**complaint**

Mr T says Western Circle Limited, trading as Cashfloat, lent to him irresponsibly.

**background**

I sent both parties my provisional decision on this complaint on 18 December 2018. A copy of it is attached and it forms part of this final decision.

I explained why I wasn't planning to uphold this complaint and asked both parties to let me know if they had anything to add.

Cashfloat responded saying it had nothing else to add. Mr T also responded, saying he didn't think the provisional decision was correct. He said Cashfloat never made any checks into his work situation or salary and continually lent him money without any basic checks of affordability. He said he was struggling to pay Cashfloat back and it took full advantage of his situation.

I've considered Mr T's response and have set out my findings below.

**my findings**

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law, good industry practice and any relevant regulations at the time.

Having done so, I've reached the same findings as I did in my provisional decision. I appreciate this will be disappointing for Mr T. I'll explain why what Mr T has said hasn't changed my mind.

I don't agree that Cashfloat didn't make any checks into Mr T's work situation or salary. From what I've seen, Mr T was asked about his salary and his employment status each time he made an application for credit. It also asked some questions about his outgoings. Information about Mr T's employment, such as salary and employer name, was changed from time-to-time, so it seems Mr T was giving sufficient attention to this part of the application form.

For the most part, I still think it was reasonable for Cashfloat to rely on what Mr T was telling it about his income and employment status. The credit checks it carried out didn't raise any concerns about this information. It may also help if I explain that the industry regulator doesn't set out any prescriptive checks a business must undertake before lending. There's no rule which required Cashfloat to ask Mr T to provide it with proof of his income and outgoings.
As I set out in my provisional decision, what Cashfloat was required to do was to carry out affordability checks which were proportionate in the circumstances of each loan. But it has discretion as to what those checks should be.

In *some circumstances* I consider it might be proportionate for a lender to ask an applicant for further information to support what they've said about their income or expenditure. This could include where a lender has reason to believe the applicant hasn't provided full or correct information. But for loans 1-6, I didn't think this applied in Mr T's circumstances.

I thought it was reasonable for Cashfloat to rely on what Mr T told it without carrying out further checks (beyond the credit checks it actually carried out). And I still think this is the case, for the reasons I gave in my provisional decision.

I did find however that Cashfloat ought to have done more to check whether loans 7 and 8 were affordable. I went on to say that such proportionate checks would most likely have suggested the loans were still affordable. I haven't seen any new information to change my mind on that point and it isn't something Mr T has specifically challenged. I have however reviewed the information in my provisional decision again and think this is still a fair outcome.

**my final decision**

I do not uphold this complaint against Western Circle Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 February 2019.

Matthew Bradford
**ombudsman**

**COPY OF PROVISIONAL DECISION**

**complaint**

Mr T says Western Circle Limited, trading as Cashfloat, lent to him irresponsibly.

**background**

Cashfloat approved eight loans for Mr T. I've set out some of the details Cashfloat provided about the loans in the table below.

| Loan no. | Amount (£) | Instalments (£) | Approved on | Scheduled end | Actual end |
|---|---|---|---|---|---|
| 1 | 500 | 2 x 329 | 26/07/2016 | 19/09/2016 | 07/10/2016 |
| 2 | 250 | 1 x 324 | 08/10/2016 | 14/11/2016 | 14/11/2016 |
| 3 | 250 | 1 x 280 | 24/11/2016 | 09/12/2016 | 09/12/2016 |
| 4 | 400 | 2 x 278 | 30/03/2017 | 30/05/2017 | 05/05/2017 |
| 5 | 400 | 2 x 257 | 14/05/2017 | 03/07/2017 | 26/05/2017 |
| 6 | 600 | 2 x 396 | 12/07/2017 | 04/09/2017 | 11/08/2017 |
| 7 | 600 | 2 x 386 | 14/08/2017 | 02/10/2017 | 18/08/2017 |
| 8 | 400 | 3 x 188 | 19/08/2017 | 06/11/2017 | 23/10/2017 |

An adjudicator considered this complaint and recommended it be upheld in respect of loans 5-8. Cashfloat didn't agree with this, saying (in summary):

