DRN-4682230

## The complaint

Mr G 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 G's borrowing can be found in the table below.

| loan number | loan amount | agreement date | repayment date | number of monthly instalments | highest repayment per loan |
|---|---|---|---|---|---|
| 1 | £250.00 | 07/01/2017 | 20/03/2017 | 2 | £183.36 |
| gap in lending | | | | | |
| 2 | £500.00 | 18/05/2018 | 22/05/2018 | 4 | £205.63 |
| 3 | £300.00 | 03/08/2018 | 20/09/2018 | 2 | £188.22 |
| 4 | £300.00 | 09/01/2019 | 18/04/2019 | 3 | £158.30 |
| 5 | £700.00 | 18/04/2019 | 20/05/2019 | 4 | £286.24 |
| gap in lending | | | | | |
| 6 | £300.00 | 07/11/2019 | 29/11/2019 | 3 | £161.52 |
| 7 | £400.00 | 28/12/2019 | 16/01/2020 | 4 | £174.69 |
| gap in lending | | | | | |
| 8 | £400.00 | 11/06/2021 | 16/06/2021 | 3 | £214.40 |
| gap in lending | | | | | |
| 9 | £400.00 | 11/12/2021 | 28/02/2022 | 3 | £186.05 |

There are a number of significant breaks in the lending so although Mr G was granted nine loans – this was spread across five different lending chains, and I'll explain why later on in the decision why this has implications for Cashfloat's checks.

Cashfloat wrote to Mr G's representative with a final response letter and explained why it didn't consider an error had been made by providing these loans. However, it did make a goodwill gesture (in full and final settlement) of £200.

Mr G's representative then referred the complaint to the Financial Ombudsman where it was considered by an investigator. In the investigator's latest assessment, she thought Mr G's complaint should be upheld about loan two only.

The investigator concluded this because the credit check results indicated that over 50% of Mr G's income was needed for his outstanding commitments, Mr G had also opened nearly two accounts each month for the last six months and had a number of active loan accounts. This was enough for the investigator to uphold the complaint.

The rest of the loans didn't uphold taking account of the amount lent, the gaps in lending and the results of Cashfloat's credit checks.

Cashfloat agreed with the proposed outcome reached by the investigator. However, Mr G's representative didn't agree with the assessment and requested an ombudsman's decision.

The complaint was then passed to me, and I proceeded to issue a provisional decision in which I outlined why further loans needed to be refunded. Both parties were asked for further submissions as soon as possible, but in any event no later than 13 March 2024.

Mr G's representative accepted the conclusions that were reached in the provisional decision.

Cashfloat also accepted the findings of the provisional decision, and it provided a copy of its compensation calculation. At the time the calculation was produced, it worked out Mr G was due a refund of £554.99 (after 8% simple interest, less any tax).

A copy of the provisional findings follows this 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 G 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 G'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 G. These factors include:*

- *Mr G 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 G 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 G 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 G. The investigator didn't think this applied to Mr G's complaint and I would agree, given the number of lending chains and the values of the loans.*

*Cashfloat was required to establish whether Mr G 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 G 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 G's complaint.*

***Loans 1, 6, 8 and 9***

*Cashfloat carried out the same sort of checks before each of these loans were granted. For each loan, Cashfloat asked for details of Mr G's employer, his income and his monthly outgoings.*

*Mr G declared he worked for the same company throughout the time he borrowed from Cashfloat with his income ranging between £2,500 to £3,200 per month for these loans. Cashfloat says these figures were verified using a tool provided by a credit reference agency and so it would've been reasonable to have relied on the amounts Mr G declared.*

*Mr G was also asked about his outgoings across a number of different categories including food, utilities, rent and credit commitments – to name a few. These costs ranged from £965 to £1,578 per month. It's worth saying here that Cashfloat says that it assessed Mr G's monthly expenditure using what is calls "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.*

*For loans 8 and 9 Cashfloat considered the monthly living costs that Mr G gave were too low and it increased his monthly outgoings to over £2,100 for both loans and it also added a further buffer of £100. Even using the larger monthly outgoings, along with the buffer, there was still sufficient disposable income for Mr G to be able to afford the repayments for the loans.*

*I've also thought about that all of these loans were the first loans of new lending chains. What this meant was that Cashfloat could, in effect, treat each of these loan applications afresh, regardless of what had happened previously. It also means, given the amounts that were borrowed that it was reasonable for Cashfloat to have relied on the information Mr G declared as well as the information it received from the credit check.*

*Two different types of credit searches were carried out before these loans were granted. The first type was used for loans one, eight and nine. Having reviewed the results, there wasn't any defaults, or other adverse markers such as County Court Judgements recorded on Mr G's credit file.*

