

The complaint

Mr H complains that Commsave Credit Union Limited (“Commsave”) ought not to have lent to him as the lending was both unaffordable and irresponsible.

What happened

In August 2019 Mr H applied to Commsave for a loan. He borrowed £5,000 over a term of 156 weeks, the repayments were £45.04 per week. The repayments came directly from Mr H’s salary. As part of the agreement Mr H was also required to open a savings account with Commsave. Further, in order to borrow from Commsave a borrower has to be a member of Commsave’s credit union. Mr H is and was a member when he borrowed from Commsave.

Prior to taking out the loan in August 2019 Mr H had borrowed before from Commsave but he had used a different membership number. Before he applied for the August 2019 loan Mr H acquired a new membership number. The August 2019 loan was the first time Mr H had taken out a loan with Commsave using the new membership number.

Mr H complains that during the application process for the August 2019 loan Commsave asked for no information to prove his income and expenditure. Moreover, Mr H adds that Commsave did not take account of his wider financial circumstances. For example he had county court judgements against him and defaults on other accounts. Further, he’d taken out several earlier loans from Commsave in quick succession. He had even asked to reduce repayments on at least one loan he’d had previously with it due to money troubles.

In addition, Mr H tells us he subsequently had three “top up” loans from Commsave, after the August 2019 loan. Although Mr H is only complaining about the loan of August 2019. Mr H has paid off this loan.

Moreover, Mr H complains that the lending was also irresponsible as he used all of the money from the loan for problem gambling, (problem gambling can be defined as gambling that is disruptive or damaging to the person who gambles or their family or interferes with their daily life).

In summary, Mr H believes Commsave would have known all about his precarious financial state which had been caused predominately by his problem gambling if it had carried out all the checks it should have done prior to lending to him.

Further, Mr H considers that Commsave let him borrow so much from it in order to “trap” him. Mr H adds that he does not consider Commsave has given him the level of customer service he is entitled to expect. Mr H says Commsave has now suddenly decided not to lend to him anymore. He tells us that the lending in August 2019, the subsequent customer service he received and the refusal to lend to him anymore have caused him to become depressed. Mr H complained to Commsave.

To put things right, at first Mr H wanted Commsave to “*wipe my debt away*” he asked for this despite saying he had already paid off this loan. Later he asked for a refund of all interest and charges that he had paid on the loan.

Commsave responded by first making some general points around its operating model and governance. Specifically it said:

“Credit unions operate under a unique cooperative model”, therefore “we do receive certain concessions such as full exemption from the Consumer Credit Act. Although not covered by consumer credit regulation, we acknowledge that we still have an ethical obligation to lend responsibly and follow the consumer credit regulations as guidance. Our lending policies are designed to ensure that we are treating all our members fairly, while supporting our objective of providing affordable credit options for individuals with a less than impeccable credit history.”

Commsave therefore accepts that before it lends to a borrower it should carry out a creditworthiness assessment of the borrower. It also accepts that as part of this assessment it should carry out proportionate checks to ensure that any borrower can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation.

Commsave then commented on the steps it had taken in relation to Mr H's individual application. In particular, it said that it had checked Mr H's income by asking him for a payslip as part of the loan application process. According to Commsave Mr H supplied his payslip for August 2019. Further, he told it about his total household income which included not just his pay but benefits he received in his household and his partner's income. Commsave checked all of his information against the income figure Mr H had given it as part of his application and they matched.

Further, Commsave says it did ask Mr H about his expenditure. It then checked that expenditure using third party information, that is the Standard Financial Statement guidance.

Moreover, Commsave also did a credit check to verify that what Mr H had told it about his pre-existing financial commitments matched what Mr H had said in his application. It did not agree that Mr H's previous borrowing history with it demonstrated that this new lending might be unaffordable.

Once Commsave had verified Mr H's income and expenditure to its own satisfaction, it then worked out his disposable income. This calculation showed that Mr H's disposable income was sufficient to cover the repayments to the loan. Plus it was satisfied that Mr H could maintain these repayments in a sustainable manner.

