

## complaint

Mr G complains about five loans he took out with Western Circle Limited, trading as Cashfloat, ("WCL"). Mr G says that WCL shouldn't have given him the loans because they were unaffordable.

## background

Mr G was given five loans by WCL between December 2016 and December 2017. Each of the loans was repayable by between two to four monthly instalments. All of the loans were repaid before the due date. A summary of Mr G's borrowing from WCL is as follows:

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	15/12/2016	22/12/2016	£ 400
2	29/12/2016	29/03/2017	£ 500
3	2/06/2017	30/08/2017	£ 700
4	3/09/2017	1/12/2017	£ 500
5	8/12/2017	20/12/2017	£300

Mr G said that he was in a lot of financial trouble when he borrowed the loans from WCL. He had up to eleven other payday loans at the same time which meant that the loans were unaffordable. He said that his credit report would have shown other debt repayments and problems including late payments.

WCL said in its final response letter that it had considered Mr G's income and expenditure, credit scoring from the credit reference agencies and the level of Mr G's monthly credit commitments. It said that Mr G's income left him with sufficient money to cover the agreed repayments without jeopardising his existing credit commitments and living expenses.

WCL provided this service with more information about its assessment process. It said it tests a consumer's monthly outgoings against statistical data. If this results in higher expense figures than those provided by the consumer, it uses the higher figures in its affordability assessment. As an example of this, it had increased Mr G's stated food expenditure from £70 to £140. It also verifies the figure for monthly credit commitments using up-to-date information received from credit reference agencies. It calculates an up-to-date monthly repayment figure for each credit item. It said that its credit report showed that Mr G had total outstanding credit of £1,553 relating to short term loans and instalment credit. It said that in the context of a monthly net income of around £3,750, this didn't appear to be excessive. In total, it estimated that Mr G was required to pay minimum total monthly repayments of approximately £430 on his outstanding credit balances.

WCL also noted that Mr G's recent credit was well-maintained. He had no new defaults registered on his account within the previous 36 months. He also had no debt management plans, bankruptcies, or individual voluntary arrangements registered on his record.

## *our adjudicator's view*

The adjudicator didn't think the checks on any of the loans were suitable. She noted that when Mr G applied for Loan 1 that he'd told WCL that his monthly expenditure was around

£1,250. And he'd said that he didn't have any loan repayments or other credit commitments.

But WCL had said that its credit checks showed that Mr G had outstanding credit commitments of around £1,550. So she said that it would have been reasonable for WCL to carry out a full review of Mr G's circumstances to ensure that the information he was providing was accurate, and that he could sustainably meet his repayments. The adjudicator said that it would've been reasonable to carry out a full review of Mr G's financial circumstances for all the loans. She said that if WCL had carried out sufficient checks, she thought it was unlikely that it would have agreed to offer Mr G any of the loans. She could see that he was spending large amounts on gambling platforms before the first two loans, and that his living costs and financial commitments would have left him with insufficient disposable income for Loans 3 to 5. So she recommended that WCL should:

- Refund all interest and charges that Mr G paid on all 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 all the loans from Mr G's credit file.

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

WCL disagreed that a full review was required. It said that other adjudicators (on other complaints) had acknowledged that fewer checks were required in the earlier stages of a loan cycle. This was particularly so in the current scenario, where Mr G's income was much higher than average, and the loan repayments were less than 7% of his net monthly income (for 4 out of the 5 loans). But it had carried out a number of checks in any event. It had carried out an independent verification check of Mr G's net salary, a residence and employment status check, a credit check including real-time data, a full affordability check, a statistical check of living costs and identity checks.

WCL noted that the adjudicator's reasoning for the need for a full review was that Mr G didn't include any credit repayments in his expenses (for the first loans in the cycle), whereas its credit report showed short term credit outstanding of £1,553. But it said that the short term credit figure included all categories of credit such as bank overdrafts (which do not require repayment), telephone contracts (which may be included in utilities), credit cards (purchases) and hire purchase balances (which can be included under travel).

WCL also said that the total credit balance was small enough, relative to Mr G's monthly income, that any monthly repayments could have been included in his regular living costs. And, even if Mr G would have had to pay the entire short term credit outstanding in one go, he still would have had sufficient disposable income to pay his regular living costs and make the repayments on his loans from WCL.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr G and to WCL on 11 March 2019. I summarise my findings:

I'd noted that WCL had referred to other adjudicators' assessments on other complaints. But each complaint at this service is assessed on its own merits and it wasn't always appropriate to compare the outcomes of other complaints without a detailed understanding of the detailed facts of each complaint.

