

The complaint

Mr W complains that Commsave Credit Union ("Commsave") lent to him irresponsibly.

What happened

Mr W took out a series of loans with Commsave from January 2015 to October 2021. Some of these were regular unsecured loans, others were revolving credit arrangements where Mr W was allowed to borrow up to an agreed limit at any time, with regular repayments. To keep things simple, I will refer to all of these as loans.

Mr W says he couldn't afford the credit. He says he had lots of debt elsewhere and that if Commsave had done proper checks it would have known the credit was unaffordable for him.

Commsave says it did all the necessary checks before it lent to Mr W and it didn't see anything which might make it think he couldn't afford the loans.

Our adjudicator thought that Mr W's complaint should be upheld. Commsave didn't agree and pointed out the differences in the objectives of credit unions to those of a commercial lender and its exemption from the Consumer Credit Act. Commsave said the adjudicator's decision had held it to standards it was not bound by. Despite this, Commsave explained that it did conduct checks and those were reasonable and proportionate to the lending and it was fair for it to make decisions on the information that was available to it. It also objected to the adjudicator suggesting that Commsave should have done checks on Mr W's partner's income. Commsave also didn't agree that because the adjudicator considered Mr W's first loan to be unaffordable that all subsequent lending was therefore automatically unaffordable, too.

There was initially a question about whether Mr W's complaint was made in time under the rules we have to apply, because some of the loans were made more than six years before Mr W's complaint. Our adjudicator explained in her view that she considered that the complaint had been made in time in relation to all of the loans. Commsave did not object to this, so I have not considered the matter further. But as Commsave did not agree with the adjudicator's view on the merits of this complaint, it has been passed to me to make a 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considering Mr W's complaint.

Having done so, I have come to the same conclusion as our adjudicator. I will explain why I have reached this decision.

Commsave is a credit union. Credit unions offer services including savings account and lending. They are self-help non-profit making co-operatives whose members pool their savings to provide each other with credit at a lower interest rate than may be found in commercial lending. Their lending is not subject to the Consumer Credit Act 1974 (as amended) where the interest charged does not exceed the statutory cap, which in this case it doesn't. Credit unions are subject to Financial Conduct Authority regulation, and it should adhere to the rules and guidance found in the Credit Unions sourcebook (CREDS). While it is not subject to the usual rules and guidance in the Consumer Credit sourcebook (CONC) for firms subject to the Consumer Credit Act, I have kept CONC in mind when considering what good industry practice would have looked like at the time of Mr W's applications.

With this in mind, Commsave still had a duty to lend responsibly. In practice this means that it should have carried out proportionate checks to make sure Mr W could afford to repay what he was being lent 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, how much borrowing Mr W had elsewhere and Mr W's income and expenditure. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the borrowing was unaffordable.

There's no set list for what reasonable and proportional checks are, but I'd expect lenders to consider things such as the amount, duration and payments of the loan being applied for, as well as the borrower's personal circumstances at the time of each application.

Over the period in question, Mr W borrowed around £12,000. Not all of this borrowing took place at the same time as some of it was paid off during the period, and some of it was in the form of revolving credit which meant as Mr W paid some of it off, he was allowed to re-borrow up to an agreed amount. This means Mr W may have borrowed considerably more than £12,000 over the period. In addition, part of the unique nature of credit unions is that about a third of any loan is retained in a savings account which is interest-bearing. This means that Mr W would only receive (and pay interest on) about two thirds of each loan and would only have to make repayments on that amount.

Our adjudicator thought that Commsave hadn't taken account of all the information it had about Mr W's financial circumstance when it decided to lend to Mr W. Commsave showed us the results of its checks at the time, which were rather limited. For example, they didn't provide a picture of how much Mr W had borrowed from other lenders or how much he was paying towards those debts.

However, the information did show that there had been 12 credit searches made in the preceding 12 months, with eight of those being in the preceding three months. Several of these were for loan applications, including a payday loan and there was a search from a debt collection agency.

I appreciate that credit unions are designed in part to lend to people who may not otherwise be able to access reasonably priced lending, so it may not be unusual to see this kind of activity on a borrower's credit history. But in Mr W's case his declared household income and expenditure (and therefore disposable income) were such that the relatively frequent searches for credit and the appearance of a payday loan and a debt collection agency – especially the latter – ought to have alerted Commsave to the possibility Mr W's financial circumstances may not have been as solid as the figures he provided suggested. Mr W was asking to borrow £800 for a holiday - this represented less than a third of his calculated monthly household disposable income. And he wanted to pay it off over nearly a year, which

is a long time for a relatively small amount with a household income of that declared and assessed.