For all of these reasons Commsave concluded it had carried out an appropriate creditworthiness assessment. In so far as it had carried out reasonable and proportionate checks to satisfy itself that the lending was affordable, and that the affordability was sustainable. As a result it did not agree it had acted inappropriately and it did not agree that it had to refund any interest or charges it had applied to Mr H's account.

Dissatisfied with Commsave's response Mr H complained to our service.

Once Mr H's complaint was with our service he provided further information. He told us he did not think he provided Commsave with any bank statements to support his application. But if he is mistaken about this, then any such bank statements were for his partner's current account. He told us his salary was paid into this account and all his bills such as his direct debits also came out of this account. He added *“I wasn't allowed to have any money in my bank by my partner because of my gambling”*.

That said although Mr H told us he did not have access to money, he also told us he had a sole current account and a sole top-up debit card account. He would transfer money to the sole current account and then he would transfer that money out of this account to his top-up debit card account. He used the top-up debit card account and only this account for problem gambling.

Mr H looked at the decisions we publish on our website. He found a decision on our website which he thought mirrored the circumstances of his complaint and asked us to look at this decision.

One of our investigators looked into what had happened. Our investigator concluded that Commsave's decision to lend to Mr H was irresponsible and recommended that Commsave had to take action to put things right.

Mr H accepted our investigator's recommendation, but Commsave did not. This in summary is what Commsave said about why it did not accept the recommendation.

- It carried out all the checks that were required and having done so it decided the lending was affordable and responsible.
- It did not agree that it should have carried out further checks. But it pointed out it also spoke to Mr H several times during the application process to verify that the information he provided was accurate. For example, it revised the income and expenditure information when Mr H told it he'd split up with his partner.
- Mr H provided inaccurate information to it with the intention of misleading it, Commsave considered therefore Mr H had committed fraud. It asked us to look at the bigger picture, in so far as, if we uphold Mr H's complaint in these circumstances we are damaging the credit union sector. This is because we will be broadcasting to prospective borrowers that they can and should provide false information in the course of applying for credit and will be rewarded for it.
- It pointed out that customers who apply to it for credit often have a less than ideal financial backgrounds including county court judgments and defaults. But that is not a reason, by itself, to decline credit. It also underlined that is often a lender of last resort for consumers who can obtain credit nowhere else.
- It did not agree it should have seen the warning signs that Mr H was engaged in problem gambling because there were no warning signs to be seen.

Commsave asked that an ombudsman review Mr H's complaint. Mr H's complaint was sent to me. Having considered the available evidence, I was not minded to uphold the complaint, but I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

"What I've provisionally decided and why

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

I take on board that Commsave is a credit union and therefore subject to the specialist rules for credit unions under the relevant rules which include the Financial Conduct Authority's Handbook ("the Handbook"). Specifically, the Handbook contains rules that relate solely to credit unions.

However, the Handbook also indicates that a credit union seeking a permission to undertake a credit-related regulated activity would need to comply with the requirements in the Consumer Credit sourcebook. Therefore whilst Commsave may be exempted from some of

the legislation that protects consumers I'd have expected it to follow the requirements in the Handbook about consumer credit lending.

In any event Commsave indicates it has an obligation to lend responsibly and follows consumer credit regulation as guidance so for this reason too I'd expect it to follow the rules in the Handbook about consumer credit lending.

Why I don't find that Commsave's checks went far enough

Mr H complains about irresponsible and/or unaffordable lending. Therefore, I need to consider whether Commsave carried out a reasonable assessment of the creditworthiness of Mr H before entering into the loan agreement with him. That creditworthiness assessment would need to be based on sufficient information. I would expect Commsave to have completed reasonable and proportionate checks to satisfy itself that the lending was affordable, and that the affordability was sustainable.

In addition, where reasonable and proportionate checks were carried out, I need to consider if the lending decision was fair. And if reasonable and proportionate checks weren't carried out, I need to consider if on balance the loan would've been approved if the checks had taken place.

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders such as Commsave to consider things such as (but not limited to) the amount being borrowed, the term of the loan and the borrower's financial situation at the time of the application.

