

The complaint

Mr R complains that Western Circle Ltd gave him loans without carrying out proper affordability checks. Mr R says had further checks been carried out, Western Circle would've discovered he had other loans with other lenders.

What happened

Mr R took four loans from Western Circle between January 2016 and February 2017. I've outlined a summary of his borrowing below.

| loan number | loan amount | date loan was funded | repayment date | term (months) | monthly repayment |
|-------------|-------------|----------------------|----------------|---------------|-------------------|
| 1 | £500.00 | 29/01/2016 | 29/04/2016 | 3 | £246.80 |
| 2 | £650.00 | 06/06/2016 | 31/08/2016 | 3 | £310.59 |
| 3 | £500.00 | 14/11/2016 | 28/02/2017 | 4 | £184.68 |
| 4 | £850.00 | 28/02/2017 | 14/06/2018 | 3 | £420.26 |

Following Mr R's complaint, Western Circle issued its final response letter in May 2017. In summary, it said it had carried out proportionate checks which showed these loans were affordable. Mr R didn't agree and instead referred the complaint to the Financial Ombudsman Service in 2023.

Western Circle initially said it didn't think we could consider the complaint because Mr R referred it to the Financial Ombudsman Service more than six months after it issued the final response letter in 2017 and so was outside of our jurisdiction. However, after it was provided with the details as to why Mr R was late, it consented to the Financial Ombudsman Service considering the complaint.

The merits of the complaint were then considered by an adjudicator who partly upheld it. She didn't think Western Circle had made an error when loans 1 – 3 were provided. But she upheld Mr R's complaint about loan 4 because in her view the pattern of borrowing was now harmful for him.

Western Circle disagreed with the proposed outcome for loan 4 because it said there were breaks between the loans and the credit commitments which were verified as well as the other checks, showed the loan to be affordable.

Mr R responded to the adjudicator's assessment by providing a medical certificate confirming his recent medical diagnoses.

I then issued the first provisional decision explaining the reasons why I was intending not to uphold Mr R's complaint about loans 1 – 3 and why, based on the evidence, Western Circle ought to have carried out further, more in-depth checks before loan 4 was granted. However, at the time, I didn't consider that better checks would've led to Western Circle deciding loan 4 was unaffordable.

Later, following further enquiries which had been made with Mr R and Western Circle, I became aware that there was a County Court Judgment (CCJ) that had been granted in relation to loan 4.

Thinking about all the information provided in response to the provisional decision, including the details of the CCJ, I issued another provisional decision where there was no change to the outcome for loans 1 – 3 – these were still not upheld. However, as a result of the CCJ, and what Mr R knew or ought to have known at the time, I didn't think it would be appropriate for the Financial Ombudsman Service to consider the fourth loan and I intended to dismiss that part of his complaint.

Western Circle accepted the findings I was intending to reach. Mr R didn't agree with the outcome and a summary of his comments can be found below;

- He wasn't able to give his view to the Court due to his mental health at the time.
- Mr R had found examples of other cases against Western Circle that had been upheld after bank statements were considered.
- Mr R provided details of other loans he had taken from other lenders at the end of 2015 into January 2016.
- Mr R said he has evidence that the Financial Ombudsman Service has asked lenders to remove CCJs as part of the resolution to a complaint on other cases.

After Mr R's response, there have been other telephone calls and emails where Mr R has made further points – all of which I considered, and a summary of these points can be found below.

- Mr R wasn't given an opportunity to present his arguments to the court before the CCJ was approved.
- Mr R provided details of another case he had against a different high-cost credit provider who gave him a loan around the same time as Western Circle. This other complaint was upheld in his favour even though there was also a CCJ.
- Mr R has some concerns around the legality of the CCJ because he didn't receive the papers it was just added against his name – he was unaware a CCJ had been recorded.
- The amount of debt kept increasing – and was too much.

Below I've provided a in parts (in italics) a copy of the most recent provisional decision which was sent to both parties on 3 November 2023. The other headings have a summary of the conclusions that I reached.

Both parties were given an opportunity to provide any further submissions for my consideration, but a response needed to have been received by 17 November 2023.

Mr R has sent in emails and had phone calls with a colleague of mine all of which were added to the file. I've summarised Mr R's points below.

- Mr R had moved address in May 2017 and so couldn't have received the court papers sent to that address in July 2017. Later, Mr R provided his address history screen shot of his credit file, showing that his address was updated in May 2017. He also provided further details of the rental arrangements of renting out the property which meant he wasn't able to attend the property to collect any post unless the tenants gave permission.
- Mr R said Western Circle didn't contact him through other means such as a phone call or an email to tell him it was intending to start court action.

- Mr R didn't discover the CCJ until after it had been granted.
- He said the outcome reached in this complaint isn't consistent with the approach the Financial Ombudsman Service has taken with another one of his complaints that was recently decided. The other complaint concerned a loan that was taken out around the same time as Mr R's fourth loan and in the other case a court also granted a CCJ.
- Mr R had other cases against other lenders, all of which Mr R says the Financial Ombudsman Service has said that from loan 4 further checks ought to have been carried such as looking at bank statements. Mr R says the approach taken in this case isn't consistent.

