

The complaint

Mrs D complains that Western Circle Limited, trading as Cashfloat (Western Circle) lent to her irresponsibly. She says Western Circle did not carry out the appropriate due diligence and the loans were unaffordable.

Mrs D also complains that the interest charged on the loans was too high.

Mrs D also has an issue surrounding a Data Subject Access Request (DSAR), namely that she never received the information she'd requested from Western Circle.

What happened

Mrs D took three loans from Western Circle. The table gives a few details.

Loan	Approved	Principal	Term and monthly repayments (rounded)	Settled
1	3 September 2021	£800	4 x £297	23 December 2021
2	9 January 2022	£500	4 x £215	27 May 2022
3	1 August 2022	£1,300	9 x £254	21 April 2023

After Mrs D had complained to Western Circle it replied with its final response letter (FRL) in October 2023 in which it gave explanations and reasons as to why it did not uphold her complaint. It offered to pay her a 'one off payment' of £100. This was offered as a goodwill gesture. Mrs D says this is an admission of Western Circle having done something wrong but it was not offered as that. And I view it as it trying to resolve a complaint and nothing more.

As for the high interest element of the complaint, Western Circle said that the daily interest it charged was in line with the Financial Conduct Authority (FCA) regulations and does not exceed 0.8% each day. It made reference to the High Cost Short term loan Cost Cap. Further that the interest charged was a detail about which Mrs D would have been aware before taking the loans.

And as for the DSAR, this was not referred to in the FRL.

Mrs D referred her complaint to the Financial Ombudsman in February 2024 and one of our investigators considered it. She thought that the information Western Circle had about Mrs D ought to have led to it carrying out a full financial review at loan 2. So, reviewing the bank account statements our investigator obtained from Mrs D, she considered that Western Circle would have realised that Mrs D was living beyond her means and ought not to have approved loans 2 and 3 for her.

Our investigator did not address the interest point nor that relating to the DSAR.

Mrs D did not respond. Western Circle disagreed and made various points to support its view that the loans were lent responsibly. I have read all of those.

The unresolved complaint was passed to me to decide. I issued a provisional decision on 14 June 2024 with both parties to respond to me by 28 June 2024. I gave reasons why I

considered that Western Circle had done all it had needed to do and so I provisionally decided not to uphold the complaint.

The provisional decision duplicated here

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

Western Circle had to assess the lending to check if Mrs D could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Western Circle's checks could've taken into account several different things, such as how much was being lent, the size of the repayments, and Mrs D's income and expenditure.

I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Western Circle should have done more to establish that any lending was sustainable for Mrs D. These factors include:

- Mrs D 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).
- Mrs D 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).
- Mrs D 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 Mrs D. I don't think that this applies to Mrs D's circumstances as only three loans were approved for her.

Western Circle was required to establish whether Mrs D could *sustainably* repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Mrs D was able to repay the 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 Mrs D's complaint.

Loan 1

The first thing to note is that Mrs D declared a high income and on loan 1 this was verified by Western Circle with a payslip for Mrs D from August 2021. It confirmed that she took home £4,715 that month.

Mrs D declared information surrounding her rent/mortgage, credit commitments (including payments to short term loans), expenses (including travel, utilities, food) which added up to £3,550 each month. Western Circle checked these with the use of a Credit Reference Agency (CRA) search and that report has been sent to us. It adjusted and came to a similar set of figures to that of Mrs D's which led it to calculate that she had £1,100 left over income. So, it considered the loan affordable.

I have reviewed the CRA information and one of the main reasons for her having a high debt balance was that she had two hire purchase contracts (HP): one with a current balance of £14,016 which had started November 2018 and was costing Mrs D £321 each month. The other had recently started and had a current balance of £16,857 which was costing her £285 each month. Neither had any issues with the repayments.

I did notice that she had an arrears marker for a water bill from six months before the loan 1 application and a credit card had been over the limit by a small amount three months before.

Miss D had a mail order account which had defaulted in May 2020 but had been settled in July 2020. And an older default of £42 for a telecom account which had settled in

September 2019. I consider these to have been long enough before the loan application to not have caused Western Circle to need to investigate them further. And both were settled promptly.

Overall, this was not a CRA report to lead Western Circle to be concerned. I consider that for a first loan of this sum with a short loan term then I'd not expect Western Circle to have done more. I plan not to uphold the complaint about loan 1.

Loan 2

Loan 1 was paid off without any issue and a couple of weeks later Mrs D applied for a smaller loan of £500. She submitted income and expenditure figures like those submitted for loan 1. The details were much the same save that Mrs D's overall debt balance showing on her CRA report had dropped significantly. On closer inspection I can see that the larger HP account (the more recent one) had been settled in late August 2021. So, this had been just before Mrs D had taken Loan 1 with Western Circle but it had not registered with the CRAs in time to be viewed in September 2021.

This is where my view departs from that of our investigator. I do not consider that Western Circle needed to do more for loan 2. Mrs D had declared a good income, her disposable income had increased, her debt balance had dropped substantially and the loan 2 application was for a much smaller sum than loan 1. I can see no reason why this ought to have prompted further checks, in my view the checks were proportionate and demonstrated that Mrs D could afford her repayments.

