

The complaint

Mr W has complained through a representative that Western Circle Ltd trading as Cashfloat ("Cashfloat") didn't carry out sufficient affordability checks before it granted loans to him.

What happened

A summary of Mr W's borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest monthly repayment per loan
1	£600.00	19/10/2021	04/01/2022	5	£209.55
2	£300.00	11/03/2022	31/05/2022	3	£139.50
3	£300.00	10/06/2022	31/08/2022	3	£138.80

Cashfloat wrote to Mr W's representative with a final response letter and explained why it didn't consider an error had been made by providing these loans. However, as a gesture of goodwill, and in full and final settlement of the complaint, it offered a one-off payment of £50.

Mr W's representative then referred the complaint to the Financial Ombudsman where it was considered by an investigator. The investigator upheld the complaint and concluded none of the loans ought to have been provided because the information given to Cashfloat indicated Mr W had a large amount of credit commitments and had two outstanding County Court Judgements (CCJ).

Cashfloat didn't agree with the assessment and these points didn't change the investigator's mind and so the complaint was passed to me. A provisional decision was then issued explaining the reasons why I didn't think the complaint ought to be upheld. Both parties were given an opportunity to provide further submissions as soon as possible, but in any event no later than 19 April 2024.

Cashfloat didn't respond to or acknowledge the provisional decision. Mr W's representative provided some further comments and I've summarised these below.

- Cashfloat's credit checks showed a significant amount of other debt from other lenders including payday loan companies.
- Mr W had two active CCJs.
- Cashfloat ought to have verified the information Mr W had provided – such as requesting bank statements. Had bank statements been requested than Cashfloat would've likely seen multiple payments to debt collectors and returned direct debits.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Cashfloat had to assess the lending to check if Mr W could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Cashfloat's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr W's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Cashfloat should have done more to establish that any lending was sustainable for Mr W. These factors include:

- Mr W having a low income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);*
- The amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);*
- Mr W having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);*
- Mr W coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).*

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr W. The investigator didn't think this applied to Mr W's complaint and I would agree, as there were only three loans taken.

Cashfloat was required to establish whether Mr W could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr W was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr W's complaint.

Loan 1

Cashfloat took details of Mr W's income and expenditure and carried out a credit search before this loan was granted. Cashfloat recorded that Mr W worked full time and received a monthly salary of £2,550. As part of his application Cashfloat obtained a copy of his payslip which also confirmed Mr W's income was likely accurate.

Cashfloat also made enquiries about his living costs, which Mr W declared to be £775 per month. It's worth saying here that Cashfloat says that it assessed Mr W's monthly expenditure using what is called "trigger values" – taken from a well-known debt charity and these values take account of an applicant's job, location, homeowner status, to name a few factors.

Having used these trigger values it estimated Mr W's monthly outgoings were at a maximum likely to be £928 and to that it added a further buffer of £100. These were the figures used for Cashfloat's affordability assessment. Even using the larger monthly outgoings, along with the buffer, there was still sufficient disposable income for Mr W to be able to afford the loan repayments.

Cashfloat also carried out a credit search and it has provided the Financial Ombudsman with a copy of the results it received from the credit reference agency. I want to add that, although Cashfloat carried out credit searches, there wasn't a regulatory requirement to do one, let alone one to a specific standard. But what Cashfloat couldn't do, is carry out a credit

search and then not react to the information it received – if necessary.

Cashfloat was also entitled to rely on the information it was given by the credit reference agency and I've looked at the results Cashfloat received from the credit reference agency to see whether there was anything contained within it, that would've either prompted Cashfloat to have carried out further checks or possibly have declined Mr W's application.

Having reviewed the credit checks I can see that Mr W had around £22,000 of debt – which isn't an insignificant amount. But it must be said that the majority of that debt (around £18,500) related to a hire purchase agreement that was costing Mr W £360 per month to service and he appeared to be repaying that account without any undue difficulty.

On top of this Mr W had six credit cards owing a total of £2,793. All of these credit cards were within their credit limits and all the cards had been well maintained with no signs of missed payments or any other signs of repayment problems.

Historically Mr W had some repayment problems, he defaulted on two accounts in 2017 and one in 2016. There were also two unsatisfied CCJs from 2016. However, this was long enough ago for Cashfloat not to have been overly concerned about Mr W's current financial position, especially as his current commitments had been managed well. Although Mr W had historic adverse payment data – that isn't in the circumstances of this case sufficient to either uphold this loan or to have prompted Cashfloat to carry out further checks.

Overall, I think that Cashfloat carried out proportionate checks before the loan was granted and it was reasonable for Cashfloat to have relied on the information Mr W provided to it and the results of its own checks.

The checks showed there wasn't anything to suggest that Mr W was having either current financial difficulties or to indicate the loan repayments would be unaffordable or unsustainable for him. It therefore follows that I am intending to not uphold Mr W's complaint about his first loan.