*The credit check results received by Cashfloat ought to have led it to conclude that Mr G's outgoings for credit commitments were greater than what he had declared. But the investigator thought that even taking account of the amounts that could be seen in the credit file these loans were still affordable.*

*For example, for loan 1 the credit file suggested existing monthly credit commitments of at least £410, which is more than the £300 Mr G declared. But even taking account of the larger credit commitments, Mr G still had sufficient disposable income to afford these repayments.*

*For loan six, Cashfloat used a different sort of credit file check with a different credit file provider. However, a copy of the results can't be provided, because Cashfloat says it only had access to this system for 12 months – and due to the amount of time that has passed it can't now recreate the information that it saw.*

*However, I do have the credit search results from loan 8– although this was around 18 months after loan 6 was approved it would, and does, show what accounts Mr G may have had outstanding at the time loan 6 was granted.*

*Having reviewed the credit report, for information that may have been visible to Cashfloat at the point loan 6 was granted, I'm satisfied that there wasn't any adverse payment information such as defaults or other types of insolvency. And as with other loans, the amount that Cashfloat was told about Mr G's credit commitments was greater than what Mr G had declared. But even if the credit report figures had been substituted in – the loan still looked affordable.*

*There also wasn't anything else, such as the way Mr G repaid his loans which would've led Cashfloat to believe that it needed to conduct further checks or to have declined his applications for credit.*

*In my view, for these loans, Cashfloat carried out proportionate checks and there also wasn't anything to suggest that Mr G was having either current financial difficulties or to indicate the loan repayments would be unaffordable or unsustainable for him. So, I don't think that Cashfloat's decision to lend was unfair or unreasonable.*

***Loan 2***

*Cashfloat has already accepted that this loan ought to not have been granted and it made an offer, in line with what the investigator recommended. To me this loan is no longer in dispute and so I say no more about it. But I've outlined below at the end of this decision what Cashfloat needs to do in order to put things right.*

***Loans 3, 4 and 5***

*Loan 3 was advanced, three months after loan 2 had been repaid, and its arguable whether this would be enough to start a new chain given that Mr G had only spent four days indebted to Cashfloat for loan 2. Mr G then took loans 4 and 5, with a nearly four-month gap between loans 3 and 4. Whereas loan 5, the largest Mr G had taken to date was taken on the same day that loan 4 was settled. I've kept this in mind when thinking about what happened when these loans were advanced.*

*Mr G's income has been declared as being either £2,700 or £2,800 per month for these loans – and it was again electronically verified with a third-party tool provided by a credit reference agency.*

*Cashfloat made enquires with Mr G about his outgoings across the same categories that I've listed above. For loan 3 these were declared as £1,000 per month and for loans 4 and 5 Mr G declared these costs came to £1,300. All of these loans would've looked affordable based on the information Mr G had provided about his income and outgoings.*

*Before these loans were approved, 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 for loan 3 only. 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.*

*Having reviewed the credit checks for loan 3, I can see that Mr G had around £13,500 of debt – which isn't an insignificant amount. He had seven active accounts and had opened seven new accounts within the last six months.*

*In my view, opening on average one new credit facility per month over the course of the last six months may have been of concern to Cashfloat. I say this because regularly opening new credit facilities could be an indicator that perhaps Mr G was reliant on loans or other credit in order to get through the month.*

*However, there were no defaults, country court judgements or any obvious missed payment markers. Which would've indicated to Cashfloat that Mr G was on top of his repayments and wasn't struggling to repay what he had borrowed.*

*Cashfloat did know that he had four active loan accounts costing around £650 per month – given the amounts borrowed and term its likely at least three of these were payday or instalment loans.*

*On top of this he had a current account with a significant overdrawn balance – which had* *been that way for some time. He also had two credit cards, with one near the limit and the other one over its credit limit. But it's worth saying here that the credit card provider hadn't at this point, recorded this account as being in arrears or being delinquent.*

*But the greater concern was the number of loan accounts that Mr G appeared to have recently settled. From the information provided Mr G had settled 17 loan accounts within the six months preceding the loan application. Which to me shows, for an extended period of time Mr G was likely having problems managing his money as there was a constant need to take out credit as other credit had been repaid.*

*So, when loan 3 was approved, Cashfloat was on notice that Mr G had been opening more than one new credit account per month, had closed 17 such accounts within the last six months and was spending more than twice the amount that he had declared to Cashfloat on servicing his existing credit commitments. All of these points together ought to have led Cashfloat to conclude that loan 3 wasn't likely sustainable because there was a real risk that Mr G would seek to borrow further funds once his other loans had been repaid.*

