

The complaint

Miss H has complained that Valour Finance Limited trading as Savvy.co.uk (Savvy) didn't carry out affordability checks.

Miss H also says Savvy didn't treat her fairly in the way it applied pressure to her to enter repayment plans and then by defaulting her account following a stay in hospital.

What happened

Miss H took one loan from Savvy in March 2016. She borrowed £500 which was due to be repaid in 12 monthly payments of £83.33. Miss H has had some repayment problems, and at the point Savvy sent this service its file, Miss H still owed it around £413.

One of our adjudicators looked at Miss H's complaint. He didn't uphold her complaint. He said, Savvy had carried out proportionate checks before it lent to Miss H. So, he didn't think it was wrong of Savvy to have granted the loan.

He also thought that Savvy had treated Miss H fairly when she was having repayment problems. When Savvy became aware of her difficulties it agreed a number of repayment plans but these weren't stuck to. It then defaulted the account, but the adjudicator was satisfied this wasn't solely connected to Miss H's hospital stay.

It appears that Savvy agreed with our adjudicator's opinion.

Miss H disagreed and in summary she said that she had been unwell, and she doesn't believe a default should've been added to her credit file in those circumstances.

No agreement could be reached the complaint has been passed to me for a final decision.

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 also taken into account the law, any relevant regulatory rules and good industry practice at the time the loan was provided.

Savvy needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss H could repay the loan in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Savvy should fairly and reasonably have done more to establish that any lending was sustainable for Miss H. These factors include:

- the lower a consumer's 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 higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the greater the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become or was becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Savvy was required to establish whether Miss H could sustainably repay her loan – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to do so without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss H's complaint.

I'm sorry to hear about Miss H's health problems and I do hope that things have now improved for her.

Unaffordable lending

When this loan was approved, Savvy asked Miss H about her income and she declared she had an income of £1,804.30 per month. This income was verified as Miss H provided it with copies of her wage slips and bank statements. So, Savvy had a fairly good idea of Miss H's *actual* income.

Miss H also declared to Savvy that her outgoings were £1,150 per month, leaving a disposable income of £654.30 in which to make the payment of £83.33. Solely, based on this information Savvy could've believed Miss H could afford the loan repayments. As it was early on in the lending relationship, I don't think it was unreasonable for Savvy to have relied on the information she provided.

Savvy also carried out a credit check, I've reviewed the results that it received, and there wasn't in my view, anything contained within that would've led Savvy to have either automatically declined the application or have prompted it to have carried out further in-depth checks. It did seem to be aware of a couple of historic defaults, but these were discussed with Miss H on the application phone call.

Finally, Savvy appears to have obtained copies of Ms H's bank statements, for the period leading up to the loan being approved. Again, I've reviewed these, I think, given what these showed, Savvy would've still thought the repayments were affordable for Miss H.

For this loan, I think Savvy carried out proportionate checks which showed Miss H was likely to be able to afford the repayments she was committing to making. I also haven't seen any further information that shows its likely Savvy was made aware of any financial problems Miss H might've been having. Or anything that would've prompted it to investigate her circumstances further. So, I think it was reasonable for Savvy to rely on the information it obtained.

Payment arrangement and default

I've not seen Miss H's credit report, but there isn't a dispute that Savvy has reported adverse information on her credit file, which includes a default.

The crux of Miss H's complaint around this this issue is that when she was ill in hospital Savvy didn't help her. She felt pressured to make repayments and feels its unfair that Savvy has defaulted her account when it knew she was ill.

I haven't outlined every repayment plan that was agreed. But, it seems Savvy was aware of Miss H's hospital stay in August 2016. It took this on board and in my view treated her fairly and it didn't default the account at this time. It put a hold on the account for 30 days. And it agreed to lower Miss H's payments from the contractual amount to £60. The first payment was made, and then the next one (due in September) failed.

At this point, Savvy was aware of a change in her financial situation, Miss H's partner was out of work, Savvy appears to have responded to this by agreeing another repayment plan but this time for a smaller amount – an amount that Miss H says she could've afforded of £20.

A further payment was made in October of £60. But then Savvy didn't hear from Miss H until December. After December 2016 a number of repayment plans have been agreed, for different sums, but at various times and for different reasons the plans failed.

I'm sorry to hear that Miss H felt pressured. But I haven't quite seen enough evidence to support that. Overall, it looks like Savvy took on board what Miss H was telling it about her situation and adjusted the repayments accordingly. It also provided information about obtaining third party debt advice. I think this was the correct course of action to take and was reasonable in the circumstances.

Turning to the default. It isn't in dispute that Miss H missed her contractual payments but in order to see whether Savvy was right or wrong to have recorded the default. I've looked at The Information Commissioner's Office (ICO) guidance about what information should or shouldn't be reported to credit reference agencies (CRA).

The ICO is the body responsible for issuing guidance about what information should or shouldn't be reported to credit reference agencies (CRA). This information can be found in its guidance entitled "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies*".

Principle two explains the following;

If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported

to the CRAs as being in arrears. If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as “defaulted”

It's clear, to me, that Miss H had missed payments, and while there was a legitimate reason for her doing that doesn't, prevent Savvy from reporting adverse information to the CRAs.

Principle four, then goes on to explain when a default may be recorded with the CRAs;

As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears. There are exceptions to this which may result in a default being recorded at a later stage, such as secured or long term loans e.g. mortgages, or if the product operates in a more flexible way e.g. current accounts, student loans, home credit. If an arrangement is agreed (see Principle 3 above), a default would not normally be registered unless the terms of that arrangement are broken.

But, there are occasions where the ICO thinks a default ought not be recorded. Principle three further explains;

A default should not be filed:

- *If you make a payment, in time, that fully meets the terms set out in the default notice*
- *If jointly with the lender an agreement is reached for an arrangement and you keep to the terms of that arrangement*

In this case, I'm satisfied that by the time the default was sent to Miss H in March 2017 that she was at least six months in arrears – that meaning she was in arrears of at least six contractual repayments. And, this is important, Miss H had agreed and not been able to stick to three repayment plans before the default notice was sent. So I don't think, in this case, the information in principle three would've prevented Savvy from recording a default.

Then after Savvy received, another plan (after the default notice was issued) was agreed and then failed again. I don't doubt, given what Miss H has told that her financial position at the time was precarious, But, there isn't anything in the ICO rules that would've prevented Savvy from defaulting the account.

Indeed, given the way the account had been managed, I think it was reasonable for Savvy to have defaulted the account when it did. And while Miss H's stay in hospital in 2016 would've contributed to the arrears, the stay, on its own, wasn't the sole reason why the account was defaulted.

Savvy has shown this service that an outstanding balance remains, and I'd remind it of its obligation to treat Miss H fairly while dealing with her moving forward.

I appreciate Miss H will be disappointed by the outcome that I've reached but I hope she's found my explanation useful as to why I've reached the outcome that I have.

My final decision

For the reasons I've explained above I'm not upholding Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 8 October 2021.

Robert Walker
Ombudsman