Loans 2 and 3

After Mr W repaid loan 1, he didn't return for a second loan for around two months. While this break clearly isn't enough to break the chain, it does lead me to conclude that Mr W wasn't reliant on the loans – after all he had no need to borrow for two months.

I've also given weight to the fact that when Mr W did return for new borrowing it was for a smaller sum compared to his first loan – and I would agree with Cashfloat here in as much as it would've likely given their underwriters added confidence that Mr W could afford his repayments.

The same sort of checks were carried out before these loans as they had been for loan 1. Mr W declared a monthly income of £2,500 for loan 2 and £3,000 for loan 3. For both loans Cashfloat verified his income through a payslip and or a screen shot of the bank statements showing his received income. So, as before, Cashfloat would've been confident the income figure declared by Mr W was accurate.

Cashfloat also made enquiries about his living costs, which Mr W declared to be £1,100 per month for both of these loans. Cashfloat once again assessed Mr W's monthly expenditure using the "trigger values" that I've mentioned above. Having used these trigger values, it estimated Mr W's monthly outgoings were at a maximum likely to be £1,380 when loan 3 was advanced and it also added a further buffer of £100. Even with these increased living costs, both loans appeared affordable.

For loan 3 Mr W gave Cashfloat access to his bank statements through open banking. As part of this process Cashfloat generated a report based on the information that was visible to it. I've reviewed the report and the information didn't suggest Mr W was in financial difficulties – there was no signs of unsustainable outgoings or any evidence of missed

payments. Having reviewed the open banking report, it wouldn't have prompted Cashfloat to have declined the application.

Credit checks were also carried, and the same caveats apply as they did for loan 1 and Cashfloat has provided the results of the credit checks for each of these loans. For both loans there were no new defaults or CCJ's and the accounts that Mr W did have had been well maintained including the hire purchase agreement. Mr W still had a number of active credit cards, but all of these were within their limits and there wasn't any adverse payment information recorded.

By loan 3, Cashfloat was on notice that he had two active loan accounts costing £399 per month and then on top he had a hire purchase agreement and his credit cards. So, I do think Mr W's credit commitments were more than the £540 Cashfloat estimated them to be. There were more likely around £900 per month – but even taking account of the larger monthly credit commitments he still had sufficient disposable income to afford the repayments for his third and final loan.

Overall, having looked at the credit check results, there isn't anything as far as I can see that would've prompted Cashfloat to have either conducted further checks or to have declined Mr W's applications.

The overall lending pattern including the amounts that were borrowed wouldn't, in my view, have triggered further checks from Cashfloat or led it to conclude the loans were unsustainable for him. In addition, there also wasn't anything else, such as the way Mr W repaid his loans, that would've led Cashfloat to believe that it needed to conduct further checks or to have declined his applications for credit.

I'm intending to conclude that Cashfloat carried out proportionate checks before each of these loans were granted which showed it Mr W could afford the repayments. Cashfloat previously made an offer of £50 to settle the complaint I'll leave it up to Mr W to contact it to see whether it's still available.

What I've decided – and why

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

I've thought about the comments Mr W's representative has made, and having considered the evidence afresh, I am still of the view that Cashfloat carried out proportionate checks before it lent. As such, I don't think it made an error when it provided these loans.

Mr W's representative has said the credit search results from Cashfloat showed significant debt outstanding which included borrowing from other payday loan companies. I've reviewed the credit check data provided and what Cashfloat received before each loan. While Mr W had a significant amount of total debt – just over £22,000 (at loan 1 but this decreased) - the majority of that was on a Hire Purchase (HP) agreement in which payments had been well maintained.

The rest of the debt, for example at loan 1, was due on credit cards. At the time of loan 1 Mr W didn't, as far as I can see, show any signs that he was reliant on payday loans because he didn't have any outstanding. While I accept at loan 3, Cashfloat was told that there were two outstanding "Finance House" loans and these could've been high-cost credit loan. Cashfloat knowing about the two loans, wouldn't in my mind have prompted further checks nor did it make the loan unaffordable based on the other information Mr W had declared.

I had thought about the CCJs when considering Mr W's complaint and his representative agrees these were historic in nature. Indeed, the first CCJ was added to his credit file more than five years before loan 1 was granted.

Those CCJs were historic and as such I think it was fair and reasonable for Cashfloat to have placed less weight on them than on Mr W's ability to repay these loans in a sustainable manner. There may have been some different considerations needed if the CCJs were more recent – but I don't think it's fair nor reasonable for Cashfloat to have thought that Mr W may have struggled to repay his loans based on CCJs from over five years ago.

Based on the information Cashfloat gathered, I think it would've been disproportionate of it to have reviewed Mr W's bank statements. I accept it used open banking when loan 3 was advanced that provided it with further details of Mr W's income and expenditure, but even looking at that report, I don't think there were any signs that Mr W was having, or likely having, financial difficulties.

Therefore, for the reasons I've outlined above and for the reasons given in the provisional decision I do not uphold Mr W's complaint.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 23 May 2024.

Robert Walker
Ombudsman