Western Circle didn't respond to the last provisional decision, but it did, after requesting further information confirm that the only address it has recorded for Mr R was the address which was provided as part of his loan application.

A summary of the previous provisional decisions follows before I move on to deal with dealing with Mr R's most recent comments. The extracts from the previous provisional decision form part of this final decision.

A summary of what I said in the previous provisional decisions

Loans 1 to 3

Below is an extract from the provisional decision about loans 1 – 3. For ease of reference, I've include new headings in order to break up the summary of the provisional decision as well as my final decision where I've addressed Mr R's most recent comments. Below is what I previously said in the provisional decision about loans 1 – 3 and I've put this part in italics.

Western Circle had to assess the lending to check if Mr R 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. Western Circle's checks could have taken into account a number of different things, such as how much money was being lent, the size of the repayments, and Mr R'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. However, certain factors might suggest Western Circle should have done more to establish that any lending was sustainable for Mr R. These factors include:

- *Mr R 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 R 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 R 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 R. The adjudicator thought, in her assessment, that this applied to Mr R's fourth loan.

Western Circle was required to establish whether Mr R 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 R was able to repay his loan sustainably. It doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

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

In my view Western Circle carried out proportionate checks before these loans were granted considering what Mr R declared about his income of £3,140 each month and the outgoings he declared. Western Circle also compared the outgoings Mr R provided against figures provided by a well-known debt advice charity and as a result it increased Mr R's outgoings. These checks showed the loans to be affordable.

I also don't think, especially for loan three that Western Circle needed to have reviewed Mr R's bank statements – as he suggested. This is due to the small gaps between loans one and two and two and three. Given it was early in the lending relationship, I'm satisfied the checks were proportionate and the checks showed Mr R could afford his repayments. So, these loans weren't upheld.

I also previously explained why Mr R's comments in relation to the second provisional decision hadn't changed my mind about the complaint.

The approach the Financial Ombudsman Service takes to cases about unaffordable lending is well publicised and our website provides some case studies of how cases are considered. Mr R would likely be able to find decisions in which we've decided bank statements (or other documentation) was used to verify information.

I am required to come to a fair and reasonable outcome based on the individual circumstances of the complaint. Mr R says he has found other decisions against Western Circle where complaints have been upheld following an adjudicator concluding bank statements (or other documents) ought to have been reviewed and I accept this may be the case.

However, in this case, I don't think it would have been required, given the loan history and the amounts borrowed. For Western Circle to have considered the bank statements or Mr R's full credit report he has provided for loans 1 – 3 given the other information it obtained from Mr R. In my view, Western Circle wasn't given any reason to think the loans were either unaffordable or unsustainable, and therefore there wouldn't have been a need for it to consider Mr R's bank statements.

I accept that Mr R provided copies of his bank statements as well as his credit file and it is of course possible, that had Western Circle reviewed these statements – to be clear it didn't need to - then it may well have thought the loans may have been unaffordable for him. But Western Circle would've only concluded this had it viewed the bank statements but in my view, given everything else that it knew, it would've been disproportionate for it to view the bank statements. This is because the loans looked affordable and there was no indication these loans were unsustainable for him for any other reason.

At this point in the lending relationship – which included thinking about the loan term, amount borrowed and the gaps between some of the loans - I do think it was reasonable for Western Circle to have relied on the information it was given from both the credit reference agency and Mr R to show loans 1 – 3 were affordable. I am therefore not upholding Mr R's complaint about these loans.

Loan 4

In the provisional decision I explained, I was going to exercise my discretion to dismiss this element of his complaint about this loan. The reasons why I was intending to dismiss the complaint were:

- A court has already issued a CCJ which required Mr R to pay Western Circle.
- Mr R is in effect asking to reopen the issue about whether the loan is payable, but a court has already decided that it is.
- I noted Mr R didn't file a defence and he provided reasons for this including not being aware of the claim as well as his mental health.
- I also felt Mr R could've and should've raised an unaffordable lending defence against the Western Circle claim. I said this because Mr R had already raised an unaffordable lending complaint directly with Western Circle and had received a final response dealing with this matter in May 2017 which was around 4 months before the CCJ was granted.
- I previously considered and had provisionally decided that although Mr R said he hadn't received the claim papers, I was satisfied that on balance that the claim form was sent by the court to Mr R.

Debt Balance

Mr R queried the amount of interest that was charged by Western Circle, and I summarised the industry regulations around the cost cap that had been in place since January 2015 and how this didn't apply to the adding of court fees or other costs.

Other Complaint

Mr R also made some further points about how we dealt with another case, and how the Financial Ombudsman has asked for CCJs to be removed, I explained that I have to consider the circumstances of an individual case and having done so, I was satisfied that it isn't always possible to compare other decisions, even though, they may look similar.

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.

This section should be read in conjunction with the findings in the provisional decision above, because here I am only reviewing the new submissions and comments made by Mr R and Western Circle.