I'd not expect Western Circle to have done more. I plan not to uphold the complaint about loan 2.

Loan 3

Loan 2 was paid off without issue. Three months later Mrs D applied again for a third loan. This was an instalment loan spread over 9 months and for a much larger amount of £1,300. So, it had a different complexion to the other two loans.

Added to which, Mrs D's declared income was a little higher (£5,143 after tax), her total outgoings were a similar amount (£3,580 for rent/mortgage, all bills, expenses, and credit commitments).

Western Circle carried out a CRA search and I have reviewed that report. Mrs D had opened five accounts in 6 months leading up to applying for loan 3 which means since she had got loan 2. Mrs D's revolving debt (which includes credit cards) had reduced by about £1,100, the 'balance to limit ratio' had reduced from 80% in January 2022 to 61% in August 2022. However, her loan debt figure had increased by £5,700.

The CRA had registered arrears on a payday loan about 4 months before she'd paid it off in May 2022 so that would have meant around January 2022. And she'd been over her limit on a credit card about four months before but by only £10 which I don't consider a significant over limit breach.

The default that was recorded was the same one which had been apparent for loan 1. There's no record of a mortgage on the CRA and so I'd consider it entirely reasonable for Western Circle to decide that Mrs D's declaration of £1,200 a month for 'rent/mortgage' related to rent.

The CRA report Western Circle obtained was more detailed than most and yet may not have included all the accounts Mrs D may have had. This would not be unusual. Different CRAs report on different elements of an individual's credit history. But it would not mean that Western Circle had derogated from what was expected of it before lending.

And if I am wrong on the amount of credit Mrs D had to pay to others, with a gap of £1,500 between what Mrs D earned and her expenditure (which included food and bills and credit commitments) then I think Western Circle would've likely considered that Mrs D could afford the repayments she was committed to making for loan 3.

The investigator thought that at this point Western Circle ought to have checked Mrs D's bank account statements. But I do not agree.

I consider that it had carried out checks proportionate with the loan applied for, it had experience of Mrs D's good repayment record, one part of her debt balance had increased and another part had reduced. She was not up to her limit on her credit cards in general and for a lender such as Western Circle to see that there may have been one set of arrears on a payday loan several months earlier would not have prompted it to be so concerned it felt it needed to do more. Or that the loan ought to have been refused.

I would not have expected Western Circle to have done more than it did.

I plan not to uphold the complaint.

High interest

Mrs D was given access to the copy documents before she signed them and the charges and the amount she was expected to pay in interest was clearly communicated to her before she took the loan. I agree with Western Circle that the interest charged falls within the cost cap and it's a commercial matter for it as to the rate at which it charges for the loan. Its not a matter about which the Financial Ombudsman would normally interfere.

DSAR

I've no information about this element of Mrs D's concerns about Western Circle.

This is a provisional decision and so if either party sends in the details surrounding the DSAR including when it was requested, whether it's been fulfilled by Western Circle and if not, why not, then we may be able to look at it. But on current evidence I cannot take it further.

How did the parties respond?

Mrs D did respond and her points are summarised here:

- Mrs D thought the provisional decision was unfair. Her view is the £100 offer from Western Circle when she first made the complaint indicated that it was liable
- Mrs D felt that it was for Western Circle to show that it did comply with the DSAR request - not for her to send evidence to show otherwise.
- Mrs D said she did not want her personal finances to be published on our website through publication of the decision.

Mrs D did not mention the part in my provisional decision relating to the high interest.

Western Circle responded by forwarding to us details of Mrs D's request for the DSAR on 22 September 2023 followed by its immediate reply to her on the same date sending to her the link with which to access the DSAR information. This email to Mrs D included details of how to ask for a new password if she needed it and gave an email address she could use to contact the data protection department at Western Circle. Our investigator forwarded these emails on to Mrs D on 18 June 2024.

As for publication on the website, our investigator wrote to Mrs D at my request to explain our policy on publication of decisions. Mrs D had the opportunity to comment.

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.

In relation to the irresponsible lending part, Western Circle offered to pay Mrs D a 'one off payment' of £100. It was offered as a goodwill gesture. Mrs D says this was an admission of Western Circle having done something wrong but it was not offered as that. And, as I said in my provisional decision, I view it as it trying to resolve a complaint and nothing more.

I've received no additional evidence about the financial issues surrounding the complaint so I see no reason to depart from the findings about irresponsible lending I made in my provisional decision. Those are repeated here and for the same reasons I do not uphold the complaint.

I've also considered whether Western Circle has acted unfairly or unreasonably in any other way and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think it lent irresponsibly to Mrs D or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

DSAR

Western Circle has demonstrated to me that on 22 September 2023 it replied to Mrs D's DSAR request. So, I do not uphold this part of the complaint.

publication

As for publication on the website, our investigator wrote to Mrs D at my request to explain our policy on publication of decisions. Mrs D has made no further observations about that. I do not think that there's enough information in this final decision that Mrs D would likely be identified post-publication. There are no substantial reasons for it not to be published.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 26 July 2024.

Rachael Williams
Ombudsman