

The complaint

Mr M has complained that Western Circle Ltd trading as Cashfloat (“Cashfloat”) didn’t carry out sufficient affordability checks before it granted loans to him, Mr M says, if Cashfloat had done better checks, it would’ve seen that he already had a number of outstanding loans.

What happened

A summary of Mr M’s borrowing can be found in the table below;

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£600.00	07/08/2020	12/01/2021	4	£218.54
2	£400.00	12/01/2021	06/04/2021	3	£192.11

Following Mr M’s complaint, Cashfloat wrote to him to say it wasn’t going to be uphold the complaint as it didn’t consider it had made an error.

Mr M then referred the complaint to the Financial Ombudsman where it was considered by an investigator. She also didn’t uphold the complaint because she thought Cashfloat had carried out sufficient checks before it lent to him.

Mr M didn’t agree with the assessment, because he says Cashfloat ought to have carried out further checks beyond verifying his income. Mr M says some of the information he gave wasn’t correct and Cashfloat ought to have asked to see his bank statements.

He also provided copy bank statements for the period of time shortly before loan two was advanced. He also provided screen shots from his credit report showing his credit score in January 2021 as well as a number of missed payments he had during 2020.

The investigator went back to Mr M to say she’d considered what he provided, but it hadn’t changed the outcome. As no agreement could be reached the complaint was passed to me for a decision.

I then issued my provisional decision explaining the reasons why I was intending to uphold Mr M’s complaint in part. Both parties were asked to provide any further submissions as soon as possible, but in any event no later than 27 February 2024.

Both Cashfloat and Mr M responded, agreeing with the provisional decision.

Although the deadline for a response has not yet passed, as both parties have responded agreeing with the provisional decision. I see no reason to delay the issuing of this final decision.

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 M 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 M'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 M. These factors include:

- Mr M 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 M 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 M 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 M. The investigator didn't think this applied to Mr M's complaint and I would agree, as there were only two loans taken within a short period of time.

Cashfloat was required to establish whether Mr M 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 M 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 M's complaint.

Before these loans were approved, Cashfloat took details of Mr M's income and expenditure. Cashfloat recorded that Mr M worked full time and received a monthly salary of £1,385 for loan 1 and £1,430 for loan 2.

Cashfloat says his declared income was cross referenced with a third-party salary tool, and the results were positive, indicating a high degree of accuracy. It was therefore reasonable for Cashfloat to have relied on what Mr M declared and the results of its checks.

Cashfloat also made enquiries about his living costs, which Mr M declared to be £630 per month for loan 1 and £560 per month for loan 2. It's worth saying here that Cashfloat says that it assessed Mr M'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 M's monthly outgoings were at a maximum likely to be £797 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 M to be able to afford the repayments for both loans.

Before the loans were approved, Cashfloat also carried out a credit search and it has, after I asked, provided copies of the results it received from the credit reference agency for each loan. 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. This does mean the information Cashfloat may receive could be different to what Mr M may be able to see in his full credit report. In this complaint, 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 M's application.

For loan 1, Cashfloat knew that there were two defaulted accounts on Mr M's credit file, both from 2019. But I do think these were too far removed from the loan start date to have given Cashfloat any cause for concern. There were arrears building on one account, but all the other active accounts appeared to have been managed well and he was on top of his payments. Therefore, considering this was the first loan and Cashfloat's checks were proportionate, I am intending to not uphold Mr M's complaint about it.

However, I have reached a different outcome in relation to loan 2 as a result of the credit check results Cashfloat received and I've explained why below.

Both Mr M's overall indebtedness and the number of active credit accounts had increased since loan 1. Cashfloat was also told that he had opened seven new accounts within the last six months, so more than one per month. This could in some situations indicate that he was now reliant on some other forms of credit.

At the time of the loan being advanced, Cashfloat was told of four outstanding loans. One was classified as a payday loan but given the open dates (and monthly repayment amounts) it's likely the other three loans were either payday or instalment loans. Mr M's commitments for these other loans was £812 per month. Given Mr M's income, Cashfloat was on notice that he was due to spend 57% of his income towards making payments to other payday loans before any other costs were considered, including the costs to service his credit cards and mobile phone contract.

There was also evidence that he had problems making repayments on his outstanding debts. For example, although Mr M had told Cashfloat of his large vehicle repair bill while repaying loan 1, it still took him longer than planned to repay the loan. Other accounts, such as one of his credit cards, showed other missed payments as well. Which taken together indicates that Mr M was having wider financial problems.

Overall, given the results of the credit search for loan 2. I really don't think, Cashfloat should've advanced the loan knowing there was already four outstanding pay and or instalment loans as well as the fact that just these outstanding loans were taking up what I consider to be a significant portion of his declared income. It ought to have been clear to Cashfloat that Mr M's final loan was neither affordable or sustainable for Mr M. I am therefore planning to uphold Mr M's complaint about loan 2 only.

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.

As neither party raised any new submissions and as both parties accepted the proposed findings as set out in the provisional decision. I see no reason to depart from those findings. In summary, Cashfloat ought to have realised, from the credit check results it received for

loan two that Mr M wasn't in a position to afford his loan repayments. I am therefore upholding Mr M's complaint about loan two only.

I've set out below what Cashfloat needs to do and has agreed to do to put things right for Mr M.

Putting things right

In deciding what redress Cashfloat should fairly pay in this case, I've thought about what might have happened had it not lent loan 2 to Mr M, as I'm satisfied it ought not to have.

Clearly there are a great many possible, and all hypothetical, answers to that question. For example, having been declined this lending, Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between him and this particular lender which he may not have had with others. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr M in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Cashfloat's liability in this case for what I'm satisfied it has done wrong and should put right.

Cashfloat shouldn't have given Mr M loan 2.

- A. Cashfloat should add together the total repayments made by Mr M towards interest, fees and charges towards loans 2, including payments made to a third party where applicable, but not including anything Cashfloat have already refunded.
- B. It should calculate 8% simple annual interest* on the individual payments made by Mr M which were considered as part of "A", calculated from the date Mr M originally made the payments, to the date the complaint is settled.
- C. Cashfloat should pay Mr M the total of "A" plus "B".
- D. Cashfloat should remove any adverse information it has recorded on Mr M's credit file in relation to loan 2.

*HM Revenue & Customs requires Cashfloat to deduct tax from this interest. Cashfloat should give Mr M a certificate showing how much tax it has deducted if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint in part.

Western Circle Ltd trading as Cashfloat should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 March 2024.

Robert Walker
Ombudsman