I explained that WCL was required to lend responsibly. It needed to make checks to make sure Mr G could afford to repay the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr G was borrowing, the length of the agreement and his lending history. But there was no set list of checks WCL had to do.

The Financial Conduct Authority was the regulator at the time Mr G borrowed from WCL. Its regulations require lenders to take *“reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.”* The regulations define ‘sustainable’ as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

#### *Loans 1 to 4*

Loan 1 was repayable by two monthly instalments of around £247 and Loans 2 to 4 were repayable by four monthly instalments with a highest instalment of £278.07.

I’d thought about whether WCL’s checks were proportionate before Loans 1 to 4. WCL told us that before lending to Mr G, it had asked him about his income and outgoings. Before Loans 1 to 4, Mr G had declared a monthly income of £3,750 and living costs of £1,250. The outgoings consisted of rent, utilities, travel and food. WCL told this service that it had increased Mr G’s declared outgoings to reflect statistical data where appropriate. I could see that the loan repayment amounts for Loans 1 to 4 were relatively modest compared to Mr G’s declared disposable income.

WCL’s records also showed that Mr G hadn’t declared any credit commitments or loan repayments before Loans 1 to 4. But I’d noted that WCL had told us about a credit check it had carried out, and that this showed that Mr G had short term credit outstanding totalling £1,553. It had estimated that he would be paying monthly credit repayments of £430. I’d thought WCL might have been concerned about Mr G omitting short term credit commitments of this amount in his declaration to it of his outgoings.

I’d also thought that WCL would be aware that when a lender carries out a credit check, the information it sees doesn’t usually provide the same level of detail that a consumer’s credit report will and it wasn’t necessarily up to date. A lender might only see a small portion of a borrower’s credit file, or some data might be missing or anonymised. I was also aware that not all payday and short term lenders report to the same credit reference agencies. So, it was possible that not all of Mr G’s loans might have been identified by WCL’s credit check. I’d also noted that WCL had only referred to the results of one credit check in its response to this service, although it had said that it had carried out a credit check before each loan. I’d considered the credit commitments referred to in that credit check below.

WCL had told us that it had performed a number of assessment checks including a credit check. I’d thought it was reasonable for WCL to have relied on the information Mr G had declared to it about his income and living costs for Loans 1 to 4, and noted that WCL had increased Mr G’s living costs to reflect statistical data. But I’d thought WCL should have been concerned about the results of its credit check especially as Mr G hadn’t declared any credit commitments to it before Loans 1 to 4. And in view of the amount of Mr G’s short term credit commitments shown in WCL’s credit check, I’d thought WCL should have been on notice that it was unlikely Mr G’s financial situation was as good as he was declaring. I’d

noted that WCL had estimated an amount for Mr G's credit repayments. But I'd thought it needed to do more here. I'd thought WCL should have additionally asked him some very specific questions about what its credit check showed before all these loans. I couldn't see that it had done this.

#### *Loan 5*

Mr G took out Loan 5 a week after he'd repaid Loan 4. The loan was repayable by three monthly instalments of around £141. Mr G had declared a monthly income of £3,750 and outgoings of £1,690. The stated outgoings included for the first time credit commitments totalling £600.

But by this time and even though there had been no repayment issues with Loans 1 to 4, I'd thought that Mr G's borrowing history might have suggested to WCL that Mr G was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem, and that his finances were likely to be under some pressure. I'd thought WCL also ought to have been concerned as to why a person with an apparently high level of disposable income was coming back to it for a fifth loan. So I'd thought it may have been proportionate at this time for WCL to have independently reviewed the true state of Mr G's finances. It could've done this in a number of ways. It could've asked for evidence of Mr G's income and expenditure such as payslips and bills or it could've looked at things like his bank statements. I couldn't see that it had done this.

Although I didn't think the checks WCL did on all the loans were sufficient, that in itself didn't mean that Mr G's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown WCL that Mr G couldn't sustainably afford the loans.

#### *Loan 1*

As I'd said above, I would have expected WCL to ask Mr G some questions about what its credit check showed, whilst taking account of Mr G's declared disposable income of £2,500. So I'd tried to find out more about this by looking at Mr G's credit report and his bank statements for the month prior to the loan, to see what better checks would have suggested to WCL. I'd noted from these documents that Mr G had received three instalment loans and a payday loan from other lenders totalling £3,270 which would have required repayment around the same time as WCL's loan. But I could see that the monthly repayments to be made around the same time as Loan 1 totalled around £1,300. Taking account of these and Mr G's declared disposable income, it still appeared that Mr G would have been able to sustainably repay the repayments on Loan 1. So I didn't think that carrying out better checks would've uncovered anything that would've stopped WCL from giving the loan to Mr G. So, I didn't intend to uphold Mr G's complaint about Loan 1.