Loans 1 – 3

Having reviewed all the submissions from Mr R and Western Circle and with reference to the findings in the provisional decision which can be found above I am still minded to not uphold the complaint about loans 1 – 3.

Mr R provided some further submissions that he was borrowing from other loan companies at the same time as he was taking Western Circle loans – and some of these other loan companies made offers to settle complaints about unaffordable lending. While that may be the case, I have to consider what has happened in the individual circumstances of this case, and having done that I am still minded not to uphold these loans.

So, for the same reasons that I gave in the provisional decision, my view remains the same that Western Circle carried out a proportionate check before it granted these loans and it could rely on the information given to it by Mr R. I therefore do not uphold Mr R's complaint about loans 1 to 3.

Loan 4

I have reconsidered, in light of Mr R's most recent comments whether loan 4 ought to be dismissed, taking account of Mr R's submissions as well as all of the information and evidence that had previously been provided.

I've also carefully reconsidered the Dispute Resolution ("DISP") section of the FCA Handbook, which can be found on the FCA's website. In the FCA Handbook "R" denotes a rule and "G" denotes guidance.

Having done so, I am still minded to exercise my discretion to dismiss the complaint about loan 4 without considering the merits pursuant to DISP 3.3.4AR (3) because I consider that the subject matter of the complaint in relation to that loan has already been the subject of court proceedings:

"The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

(3) the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits..."

I've thought carefully about the evidence Mr R has provided about his address history – the screen shots from his credit file do suggest that he wasn't living at the address that Western Circle held for him. He also provided some testimony about how difficult it was for him to collect any post that may have been sent to the old address.

In saying that, the fact remains that a CCJ was obtained by Western Circle for the fourth loan and Mr R still could and should have raised this issue about affordability as part of those legal proceedings, given he had already raised his complaint with Western Circle before the CCJ was granted. I accept this may have had to have happened after the CCJ was granted, given Mr R says he wasn't aware of it until then, but that doesn't change my mind about whether it is appropriate for the Financial Ombudsman Service to review the fourth loan.

Even if Mr R did not know about the CCJ until some months later, which in his submissions to our service he says is the case, he took no action at that time when he did become aware – such as challenging the CCJ. Now, there may be good reasons why Mr R didn't take any action – due to his mental health and his disability, details of which he has given us which. Mr R says this made things more difficult for him to deal with these matters at the time. Nonetheless, I still consider that these arguments about the affordability of loan 4 should have been raised with the court at some point since then given it issued the CCJ, rather than referred to our service.

I have therefore decided, for the reasons above, to exercise my discretion to dismiss Mr R's complaint about his fourth loan.

Other Complaint

Mr R has also said that he had another complaint which has been considered by the Financial Ombudsman Service against a different high-cost lender and in the other case, Mr R also had a CCJ recorded against him. He says that in the other complaint, an adjudicator upheld his complaint about the loan. Mr R says there has been inconsistent treatment with regards to how the Financial Ombudsman Service has dealt with the issues surrounding the CCJ.

My role is to assess every case on the individual circumstances and facts, so there may be occasions where cases which appear to have similar circumstances can lead to different outcomes. In the circumstances of this complaint, I am satisfied that it is appropriate for me to exercise my discretion as afforded to me by DISP 3.3.4AR (3) and dismiss the complaint about loan 4.

It may also help to explain that determinations of complaints by the Financial Ombudsman Service do not set any sort of precedent for how future complaints will be determined or indeed whether they will be determined, or whether they may be dismissed without consideration of the merits.

As an aside, I also note that in the other complaint Mr R has referred to, there doesn't appear to have been any mention of the CCJ until *after* the complaint was closed. The adjudicator had already upheld the complaint and it had been accepted as a fair resolution by both Mr R and the lender.

For the above reasons, I remain satisfied that I have applied the relevant rules correctly to Mr R's case and therefore I am exercising my discretion to dismiss the part of Mr R's complaint in so far as it concerns loan 4.

Debt Balance

I did touch on this element of the complaint in the previous provisional decision, and I see no reason to depart from my findings about this. Although I note that Mr R has shared comments about the debt balance increasing and his unhappiness with Western Circle. The industry regulator set a cost cap for this type of loan which was implemented in January 2015. What this means, in short, is that a lender can't collect more than 100% of the amount borrowed. Which means the most Western Circle could in theory collect for loan 4 was £1,700.

However, the cost cap only applies to the interest and charges added (either contracted or not) and the cost cap doesn't include any additional charges such as court fees or costs. I've not seen anything to suggest that in this case, Western Circle has breached the cost cap and as I've mentioned above, a court already found Mr R liable for the outstanding balance and ultimately, this debt was settled with a payment for the lower amount of £1,200.

I appreciate Mr R will be unhappy with the outcome of his complaint, but I want to reassure him that I have fully considered all the evidence which has been provided.

My final decision

For the reasons I've explained above and in the provisional decisions, I'm not upholding Mr R's complaint about loans 1 – 3 and I am dismissing his complaint about loan 4 without considering the merits.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 December 2023.

Robert Walker
Ombudsman