DRN-3158376

The complaint

Mr T complains that Valour Finance Limited, trading as Savvy.co.uk (Savvy), lent to him irresponsibly. He says they should have done better checks before lending as he was taking loans out to repay other loans.

What happened

Using information from Savvy, here is a brief loan table of the approved loans.

Loan	Date Taken	Date Repaid	Monthly instalments	Amount	Monthly repayment
1	17/01/2019	15/01/2020	12	£650.00	£108.32
2	28/02/2020	15/02/2021	12	£1,000.00	£166.66
3	16/03/2021	Outstanding	15	£1,500.00	£200.00

The information received from both parties includes Savvy's call recordings of the telephone conversations with Mr T before approving the loans, the credit search results it carried out and the terms of the agreements.

From Mr T we have received his bank statements which cover most of the lending period – November 2019 to May 2020 and November 2020 to May 2021. These cover loans 2 and 3.

Our adjudicator did not think that Savvy needed to do more before it lent to Mr T.

Mr T disagreed and asked that an ombudsman decides. The complaint was passed to me. I issued a provisional decision dated 25 February 2022 in which I gave reasons why I had provisionally decided that Savvy ought not to have approved loans 2 and 3 for Mr T.

Savvy and Mr T have responded with points to make about different parts of the provisional decision and I plan to address those parts.

The most straightforward method to do that is to set out each part of the provisional decision, together with each of the sets of comments followed by my final decision on those parts. So that is what I have done.

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.

We have set out our general approach complaints about short-term lending including all the relevant rules, guidance and good industry practice - on our website.

Savvy needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr T could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

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 the consumer.

These factors include:

- 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 level of income);
- having many 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);
- 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, but I do not consider this applies in Mr T's circumstances as there are gaps between paying off one loan and applying for the next.

Savvy was required to establish whether Mr T could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr T's complaint.

Before the provisional decision was issued I had listened to the telephone recordings between Mr T and the Savvy representative for each loan application.

I have reviewed all that has been sent to me recently and address the points in this, my final decision, here.

Mr T has spoken to our adjudicator and I have listened to that recorded call. He has agreed with my provisional decision and he has not disagreed that I did not plan to uphold Loan 1.

As I know Savvy is content that loan 1 was a 'non-uphold', then I do not plan to comment on the loan 1 assessment further. But I set out here my provisional findings about Loan 1 for completeness. It is in italics and smaller type to differentiate it.

The provisional decision for loans 1 and loan 2 follows.

For loan 1 – I do not think Savvy needed to do more. Mr T was a new customer and the sum approved was relatively modest. Savvy had looked at his credit file and had asked Mr T questions relating to his income and expenditure and the Savvy representative asked Mr T about his payslips. On his 'basic wage' figure, Mr T's disposable income after paying all his existing commitments was going to leave him with around £59 a month. The Savvy representative said that was too low and against Savvy's policy.

Mr T had a recent payslip on him and explained that he had earned more that month and it demonstrated his salary was £3,543 after tax. The Savvy representative asked him if he had the payslip for the month before – and Mr T had his December 2018 payslip which said he had received £3,556. The Savvy representative asked Mr T to screenshot the payslip or send in a photo of both payslips. It may be that Mr T did that – we have not seen any record of any payslips. The loan was approved. But having thought carefully I think Savvy's approach was adequate and proportionate. Mr T paid it off in line with the agreement.

Mr T returned a month after repaying loan 1 for a second loan. That telephone call I listened to was less satisfactory. I think that for a second loan of £1,000 over 12 months, Mr T ought to have been questioned further and been asked to send in additional documentation to demonstrate his financial position before Savvy approved the loan. I say this because:

- *Savvy had asked Mr T to confirm if his salary was still £3,543 to which he replied yes; and*
- *it's 'soft credit search' of Mr T's credit file revealed that his current monthly credit commitments amounted to £1,316 which was a big increase on the credit commitment figure it had for him for loan 1; and*
- *Savvy questioned Mr T as to why he had two HP agreements. One for £426 and one for £463. Mr T had explained that the one for £463 had ended in August (2019) and it was on his credit file incorrectly. He had raised it and was trying to sort it out. But the Savvy representative did not ask for more to double check this; and*
- *the Savvy representative ran a 'hard search' on his credit file and then said she did not need any documentation and the company could offer him £1,500.*

Mr T said he wanted £1,000 and the 12 month loan of £1,000 at £166.66 a month was approved.

Reviewing the credit search results Savvy has sent to us dated the day Mr T was approved for loan 2, then I think that it warranted further enquiries. Two County Court Judgments (CCJs) were registered – admittedly 2014 and 2016 - but still these showed poor money management at the very least. No additional information about the £463 a month HP was obtained when I think Savvy should have done that.

