

The complaint

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

What happened

Savvy provided Mr S with a loan as follows:

Date Taken	Date Repaid	Monthly Instalments	Loan Amount	Total Amount Repayable	Monthly Repayment
15/08/2018	Outstanding	15	£1,250.00	£2,474.40	£154.65

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

Mr S mainly said 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. He also told us that Savvy obtained a county court judgement (CCJ) against him as he wasn't able to make the repayments. He told us that having a CCJ has made things very difficult for him and he's now living with mental health issues and financial problems. To resolve this complaint Mr S would like relief from the financial pressure of this loan and Savvy's help to remove the CCJ from his credit file.

Our adjudicator thought that proportionate checks would most likely have shown that Mr S was already having problems managing his money as it would've become aware that he had opened several new loans during the three days running up to him taking this loan. So our adjudicator upheld Mr S's complaint and set out the steps he thought Savvy should take to put things right. Our adjudicator didn't make any mention of the CCJ.

Savvy disagreed with our adjudicator's view. In summary, Savvy said:

- the several other recent loans referred to by our adjudicator that had been opened just a few days before Mr S's application to Savvy were not visible on his credit file at that time, so it was unable to consider this information as part of his application
- Savvy asked Mr S about any loans which might not be reflected on his credit file and he had mentioned only one
- Savvy cannot be held liable for any credit taken after it issued this loan or for any information not displaying on a credit file if Mr S took out other credit with other lenders within the same month
- Savvy completed thorough checks and does not agree that it provided this loan irresponsibly.

Savvy asked for an ombudsman review. The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

“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 S 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 S’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 S 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 S’s complaint.

Thinking first about the CCJ, this means a court has decided the outstanding debt needs to be repaid. Whilst I understand that Mr S wants the CCJ removed from his credit file, I think it’s important for me to start by saying that this Service can’t direct the court to set aside (undo) its judgement – and we have no power to do that ourselves. That’s because only the court can set aside a decision it made and Mr S could have taken steps himself to challenge the judgement. If that’s something he would like to find out more about now he may be able to obtain free legal advice from Citizens Advice or a local law centre.

But I've seen nothing to suggest that the court would have considered Mr S's irresponsible lending complaint. I say this because Savvy hasn't sent me anything concerning the court judgement, such as a copy of the court order and the specifics of the claim and any counterclaim. And I haven't seen anything to make me think that Mr S knew at the time that he was able to raise this complaint as part of the debt recovery proceedings. As Mr S didn't complain to Savvy about the loan until around two years after the date of the court judgement, I think it's most likely that he hadn't realised he could complain about the loan having been irresponsibly provided before then, even though he first ran into payment problems in 2018 and the loan was defaulted in January 2019.

So, unless Savvy sends me anything to make me think again about this, like our adjudicator, I think it's fair for me to consider this complaint.

Savvy told us about the checks it did before lending to Mr S. 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 S's credit file. And I've taken into account that Savvy also asked Mr S about information that might be missing from its credit checks.

Based on what Mr S 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 S having monthly income of £1,150 from his main job and it was aware he also had a secondary income of around £460 per month. Savvy understood that his total monthly expenditure was around £475, including his existing debt repayments and worked out that this gave Mr S an available monthly surplus of approximately £675. So Savvy was satisfied that, after paying the contractual payments for this loan, Mr S would still have more than £500 spare cash left, making the loan affordable for him.

But Savvy expected Mr S would be paying the loan for the next 15 months. 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, irrespective of the fact that Savvy thought it looked like Mr S was currently able to afford this loan, 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 S 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 S.

Mr S 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 S's finances at the time. And had Savvy looked in more depth at Mr S's finances it would likely have seen that he was facing serious problems managing his money. I can see on his 2018 bank statement that he borrowed £800 on 12 August, £1000 on 13 August and on 14 August he took out two loans for £54 and £1000 – all from other providers of expensive short-term and high cost credit.

I think it's fair to say that very recent borrowing taken out by Mr S might not have shown on a credit report done at the time. But that was a further reason for carrying out more in-depth checks before agreeing to lend this loan when a proportionate check required Savvy to probe more deeply into Mr S's financial situation to check what he'd told it – or omitted to say. And had Savvy done what I consider would've been a proportionate check, given what I've seen on his bank statements, I think it should have concluded that Mr S's use of this sort of expensive credit was a clear sign that he was already facing significant financial difficulty and this meant it was unlikely that he would be able to repay this loan in a sustainable

manner. This all leads me to conclude that it was unreasonable for Savvy to provide this loan.

In coming to my decision, I've taken into account everything that Savvy has said in support of its view. And I'm mindful also that its affordability checks resulted in Savvy providing a smaller loan to Mr S than the amount he had originally requested. But this doesn't mean that the loan it did provide was sustainably affordable for Mr S and whilst I accept that Savvy takes a different view to me, nothing it has said changes my view.

For these reasons, as things stand, I'm planning on upholding the complaint and telling Savvy to take action to put things right."

What the parties said in response to my provisional decision

Mr S has responded to say that he's unhappy that the CCJ remains in his record.

I have heard nothing further from Savvy and the deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

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. I've taken this into account in deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter. I completely understand why Mr S would like to see the CCJ removed from his credit file. But Savvy didn't put this information on his credit file so I can't tell Savvy to remove it.

Mr S might think about contacting the court to see if he could apply to have the judgement set aside or otherwise, he could seek independent legal advice about this – as mentioned in my provisional decision, he may be able to obtain free legal advice from Citizen's Advice or a local law centre.

I don't know if Mr S is aware that he has the right to add his own short explanatory note on his credit file (up to 200 words). This is called a 'notice of correction'. Prospective creditors should take the information into account if he applies for credit. Mr S can contact the credit reference agencies directly to do this or to find out more.

And of course, the record will automatically no longer appear on his credit file after six years.

I hope this is useful to know. And given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

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 S, 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 S 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 S 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 S 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) remove all interest, fees and charges from the balance on the loan and treat any repayments made by Mr S as though they had been repayments of the principal. If this results in Mr S having made overpayments then Savvy should refund these overpayments to Mr S along with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.

B) If there is still an outstanding balance, then the amounts calculated in "A" should be used to repay this. If this results in a surplus, then the surplus should be paid to Mr S. Savvy should be aware that it is up to Mr S to decide whether to use any payment due to him to reduce the court debt or keep the redress in full so he can use it for other purposes he may wish to prioritise over this debt. Savvy shouldn't pursue outstanding balances made up of principal already written-off.

C) If there is still an outstanding balance then Savvy should try to agree an affordable repayment plan with Mr S bearing in mind its obligation to treat him positively and sympathetically in any discussions if he still needs further time to pay.

D) Whilst it's fair that Mr S's credit file is an accurate reflection of his payment 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 S's credit file about his payment record in relation to the loan. I am not directing Savvy to remove adverse information connected to the CCJ because it's an accurate reflection of the judgement and a matter of public information, not something that Savvy has reported to credit reference agencies. So it wouldn't be fair to ask Savvy to do this.

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

My final decision

I uphold Mr S's complaint and direct Valour Finance Limited trading as Savvy.co.uk to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 March 2022.

Susan Webb
Ombudsman