- The loan repayments were small in relation to Mr T's income and so the amount of checking (*i.e.* proportionate checks) was correspondingly lower. Expecting a full-scale audit of Mr T's financial records isn't reasonable
- Cashfloat did, as the adjudicator suggested, verify Mr T's income, using credit tools
- It doesn't have to take into account discretionary spending
- Customers with outstanding short-term debt will often choose to make higher payments than necessary in order to reduce their debt and save on interest. If they then have an unexpected expense, they will borrow again, and reduce the payments to previous lenders to the minimum level to leave sufficient disposable income to make the repayments on their new loan. This is perfectly rational and unobjectionable behaviour
- Some of the figures the adjudicator used seem highly unlikely or didn't make sense
- The adjudicator didn't distinguish between the balance of outstanding loans and the repayment required when looking at Mr T's outgoings
- The number of loans Mr T took out had no bearing on credit risk or affordability.
- Mr T's indebtedness (from his credit report) reduced by a third over the period of lending
- Cashfloat doesn't have to take gambling expenditure into account

As there was no agreement, the complaint was passed to me to decide.

**my provisional 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 taken into account the law, good industry practice and any relevant regulations at the time.

Relevant regulations and guidance include the Financial Conduct Authority's (FCA) Consumer Credit sourcebook (CONC). CONC contains rules and guidance for lenders about responsible lending. Among other things, CONC says lenders should carry out affordability checks which are proportionate in the circumstances of the loan. The regulations also say repayments should be sustainable (*i.e.* repayable from the borrower's income or savings) and that lenders shouldn't allow a borrower to enter into consecutive credit agreements where it would be unsustainable to do so. CONC was amended in

November 2018, so any reference to it in this decision should be read to mean CONC as it stood at the time the loans were approved.

With this in mind, I've considered whether Cashfloat carried out proportionate checks before lending – and if I find it didn't – I've gone on to consider what proportionate checks would likely have shown.

Cashfloat has shown us that it took into account information provided by Mr T in his application. This included information about his income, expenditure and employment status. The monthly outgoings Cashfloat recorded included figures for food/groceries, utility bills, rent/mortgage, other credit commitments and travelling expenses. I've set out below the figures Mr T provided to Cashfloat.

For each loan, Mr T declared a net monthly income of £4,000-£4,500 and also included partner's income of £1,500. Mr T's total declared monthly expenditure was £2,400-£2,900 and Cashfloat seems to have used a figure of just under £2,500 when calculating Mr T's total expenditure for each loan. It worked out Mr T's *household* disposable income was about £3,000 – so Mr T's personal disposable income would be about £1,500 (if his partner's income was disregarded). Cashfloat also carried out credit checks, but I haven't seen the detailed results of these for all of Mr T's loans.

Based on what I've seen so far, I think the checks Cashfloat carried out on loans 1-3 were proportionate, bearing in mind the size of the loans and the information provided by Mr T on his applications. The repayments on each of these loans were small in relation to Mr T's declared income (and declared disposable income) and the amounts Mr T was borrowing were not increasing. I've taken into account that loan 1 was repaid 18 days late, but I don't think one instance of a late repayment is enough to suggest Cashfloat should've carried out more detailed checks for loan 2 or 3, particularly given that they were half the size of loan 1.

One element of possible concern is that Cashfloat did see, from its credit check in October 2016, that Mr T had £20,875 of consumer credit debt – this included £12,385 on credit cards and £8,422 of loans and instalment credit. But Mr T included £400 for loan repayments and £500 for 'other' credit commitments on his loan application. From the credit check information I've seen, I don't think these outgoings would have appeared to be obviously wrong to Cashfloat. And the loans appear to be affordable when taking those figures into account.

Overall, I think Cashfloat carried out proportionate checks and reasonably decided loans 1-3 were affordable. So I'm not planning to uphold the complaint about loans 1-3.

