adjudicator. It said that:

- Mr O's borrowing didn't increase over the time he lent and this indicated that his debuts weren't unsustainable
- Cashfloat carried out a detailed analysis of Mr O's credit commitments as part of its affordability calculation. He may have been paying large amounts to other creditors by choice rather than necessity
- Mr O's gambling wasn't relevant to whether he could afford to repay the loans.
- it shouldn't be required to look at bank statements. The regulations don't require this
- Mr O's loan accounts were well maintained and he didn't have problems making the repayments. He did repay some loans early

So as no agreement's been reached the complaint's been passed to me to me to issue a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to partially uphold Mr O's complaint about loans 5 to 10 on my table above. I'll explain why.

Mr O didn't disagree with the adjudicator when he said that his complaint about loans 1 to 5 shouldn't be upheld. So as there is now no disagreement about these loans I won't look at them here.

But although I won't be making a decision about whether Cashfloat did something wrong in respect of those loans, they were part of the borrowing relationship Mr O had with Cashfloat. So they are something I will take into account when considering the other loans he took.

Cashfloat was required to lend responsibly. To do this it needed to make checks to see whether Mr O could afford to pay back each loan before it lent to him. There's no set list of what a lender should do to check affordability. But the checks should be proportionate to things like the size of the loan, the repayments, what the lender knows about the consumer and what the consumer tells the lender about their circumstances.

So I've firstly looked at whether Cashfloat performed proportionate checks. If I think that the checks were proportionate then it usually would've been reasonable for it to lend. But if Cashfloat didn't do proportionate checks I've looked at whether it would've been apparent to it that the loan repayments were affordable had it done better checks. Cashfloat should put things right if it's likely to have then found that the loan repayments were unaffordable.

were the checks Cashfloat made for loans 5 to 10 proportionate

Cashfloat says that the checks it made were proportionate. It says that it:

- asked Mr O about his income and expenditure before lending
- verified the amounts provided using credit reports, a number of third party organisations and credit reference agencies
- used a credit reference agency to find out about Mr O's existing long and short term credit commitments. It's shown us the results from the credit reports it received

- these showed he did have significant other credit and short term loans. Cashfloat didn't think this made the loan repayments unaffordable

It recorded Mr O's income as being between £2,200 and £2,800 for all of this lending, it was usually recorded as being nearer £2,200. It recorded his monthly outgoings as being between £725 and £1,125. His outgoings were usually recorded as being nearer £725 than the higher figure.

As our adjudicator has said on Mr O's application forms for the loans it was shown that he didn't have any outstanding long or short term credit commitments. But Cashfloat's credit checks showed that Mr O usually owed a significant amount to other lenders. Albeit it says that the outstanding loans weren't large enough to make the loans unaffordable. But I think Cashfloat should've become concerned about whether it knew enough about Mr O's true financial situation.

And by loan 5 Cashfloat had been lending to Mr O for over 8 months. So after this time I think Cashfloat could've realised that Mr O was becoming dependent on short term lending rather than using the loans to help with a temporary cash flow problem. I think Cashfloat's own credit checks showed that this may be the case.

So for loan 5 onwards, because of these factors, Cashfloat should've made a full review of Mr O's finances to check if Mr O could sustainably repay any further short term lending.

I don't think Cashfloat's checks did this. It seems to have relied on Mr O's declarations about his income and expenditure when it had information that showed they weren't correct. I don't think it was reasonable to do this. I think it should've verified all of the information Mr O provided. It should've asked him about, and verified, his other borrowing. As it didn't do this I don't think Cashfloat did proportionate checks for loans 5 to 10.

were loans 5 to 10 affordable for Mr O.

So I've looked at the information provided to see if these loans were affordable. I've mostly used Mr O's banks statements to this as they have allowed me to get an accurate picture of his finances at the time. I've also looked at the credit reports provided by both parties and the other information provided.

I'm not saying that Cashfloat had to look at bank statements. There are many ways it could've done the checks it should've done, such as by asking for payslips, loan agreements and/or bank statements, to verify the information Mr O was providing.

Mr O's bank statements show that over the period Cashfloat approved loans 5 to 10 his income averaged around £2,500 a month. His regular household bills seem to total around £750 per month. These amounts aren't very different to what Cashfloat recorded about him. Mr O's confirmed these figures are broadly correct and his bank account seems to support them in the main. So he had a disposable income of around £1,750.

But as all parties to the complaint are aware Mr O had other short and long term financial commitments. Before loan 5 Mr O was due to make longer term loan repayments of just over £300. And looking at his banks statements he was due to repay just over £1,250 to other short term lenders in the month he was due to make the first repayment to loan 5. And he had repaid a similar amount the month before. So I don't think he could afford the repayments to loan 5 of just under £250.

And Mr O's situation didn't improve going forward. He consistently borrows and repays over £1,000 to other short term lenders each month, and sometimes more. And his longer term loan repayments increase to between £800 to £1,000 a month. This would mean that Mr O's expenditure was greater than his income over this time, before he needed to make the repayments to Cashfloat.

And as Cashfloat's credit checks showed, Mr O's debt was increasing. The credit check it made in December 2015 showed he had a total debt balance of just under £5,000 over 13 active accounts. This rose to just under £7,000 over 22 active accounts in March 2017. So I don't think it's right to say Mr O's borrowing doesn't increase.

And as the adjudicator said there are signs of gambling transactions on Mr O's bank statements. They aren't always easy to spot. But when they are visible they are significant. For example Mr O had over £8,000 of gambling related costs before loan 10. I don't think it's reasonable to say these aren't relevant. Any regular expenditure of this amount should be considered. And I don't think it's responsible to lend where Mr O's expenditure is so much higher than his income. He would clearly face financial problems going forward because of this.

So I think if Cashfloat had carried out the appropriate checks it would've seen that Mr O couldn't sustainably repay loans 5 to 10. And I don't think Cashfloat would've lent to him. So I'm upholding Mr O's complaint about loans 5 to 10.

putting things right

Cashfloat shouldn't have lent to Mr O between May 2016 and July 2017 (inclusive). So for loans 5 to 10 Cashfloat should:

- refund any interest and charges applied to those loans
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*
- remove any adverse information recorded on Mr O's credit file in relation to those loans

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

If Mr O still owes Cashfloat any of the principal balance he borrowed on his final loan, Cashfloat may deduct this from the compensation that is due to him. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr O has made on that loan as though they were applied against the principal sum borrowed.

my final decision

For the reasons I've explained, I partly uphold Mr O's complaint.

Western Circle Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr O to accept or reject my decision before 23 September 2018.

Andy Burlinson
ombudsman