

complaint

Mr H complains that Western Circle Ltd (trading as Cashfloat) did not do proper affordability checks before lending him money.

background

Mr H had three loans from Cashfloat between December 2016 and April 2017 as follows:

<u>Loan</u>	<u>Date</u>	<u>Amount</u>	<u>Term</u>	<u>Due</u>	<u>Repayment</u>	<u>Repaid</u>
1	16 Dec 2016	£200	1m	25 Jan 2017	£264	On time
2	3 Mar 2017	£350	4m	23 Jun 2017	4 x £134.13	25 Apr 2017, early
3	28 Apr 2017	£400	3m	25 Jul 2017	3 x £194.51	On time, 1 late

Mr H says if Cashfloat had done better checks it would have seen he wasn't suitable for a loan. He said he had other short-term loans, spiralling debts and a gambling addiction.

Cashfloat says it asked Mr H for information about his income and expenditure and checked his credit file. It said its checks indicated the loans were affordable. Cashfloat added that it was told by Mr H, in July 2017, that he had a gambling issue so provided no further lending.

Our adjudicator didn't recommend the complaint should be upheld. She found Cashfloat did enough checks and would have seen nothing to indicate the loans were unaffordable.

Mr H responded to say, in summary, that the checks were not sufficient. He said his credit file would have shown numerous debts, including other short-term loans and a default from 2012. He says he was only able to repay the loans due to a redundancy pay out.

my provisional findings

I issued a provisional decision to Cashfloat and to Mr H on 22 July 2019. I summarise my findings here:

- I was satisfied the checks for loan 1 went far enough and there was nothing to suggest it was unaffordable;
- I found the credit checks that Cashfloat carried out for loan 2 showed Mr H was due to make payments to four other short-term loan providers of over £1,200;
- As a result, I considered Cashfloat should have asked further questions about Mr H's other short-term loans at the time he applied for loan 2;
- Had it done so, it's likely it would have found that Mr H not only had to make payments of £1,219 to the four lenders shown in the credit file, but he also owed a further £600;
- I was satisfied, therefore, that had Cashfloat carried out proportionate checks, it would have found loan 2 was unaffordable to Mr H;
- When Mr H applied for loan 3, Cashfloat's credit check again showed other outstanding short-term loans and proportionate checks were likely to have shown Mr H borrowed £1,650 from three other short-term lenders in the days before loan 3;
- This meant Mr H needed to make repayments of £1,100 at the same time the loan 3 instalment was due and this was not affordable to him, based on his declared disposable income;
- So I found Cashfloat should not have approved loan 3.

My provisional decision was that Cashfloat should refund interest and charges on loans 2 and 3 (plus 8% statutory interest) and remove any associated negative information from his credit file.

Mr H accepted my provisional decision.

Cashfloat responded to say, in summary:

- That checks should be proportionate to the circumstances of the loans and that less checking is required in the earlier stages of a loan cycle;
- Its credit checks were carried out for the purpose of checking whether Mr H had any negative markers on his file, such as County Court Judgements, defaults or debt management plans. These showed he had a good credit record with recent credit being well paid;
- Summary information showed Mr H had total outstanding loans of £1,247 which in the context of a net monthly income of £1,650 did not indicate his debts were unsustainable;
- It did not calculate Mr H's outstanding short-term loans, and it was not a requirement to do so;
- Mr H declared £200 of monthly credit commitments, which was consistent with the total amount outstanding according to the credit agencies;
- Although Mr H's bank statements may have shown higher payments, it was only required to take into account contractual minimum payments;
- It had verified Mr H's declared income and employment and had taken into account the fact he lived with his parents when considering his living costs;
- It had no obligation to review bank statements at this stage of the loan cycle and Mr H had repaid loan 2 early which indicated he was not in financial difficulty and was able to make discretionary payments.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've noted the additional points made by Cashfloat, but they do not persuade me to change my decision.

I say that because the checks carried out by Cashfloat showed clear indications that Mr H may have been struggling to manage his finances. I accept Cashfloat's initial checks were proportionate to the circumstances of loans 2 and 3, but the purpose of such checks is to ensure there is nothing in the available information that might show the lending is unaffordable. In this case, the credit checks carried out at the time of Mr H's applications for loans 2 and 3, showed he was using other short-term lenders. I accept that the overall figure for outstanding loans was not unreasonable in comparison with Mr H's income, but I consider it was important for Cashfloat to ask further questions given the credit file indicated that at least some of the outstanding amount was due to be repaid in the short-term.

As Cashfloat did not ask further questions, I used Mr H's bank statements, and other available information, to assess his repayment commitments at the time the instalments were due on loans 2 and 3. As is the nature of short-term loans, the repayments were due soon after the loans were taken out and, in some cases, the entire repayment was due the following month. It is these contractual repayments that I used in the analysis.

I accept Cashfloat was under no obligation to look at Mr H's bank statements, however, given what it should have seen on his credit file, I consider it should have asked further questions about Mr H's short-term credit commitments. I accept Mr H's living arrangements meant it was likely his monthly costs were lower, but I took that into account when assessing the affordability of the loans compared with his own declared disposable income.

Finally, I acknowledge Mr H repaid loan 2 early, but he applied for loan 3 just three days later, and it was for a higher amount. So I don't think it's reasonable for Cashfloat to conclude this meant Mr H was not in financial difficulty when assessing loan 3. Indeed, such a borrowing pattern often indicates there may be a gambling issue which, indeed, was the case here.

For the above reasons, I see no reason to depart from the findings in my provisional decision.

my final decision

My decision is that I uphold this complaint. Western Circle Ltd (trading as Cashfloat) should:

- Refund all interest and charges that Mr H paid on loans 2 and 3;
- 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 loans 2 and 3 from Mr H's credit file;

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 October 2019.

Amanda Williams
ombudsman