*I am therefore intending to uphold Mr G's complaint about loan 3.*

*I've already outlined above, what Cashfloat knew from Mr G about his income and expenditure when loans 4 and 5 were granted. The credit check results aren't for the next two loans. The reason for this is that Cashfloat appears to have changed which credit reference agency it used and the results from these other checks were only visible to Cashfloat for 12 months.*

*So, even though I don't have the exact details of the checks that Cashfloat carried out I have used the credit check results that were given it to for loan 8. I think that is entirely reasonable to use the later credit check results because it is an indication of what accounts Mr G had outstanding at the time.*

*As I've said there were some small gaps between the loans very little had changed in Mr G's credit file. The results from the later loan still showed Mr G regularly taking out new credit and repaying loans.*

*When loan four was advanced, Mr G already had two payday loans, three home credit loans and five other "Finance House" loans outstanding. The Finance House loans were likely to be either high-cost credit and / or instalment loans given the amounts borrowed and what I could work out about the term.*

*These existing loans were costing Mr G a total of £1,654 per month – which is more than 50% of his declared income before the loan repayment for Cashfloat was considered as well as his other credit commitments such as credit cards and his living costs.*

*He had also closed six other credit accounts within the last six months – indicating to me that Mr G had a continued need for further credit – and it no longer seemed that this was a short-term problem – it was an ongoing one and so Cashfloat ought to have realised this and not lent loan four to Mr G.*

*There is a similar picture apparent when loan 5 as granted. Mr G had closed 14 loan accounts since the start of 2019 – which is more than three per month. Clearly, Mr G was having problems managing his money given the frequency in which loans were being taken out and repaid. This time, Mr G only, had two outstanding payday loans and two "Finance House" loans but these were costing more than £1,000 per month, before the loan cost or his other living costs were considered.*

*Given the pattern of Mr G regularly taking out new credit, as well as evidence that at times Mr G was spending significant amounts of money financing his existing creditors has led me to conclude that both loans 4 and 5 weren't sustainable or affordable for Mr G. As there was a real risk, he was likely to need to borrow from other lenders in order to meet his loan repayment.*

*I am therefore also intending to uphold Mr G's complaint about loans 3, 4 and 5.*

***Loan 7***

*This loan was taken out around a month after loan 6 had been repaid and was the second loan in this chain of lending. The same checks were carried out, as I've described above. Mr G's income was declared as being £3,030 per month with declared monthly outgoings of £1,460. Cashfloat says the income was electronically verified using a tool provided by a third-party credit reference agency.*

*As before, Cashfloat used trigger values and information from the credit search results to increase Mr G's monthly outgoings to £1,831. To this sum it also added an additional £100 buffer. Solely based on the information Mr G declared the loan looked affordable.*

*A credit search was carried out for this loan, but for the same reasons as above, the credit search results are no longer available. I appreciate Mr G has provide a copy of his credit report, but I do have the credit check results from loan eight, and while this is around 18 months before loan eight was approved, it does provide useful information about the active accounts he had at the time.*

*What is shows is that there was no adverse payment information or any defaults or other forms of insolvency. It also showed that Mr G had monthly credit commitments of around £500 per month – this is more than Mr G declared to Cashfloat as part of his application and more than the amount calculated by Cashfloat before the loan. Using the larger figure, from the credit check suggested this loan was still affordable.*

*For a second loan in a lending chain, where proportionate checks have been conducted which showed the loan was affordable. I have therefore not been able to say that Cashfloat made an error by advancing this loan.*

## 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 both parties have accepted the findings of the provisional decision, I see no reason to depart from those findings here. I still think, Cashfloat was wrong to have approved loans 2 – 5 and I've set out below what Cashfloat needs to do (and what it has agreed to do) in order to put things right for Mr G.

## 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 loans two to five to Mr G, as I'm satisfied it ought to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr G may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they 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 they 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 G 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 G 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 G loans 2, 3, 4 and 5.

A. Cashfloat should add together the total of the repayments made by Mr G towards interest, fees and charges on these loans.
B. Cashfloat should then calculate 8% simple interest* on the individual payments made by Mr G which were considered as part of "A", calculated from the date Mr G originally made the payments, to the date the complaint is settled.
C. Cashfloat should pay Mr G the total of "A" plus "B".
D. Cashfloat should remove any adverse information Cashfloat have recorded on Mr G's credit file in relation to loans 2 – 5.

*HM Revenue & Customs requires Cashfloat to deduct tax from this interest. Cashfloat should give Mr G 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 G's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 April 2024.

Robert Walker
**Ombudsman**