#### *Loan 2*

I'd again looked at Mr G's credit report and his bank statements for the month prior to Loan 2, to see what better checks would have suggested to WCL. I'd noted that Mr G's outstanding short term loans totalled £3,070 which would have required repayment around the same time as WCL's loan. But I could see that the monthly repayments totalled around £1,100. Taking these and Mr G's declared disposable income of £2,500 into account, it still appeared that Mr G would have been able to sustainably repay the repayments on Loan 2. So I didn't think that carrying out better checks would've uncovered anything that would've

stopped WCL from giving the loan to Mr G. So, I didn't intend to uphold Mr G's complaint about Loan 2.

### *Loan 3*

I'd again looked at Mr G's credit report and his bank statements for the month prior to the loan, to see what better checks would have suggested to WCL. I'd noted that Mr G had no outstanding short term loans which would have required repayment around the same time as WCL's loan. So I didn't think that carrying out better checks would've uncovered anything that would've stopped WCL from giving Loan 3 to Mr G. So, I didn't intend to uphold Mr G's complaint about Loan 3.

### *Loan 4*

I'd again looked at Mr G's credit report and his bank statements for the month prior to the loan, to see what better checks would have suggested to WCL. I'd noted that Mr G's outstanding short term loans totalled £4,248 which would have required repayment around the same time as WCL's loan. But I could see that the monthly repayments totalled around £1,461. Taking these and Mr G's declared disposable income of £2,500 into account, it still appeared that Mr G would have been able to sustainably repay the repayments on Loan 4. So I didn't think that carrying out better checks would've uncovered anything that would've stopped WCL from giving Loan 4 to Mr G. So, I didn't intend to uphold Mr G's complaint about Loan 4.

### *Loan 5*

As I'd said above, by the time of Loan 5, I'd thought WCL should have been independently checking what Mr G was earning and spending each month. So I'd tried to do this by looking at Mr G's credit report and bank statements in the month before this loan to see what better checks would have shown WCL. The bank statements might not have shown WCL everything it would've seen by carrying out proportionate checks. But I thought that the bank statements were the best indication of Mr G's ability to afford the loan at the time it was approved. So I didn't think it was unreasonable to rely on these.

I'd checked Mr G's credit report and I could see that he had at least 15 short term loans outstanding when he took out Loan 5. The monthly repayments totalled over £3,000 and would have had to be repaid around the same time as Loan 5. Mr G's bank statements for the month before Loan 5 showed his income was around £3,900 and his normal living costs and regular financial commitments were over £2,000. WCL would also have become aware that Mr G appeared to be gambling heavily with gambling expenditure of around £2,000. Mr G's living costs, his spending on gambling and his needed to borrow to fund his gambling I thought made it clear that any new borrowing was unlikely to be repaid sustainably. So overall, if WCL had carried out what I considered to be proportionate checks before Loan 5, I'd thought it was likely that it would have concluded that Loan 5 wasn't sustainable.

So, I thought if WCL had done what I considered to be proportionate checks, it would have seen the problems with Mr G's financial situation. And so, as a responsible lender, I didn't think it would have agreed to lend Loan 5 to him. So, I thought that WCL needed to pay Mr G some compensation relating to Loan 5.

Subject to any further representations by Mr G or WCL my provisional decision was that

I intended to uphold this complaint in part. I intended to order Western Circle Limited, trading as Cashfloat, to:

1. Refund all interest and charges that Mr G paid on Loan 5
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement;
3. Remove any adverse information about Loan 5 from Mr G's credit file.

\*HM Revenue & Customs requires WCL to take off tax from this interest. WCL must give Mr G a certificate showing how much tax it had taken off if he asks for one.

Mr G responded to my provisional decision to say he had nothing to add.

WCL hasn't provided a response to my provisional 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.

Given that Mr G and WCL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require WCL to pay Mr G some compensation as set out below.

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Western Circle Limited, trading as Cashfloat, to:

1. Refund all interest and charges that Mr G paid on Loan 5
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement;
3. Remove any adverse information about Loan 5 from Mr G's credit file.

\*HM Revenue & Customs requires WCL to take off tax from this interest. WCL must give Mr G a certificate showing how much tax it had taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 16 May 2019.

Roslyn Rawson  
**ombudsman**