I consider that further checks ought to have been carried out – such as obtaining payslips and reviewing bills or asking to review some relevant bank statements. I do not think Savvy did that.

Had Savvy done that, I think it would have seen the details I have seen on Mr T's bank statement for the month before loan 2 was approved. Several things demonstrate details of Mr T's financial situation which lead me to conclude that Savvy lent irresponsibly. Mr T's January 2020 and February 2020 salaries were lower than the figure he had declared (£3,543) at £3,100. And this was lower than the income figure used for loan 1.

In addition, on or around 16 January 2020, Mr T's bank statements showed payments to a series of lenders (four) well known for issuing high-cost short term or instalment loans and other names of lenders which were ones easily discovered as being loan providers. That repeated itself in February 2020 and the result was that by 24 February 2020 Mr T had only £30 left in his account and needed the £1,000 to get through to the following payday. And yet he'd committed himself to 12 months of payments.

These details shown on his statements plus the information Savvy already had from his credit file, does show to me that Mr T was obtaining credit sequentially and likely using loans to pay off debts. This was a clear sign of unsustainable lending meaning Mr T was not able to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments. I am planning to uphold Mr T's complaint about loan 2.

Savvy's response about loan 2

Savvy has said that for Loan 2 it had done an automated income check with a credit agency validation tool which Savvy says showed it that Mr T *'had been receiving a minimum of £3,543 per month for the past 12 months'*. So, using this Savvy said it would not have asked for bank statements to verify the income.

I've looked at the screenshot sent to me by Savvy showing the validation tool result. It does seem to show that as at 28 February 2020 (the date loan 2 was approved) a computer generated result had come back as *'negative'* when data inputted was *'£3,543 Income + £0 other income'.*

Looking again at the bank statements I have for Mr T, his income on 14 February 2020 was £3,107.35, for 15 January 2020 was £3,115.24, for 13 December 2019 was £3,091.78. And – in fairness – I have seen that the income credited to the account on 15 November 2019 was £3,660.01 plus additional expenses paid in on 25 November 2019 of £170.56.

I cannot fully explain the discrepancy between the tool confirmation and the bank statements figures, but one explanation might be that the credit agency tool is a blunt tool and so cannot be relied on to return answers on specific sums of income. Another might be that other transfers into the account – not income related – may have been 'counted' by the verification tool and come to a conclusion which might not have been entirely accurate.

Either way, a comparison of what the tool said and what the reality was differ and so I think I'm able to say that it may not be fully accurate. And I add that in my view when assessing individuals for loans, the difference of several hundred pounds can make a difference to affordability. And so, in my view, verification of Mr T's income was relevant to a satisfactory creditworthiness assessment and important.

And even if Savvy, having used the tool, was content it had verified the income, this was not the only reason I said in my provisional decision that a full financial review ought to have been carried out before lending loan 2. There were a number of reasons and one way of carrying out the full financial review, as a proportionate check for loan 2, was to review Mr T's bank statements.

Savvy has commented on the fact that the Savvy representative had found two HP agreements. It has said it had no reason to doubt Mr T's explanation about those. Savvy has said that the second HP was settled in April 2020 – after loan 2 was approved in February 2020. And so, Mr T's explanation had been correct.

My view is that the HP agreement to which this point relates may well have been settled in April 2020 or it may have been a corrected entry as Mr T had actually explained to Savvy (on the recorded call in February 2020) that it had ended in August 2019. But my view was, and remains, that the £463 a month credit commitment was known to Savvy before it made the decision to lend on loan 2 and several hundreds of pounds can make a difference. I think that ought to have been checked before lending.

But a more general point is this: these points individually do not necessarily mean Savvy did something wrong. My view is that these points were cumulative. Similarly, with the CCJ evidence. Savvy has said these CCJ records were too old to be particularly relevant. Admittedly they related to debt years before. But it shows that Mr T had had serious difficulties in the past and so that, in my view, was relevant in February 2020 when considering all points together. CCJ records are kept on credit files for six years precisely to inform future lenders of the facts.

Savvy has questioned why it is I think that it ought to have obtained copy bank statements from Mr T before approving loan 2. Recently it has said to us:

> *'You feel we should have requested bank statements, however* [Mr T's] *credit file reflected no recent lending taken within the previous three months, his income was verified, his income and expenditure figures were reasonable and he had repaid his prior loan with us in full and on time demonstrating his ability* [sic] *manage his credit commitments.'*

I did not say that. I indicated that additional checks ought to have been carried out to carry out a proportionate creditworthiness assessment, and one way was to obtain bank statements.