There was then a three month gap between Mr T repaying loan 3 and applying for loan 4. On the one hand, this isn't a particularly long gap bearing in mind the short-term nature of the type of credit Mr T was applying for. This was Mr T's fourth application for short-term credit in eight months, which I consider to be relatively frequent to the point where it *might* indicate a dependency on this type of credit. But on the other hand, Mr T's declared income was quite high, he appeared to have a reasonable amount of disposable income and I've not seen that Cashfloat was actually aware that Mr T was in financial difficulty. Based on his declared net monthly salary of £4,000 and total declared expenditure of £2,900 (which included £1,000 towards other loans), Mr T had £1,100 of disposable income from which he had to make two repayments of £278.
I also bear in mind he included his partner's £1,500 income on the application – which would suggest he shared at least some of his living costs.

On balance, I think Cashfloat's checks were proportionate for loan 4 too. Although I haven't seen the credit checks for loan 4, I've seen a credit check either side of this loan and I don't think it's likely a more up-to-date credit check would've significantly undermined what Mr T told Cashfloat about his credit commitments. As it stands, I'm not planning to uphold the complaint about loan 4.

For loans 5 and 6 Mr T declared a monthly income of £4,000 and £4,500 respectively. His declared outgoings again totalled £2,900 for loan 5 and totalled £3,050 for loan 6. This left Mr T with disposable income of £1,100-£1,450. I've thought carefully about whether it was still reasonable for Cashfloat to rely on the information Mr T provided. It says it verified his income with credit reference agencies and although I haven't seen much detail of this I have seen Mr T's bank statements and I don't think more detailed checks would've suggested Mr T earned less than he declared. Cashfloat has also suggested Mr T's indebtedness was reducing over time. And his credit report does show a small reduction in his overall indebtedness, from around £21,000 total debt in October 2016 down to around £19,000 in August 2017. There's also a reduction in the value of cash advances Mr T received over the same period and the balance of debt classified as 'loan/instalment' credit decreases from £8,400 to £5,800.

I think there are also negative factors to take into account. The August 2017 credit check shows a total of 23 accounts were opened within 12 months. I think this suggests Mr T was relying heavily on short-term credit. The credit checks also shows Mr T had 12 active accounts and it seems that there was a recent default on at least one account.

In addition to this negative information, it's also arguably unusual that Mr T – who had reported significant disposable income of £1,100-£1,450, was regularly returning to borrow relatively small sums. I consider this to be a factor which it could be said should have caused Cashfloat to question whether it was still proportionate or reasonable to accept what Mr T was saying about his outgoings.

Given the above, I've thought carefully about whether Cashfloat's checks were proportionate for loans 5 and 6, bearing in mind the negative and positive factors I've summarised. And on balance, I think it was still reasonable for Cashfloat to rely on the information provided by Mr T. And so I think the sort of income and expenditure information Cashfloat gathered was still proportionate at this stage in the lending relationship. In saying this, I've taken into account that the total amount Cashfloat had advanced to Mr T at this stage (loans 1-6) was £2,400 – and this was across a period of almost a year. Mr T had reported *monthly* income of at least £4,000. So the total amount Cashfloat had advanced was around 5% of Mr T's declared net yearly income. On balance, I don't think it would be reasonable to say Cashfloat should've considered Mr T's indebtedness was increasing or wasn't sustainable. I'm not therefore planning to uphold the complaint about loans 5 and 6.

For loans 7 and 8, I do not consider Cashfloat carried out proportionate affordability checks. I've again taken into account the positive and negative factors I've mentioned above. But I also bear in mind that short-term loans are not generally considered to be suitable for long term use (CONC 6.7.22G). And Cashfloat had been advancing credit to Mr T for about a year by this point – a total of eight loans in 12 months. There were only very short gaps between Mr T closing his previous loans and opening loans 7 and 8. I also think it's reasonable to say the amounts Mr T was borrowing were, by this time, increasing. Loan 6 was for £600. Then loans 7 and 8 were both taken in the same month, meaning Cashfloat leant Mr T £1,000 in total in August 2017.

I don't agree (as Cashfloat said in response to the adjudicator) that the number of loans isn't an important factor. I consider that providing a large number of loans could have the effect of unfairly prolonging Mr T's indebtedness by allowing him to take expensive credit over an extended period of time. Additionally, the sheer number of loans was likely to have negative implications on Mr T's ability to access mainstream credit and so kept him in the market for these high-cost loans. So I think the number of loans is a relevant factor when considering whether Cashfloat treated Mr T fairly.