It's not possible to say with certainty what Commsave would have seen if it had done more checks, because I can't know what checks it would have chosen to do. But I think it would have been reasonable in these circumstances for Commsave to ask Mr W about his other borrowing commitments.

Mr W has provided evidence to show that in the four months before this borrowing he had incurred two defaults on other lending. He had also taken out other loans after those defaults, including three in the two months prior to his application, two of which were in the four weeks prior to his application. I think this indicates that Mr W was not managing his finances well and that he likely wasn't in a position to repay further debt sustainably.

Commsave has argued that our adjudicator didn't then go on to detail each of Mr W's later loans individually, intimating that his financial position may have changed for the better. But Commsave hasn't provided any evidence to suggest that Mr W's financial circumstances had got better. And from what I have seen of his circumstances they in fact got worse.

For example, in the period from the first loan to December 2018 his indebtedness, even by Commsave's measures, increased. Mr W had taken over 35 loans during this time; sometimes together and sometimes in quick succession. He incurred arrears and entered payment arrangements on several of these. He also incurred a default and a County Court Judgement in this time. He didn't declare that CCJ on the next application he made after that and because Commsave's checks were so limited at that point it didn't appear on its checks either. Indeed, in 2017 and the beginning of 2018 Mr W applied for a number of loans with Commsave which were declined because there was less than three months between his applications with the credit union, however as soon as the three month period expired Mr W applied again and was provided with the loans with little significant difference in the checks Commsave made. A later offer of a loan in February 2018 was withdrawn when Commsave belatedly realised that Mr W had incurred a CCJ in 2017, although it did lend to him again later in the same year.

There was then a gap of about 2 and a half years between applications - perhaps long enough for Mr W's circumstances to have improved. In May 2021 Mr W applied for a loan of £2,000 for a holiday. Commsave's checks again showed a default on Mr W's credit file from 2018 which was still in default. While Commsave has provided copies of some of Mr W's bank statements which suggests it did further checks at the time, these bank statements post-date the application. I think they were acquired for a later loan Mr W applied for in October of the same year.

I think the presence of the unsettled default on Mr W's credit record, along with his long history of borrowing with Commsave and the size of the loan, ought to have prompted Commsave to do more checks.

I can't know for sure what Commsave would have seen in May 2021 if it had done more checks, but I think it's fair to rely on the bank statements provided for the October 2021 loan to get an idea of what Mr W's general outgoings and financial circumstances might have been.

From those statements I can see that Mr W was rarely in credit in his current account. His outgoings regularly exceeded his income. There were numerous small gambling transactions. While gambling is legal, it can also be a sign of potential financial problems. And I can see that if Mr W hadn't been gambling he would have been in less debt. I think if Commsave had taken proper account of the evidence available to it, it would have realised that Mr W was unlikely to be able to sustainably repay his borrowing.

So, on the evidence available to me, I don't think Commsave ought to have lent to Mr W in the way that he did. I think the whole lending was unaffordable for Mr W and it was likely he wouldn't have been able to repay it all in a sustainable way. I think Mr W lost out as a result of this.

Putting things right

Commsave should not have provided the lending to Mr W. To settle this complaint Commsave should do the following:

- Add up the total amount of money Mr W received as a result of having been given the loans.
- Subtract the repayments Mr W has made from this amount.
- If this results in Mr W having paid more than he received, any overpayments must be refunded along with 8% simple interest* calculated from the date the overpayments were made to the date of settlement.
- If any capital balance remains outstanding, Commsave should arrange an affordable and suitable payment plan with Mr W. If no such arrangement can be agreed, Mr W can return to this service to make a further complaint.
- Remove any negative information recorded on Mr W's credit file relating to this loan when he has cleared any remaining balance.

*HM Revenue & Customs requires Commsave to deduct tax from any award of interest. It must give Mr W a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I have decided that Commsave acted unfairly when it gave Mr W the loans. To put things right I direct Commsave UK Plc to pay compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 March 2023.

Sally Allbeury
Ombudsman