The complaint

Mr B complains that Valour Finance Limited trading as Savvy.co.uk acted irresponsibly when lending to him.

What happened

Savvy provided Mr B with a loan as follows:

Date Taken	Date Repaid	Monthly Instalments	Loan Amount	Monthly Repayment
08/05/2021	outstanding	15	£2,000.00	£266.66

When Mr B first complained to Savvy, it didn't uphold his complaint, so he brought his complaint to this Service.

Mr B mainly said that Savvy didn't do proper checks before it provided him with the loan and had it done so it would have seen multiple gambling transactions. Mr B believed that if Savvy had done proper checks it would've realised that the loan wouldn't be affordable for him and so it shouldn't have been provided.

Our adjudicator thought that proportionate checks would most likely have shown that Mr B's spending on online betting transactions was at least £1,300 amounting to more than 55% of his declared income of £2,250. This meant Mr B wouldn't have had enough money to make his loan repayments along with his other financial commitments. So our adjudicator upheld Mr B's complaint and set out the steps she said Savvy should take to put things right.

Savvy disagreed with our adjudicator's view. In summary, Savvy said it believed that the checks it did were proportionate, it saw nothing to suggest that more in-depth checks were needed before agreeing to lend and it didn't have any reason to think the loan wasn't affordable for Mr B as he had ample surplus income according to its affordability calculations.

Savvy asked for an ombudsman review so this complaint comes to me to decide.

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

Like our adjudicator, I don't agree it was reasonable for Savvy to provide this loan to Mr B. Here's why I say this.

Savvy needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice, this means that it should've carried out proportionate checks to make sure Mr B 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 Mr B'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 the consumer. These factors include:

- the *lower* a customer'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.

Savvy was required to establish whether Mr B could sustainably repay his loans – 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 repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Taking all this into account, I've carefully considered all of the arguments, evidence and information provided and thought about what this all means for Mr B's complaint.

Savvy told us about the checks it did before lending to Mr B. It asked him to provide details of his income and to tell Savvy what he normally spent each month. Savvy conducted an automated income verification to check what he'd said about how much he earned and also carried out checks on Mr B's credit file. Savvy also asked Mr B some additional searching questions to try and understand why someone with his apparent level of disposable income was applying for this loan.

Based on what Mr B had told Savvy about his living arrangements and his financial situation, Savvy understood that he had ample disposable income each month and only limited responsibility for usual household costs. Its affordability assessment was based on Mr B having a total monthly income of £2,250 and a total monthly expenditure of around £959, including his existing debt repayments. Savvy worked out that this gave Mr B an available monthly surplus of approximately £1,290. So it was satisfied that, after paying the loan contractual payments of £266.66 per month, he would still have around £1,023 spare cash left.

But Savvy expected Mr B would be paying the loan for the next 15 months. Despite Mr B's apparently sound financial situation, I think this was a long enough loan term to go beyond what would be a reasonably foreseeable period to expect complete stability in his finances. So I think Savvy ought to have gone further in its affordability checks before agreeing to lend. I think Savvy should have taken steps to verify what Mr B was saying about his financial circumstances. Savvy hasn't shown me it did this. So I can't fairly say that it carried out a proportionate check before agreeing to lend to Mr B.

Mr B has provided his bank statements so I've looked through these to see what Savvy was likely to have found out. In the absence of other evidence, I think these give a useful insight into Mr B's finances at the time. And had Savvy looked in more depth at Mr B's finances it would likely have seen that he was facing serious problems managing his money. I think it would have learnt that Mr B was regularly spending significant amounts on what appear to be gambling transactions. I think, had it seen those transactions, that Savvy should have concluded that the extent of Mr B's apparent gambling meant it was unlikely that he would be able to repay this loan in a sustainable manner.

This means I don't think it was reasonable for Savvy to provide this loan.

In coming to my decision, I've taken into account that Savvy has supported its position by pointing to the fact that Mr B made each of his contractual payments in full and on time. But this doesn't necessarily mean that he was able to do so in a way that was sustainable for him. And this isn't enough to persuade me that the loan was sustainably affordable for Mr B.

For these reasons I'm upholding the complaint and Savvy should put things right.

Putting things right

In deciding what redress Savvy should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Mr B, 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 B may have simply left matters there, not attempting to obtain the funds from elsewhere.

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 now impossible to reconstruct accurately. From what I've seen in this case, I 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 B 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 B 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.

If Savvy has sold any outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, Savvy will need to liaise with the new debt owner to achieve the results outlined below and do the following:

A) add together the total of the repayments made by Mr B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything already refunded.
B) calculate 8% simple interest* on the individual payments made by Mr B which were considered as part of “A”, calculated from the date Mr B originally made the payments, to the date the complaint is settled.
C) remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr B as though they had been repayments of the principal. If this results in Mr B having made overpayments then Savvy should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Savvy should then refund the amounts calculated in “A” and “B” and move to step “E”.
D) If there is still an outstanding balance, then the amounts calculated in “A” and “B” should be used to repay this. If this results in a surplus, then the surplus should be paid to Mr B. However, if there is still an outstanding balance then Savvy should try to agree an affordable repayment plan with Mr B. Savvy shouldn’t pursue outstanding balances made up of principal already written-off.
E) Whilst it’s fair that Mr B’s credit file is an accurate reflection of his financial history, it’s unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So Savvy should remove any adverse information recorded on Mr B’s credit file in relation to the loan.

*HM Revenue & Customs requires Savvy to take off tax from this interest. Savvy must give Mr B a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons given above, I’m upholding Mr B’s complaint and Valour Finance Limited trading as Savvy.co.uk should take the steps I’ve set out to put things right.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 11 February 2022.

Susan Webb
Ombudsman