Finally, I think by the time of loans 7 and 8 Cashfloat should have been sceptical about whether it knew enough about Mr T's income and outgoings to determine if the loans were sustainably affordable. From the 'dashboard' calculation it has provided, it seems it relied heavily on Mr T's declared income and expenditure to work out his disposable income. But I think the number and size of the loans Mr T was requesting was enough, by the time of loan 7, for Cashfloat to question whether Mr T really had as much disposable income as he declared.

Before approving loans 7 and 8, I think it would have been proportionate for Cashfloat to ask Mr T further questions about his credit commitments, setting out separately how much he paid for short-term and regular commitments. I also think it should've asked him to provide it with some evidence, such as bank statements, of his income and outgoings. It didn't do this, so I've considered what I think Cashfloat would've seen, taking into account information from the bank statements Mr T has provided.

I've seen that in July 2017 about £9,075 was deposited into Mr T's bank account, from a limited company it seems was controlled by him. I think Cashfloat could reasonably have treated this as income.

It's difficult to say exactly what Cashfloat would've decided Mr T's regular credit commitments were. I've seen, from a credit report he provided, that he had five credit cards with balances totalling about £13,000. This aligns with Cashfloat's own credit check. From his bank statements, it seems likely Mr T was paying more than the minimum payment on his cards. But I think Cashfloat could reasonably have used the minimum payment when deciding whether the loan was affordable. Mr T declared £500 of credit commitments and this seems like enough to cover the minimum payment on this much credit card debt. So I think Cashfloat could've accepted £500 as being a reasonably accurate figure for regular credit commitments payments.

But Mr T said his loan repayments were £0. This couldn't be right. Cashfloat's credit report suggests Mr T had almost £6,000 in outstanding loans/instalment credit. The credit report doesn't provide any information about the terms of the repayment for this debt. From what I've seen from Mr T's bank statements, it was likely to be a mixture of payday and instalment credit.

Again, this makes it difficult to say what proportionate checks would've revealed about Mr T's short-term credit commitments. I've seen that he paid one short-term creditor £570 and another £480 shortly after these loans were approved. I think it's likely these were both ordinary contractual payments, which were outstanding at the time he applied for loans 7 and 8. I haven't seen enough to make me think Mr T had other contractual short-term loan payments in addition to these. As a result, I think it's likely proportionate checks would've suggested Mr T had around £1,050 of short-term credit commitments Cashfloat would've taken into account as part of an affordability assessment.

This leaves Mr T's general living costs. From what I've seen, he paid rent of £1,825 a month, rather than the £1,250 declared. I think it would have been reasonable for Cashfloat to accept the other figures Mr T provided for things like travel and food and bills – a total of £650 a month. Overall, this leads to a total for general living expenses of about £2,500.

So to summarise, I think proportionate checks would've suggested to Cashfloat that Mr T's income was about £9,000 a month and his expenditure included £500 for regular credit commitments, £1,050 for short-term commitments and £2,500 for regular living costs at the time he applied for loans 7 and 8. Even allowing for a significant margin for error, this would appear to leave quite a lot of disposable income from which Mr T could repay the loans. On balance, I don't think proportionate checks would've suggested these loans were unaffordable.

Finally, I have noted there is at least one month in which there is a fair amount of gambling expenditure on Mr T's bank statements. But it isn't persistent and there are many months with very little gambling expenditure. I don't think that gambling expenditure is a significant consideration in Mr T's case. I don't agree with Cashfloat that it should never take it into account, but in this case, I think it isn't a particularly important factor and I don't plan to say more about it.

I appreciate this will come as a disappointment to Mr T. But I don't think it's likely proportionate affordability checks would've lead Cashfloat to think loans 7 and 8 were not affordable. And I think Cashfloat's checks were proportionate for loans 1-6. As a result, I'm not currently planning on upholding his complaint.

**my provisional decision**

I am not currently planning to uphold this complaint against Western Circle Ltd.