Savvy's comments do not alter my view on this part.

That part of my provisional decision dealing with loan 3 follows here:

For Loan 3, the situation I've described above was not a great deal different. The loan was for more money at £1,500 and Mr T's monthly repayments to Savvy were £200. I think that additional, full financial checks were needed and I don't think Savvy did them.

Having reviewed the information I have, then Mr T appeared to be sending payments to six, possibly seven other lenders each month and he was needing the Savvy loan a couple of days after his payday date. So, I am planning to uphold Loan 3 for the same reasons I upheld loan 2.

Savvy needs to put things right for Mr T.

In response to my provisional decision about loan 3, Savvy has referred to the income verification tool again. And it has said I've not given detailed reasons as to why I came to a view that Mr T's complaint about loan 3 ought to be upheld.

I've read what Savvy has said. In my provisional decision I repeated the reasons for upholding loan 2 for loan 3 and I do that again here.

Savvy says that the tool it had used confirms that Mr T's salary around March 2021 was '*a minimum' '£3,100 Income + £0 other income'.* Loan 3 was approved on 16 March 2021 and the bank statements I have and reviewed again show me that Mr T's salary from the same employer on 15 March 2021 was £3,108.16, plus what I take to have been an expenses payment of £380.27 on 12 March 2021. On 15 February 2021 Mr T received £2,938.89 and on 15 January 2021 it was £3,363.78.

As I said earlier I have no explanation as to the discrepancy in relation to this income figure point. But by the third loan, where Mr T was applying for a further and larger loan and for a longer term with repayments of £200 a month I think it would need additional checks. I do consider that a full financial review was warranted and I do not think Savvy did that. Looking at bank statements is one method of checking elements of a consumer's financial details but it is not the only way. And the picture of Mr T's financial situation was one that consisted of an accumulation of details, some of which ought to have been further checked.

And looking again at the bank statements for loans 2 and loans 3, Mr T was paying high cost short term loans for many other lenders, all at the same time and in 2021, these were eating up all his salary.

On the telephone when he gave his response to the provisional decision, Mr T said that his debt situation was so bad that his mother had been lending to him and I can see that there are credits into that account which may represent those sums.

Mr T also said that his rent alone was almost £800 and so the figures Savvy had used as his total expenditure figures were likely too low.

Savvy has said recently '*Likewise our credit file search reflected that* [Mr T] *had not taken any other lending in over 11 months.'* I have no answer as to why Savvy's credit searches did not show the extensive borrowing Mr T had with several well known high cost short term and instalment lenders, but I am satisfied that Mr T had extensive debt, that proportionate checks would have discovered those, and Savvy ought not to have lent to him in relation to loans 2 and 3.

And as I said in my provisional decision, Mr T was obtaining credit sequentially and likely using loans to pay off debts. This was a clear sign of unsustainable lending meaning Mr T was not able to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments.

My decision is that I uphold Mr T's complaint about loans 2 and 3.

Putting things right

I understand from the recorded call in which Mr T made his complaint that he was going to continue paying the £200 a month for loan 3. My current understanding from Savvy is that Mr T has paid correctly and on time up to now. It's likely that the loan is still being paid off. I asked in my provisional decision to be told the up-to-date position. But Savvy has not informed us.

Loan 3 was scheduled to end June 2022 and so I will assume that loan 3 is outstanding.

In deciding what redress Savvy should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr T from loan 2 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 T 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 T in a compliant way at this time.

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

I direct that Savvy ought to do as follows:

- refund all interest and charges Mr T has paid on loans 2 and 3;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- remove any negative information about loans 2 and 3 from Mr T's credit file;

If Mr T still owes Savvy any of the principal balance he borrowed on loan 3, instead of the above, for loan 3 Savvy should remove all the interest and charges applied to the outstanding balance. Savvy should then re-work the account as if all payments made by Mr T went towards the principal on loan 3. But importantly, Savvy needs to make sure that Mr T doesn't repay more than the principal amount borrowed.

If after doing this Mr T hasn't repaid the principal he borrowed Savvy can deduct this from the remainder of the compensation. If, Mr T has already paid enough to repay the principal then any overpayment should be refunded to him with 8% simple* interest from the date of payment to the date of settlement

And if Savvy no longer owns this debt, and it wants to make a deduction due to the amount owed, then it should buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr T.

*HM Revenue & Customs requires Savvy to take off tax from this interest. It must give Mr T a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr T's complaint in part and I direct that Valour Finance Limited trading as Savvy.co.uk does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 April 2022.

Rachael Williams
Ombudsman