Commsave tell us that as part of the creditworthiness assessment of Mr H it asked Mr H about his income and expenditure. It verified and revised that information where appropriate. For example, it revised his income once he told it he'd split up with his partner, but it appears from the information that Commsave have provided that this revision of his income related to a later loan not this one. Rather, for the purposes of this loan it used the information Mr H provided without revision. It also used third party sources to verify what it was told.

It was entirely up to Commsave to decide what information it asked for. But when a consumer is borrowing a relatively large amount as here, I think it would be proportionate to verify income and expenditure by for example asking for bank statements to establish the actual amount of income and expenditure, rather than the likely amounts. Moreover, given Mr H's wider financial circumstances, as identified in his credit search, which I will talk more about below I also think it would have been proportionate to have verified Mr H's income and expenditure.

Further, Commsave took account of Mr H's partner's income when assessing Mr H's ability to repay. It is permitted to do this in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement. Though as far as I can see Commsave did not ask anything about Mr H's partner's expenditure, so it is unclear how it established all of this income would be available to Mr H to make repayments under the agreement.

Moreover, it seems likely that Mr H withheld information about two sole accounts which he used to facilitate his problem gambling. Commsave's position is it is entitled to rely on the information Mr H supplied about his income and expenditure. Specifically, it is entitled to assume that it is accurate. I accept Commsave's argument here, to a degree, Commsave is entitled to rely on the information Mr H supplied. But that does not mean that if that information does not stack up it, it does not have to take things further and there are I think several instances here where taking a closer look at what it was told would have been proportionate.

Commsave has sent us the result of the credit search it did at the time Mr H applied for the loan. Amongst other things the credit search showed there had been 15 credit searches in the last 3 months and 38 within the last 12 months. He had two active county court

judgements. There had been a default on one of his accounts in the last 12 months. The total balance of his indebtedness was around £2,500. Commsave also knew about Mr H's previous borrowing from it, and it does not deny Mr H's position that he borrowed from it in quick succession. But it does not seem that any of that finance was used to pay down his pre-existing debt. Given that Mr H's disposable income seemed sufficient to pay down his pre-existing debt and meet the new repayments, there was no reasonable explanation for what had happened to that previous lending.

On the face taken together this behaviour demonstrated Mr H was credit hungry and was having some difficulty managing his pre-existing financial commitments which contradicted the picture Mr H had painted about his income and expenditure. I recognise that some of Commsave's customer base may well have less than ideal financial backgrounds, but in the circumstances Mr H's financial situation suggested all was not as he said it was.

For all of these reasons I think Commsave's checks were not reasonable or proportionate, and Commsave ought reasonably to have gone further.

New membership number

I've not gone into detail about the fact that Mr H used a new membership number to borrow in August 2019, because I can't see what difference this would have made. I say this because the credit search shows that Commsave had access to information about Mr H's financial history both with it and with third party lenders. So it does not seem that by applying for the loan using a new membership number Mr H was able to conceal his previous financial history.

What difference would it have made if reasonable and proportionate checks had been done?

I'll now look at if on balance the loan would've been approved if reasonable and proportionate checks had taken place.

Commsave chose not to ask for bank statements. If it had asked for bank statements to demonstrate income and expenditure, Mr H says it would have found that the account he paid his salary into and which he used to pay his bills was his partner's account. But he has not told us or demonstrated that the information about his income and expenditure that he gave to Commsave was incorrect. Therefore even, if Commsave had asked to see statements for this account, it would not, on balance, have shown that he could not afford to borrow from it.

That said, I have no reason to doubt Mr H when he says the account he used for day to day living was his partner's sole account. The credit search showed Mr H also had a sole current account. But just because Mr H had this sole current account does not mean in the circumstances, Commsave might reasonably have asked to see statements from that account too. I say this because the credit search does not show what was happening with this account. It does not show that Mr H was transferring money from this account to the top-up debit card account. Rather the credit report indicated Mr H was not using this account.

In addition it seems that Mr H's top-up debit card account was a pre-paid debit card account which does not seem to appear on the credit search. So I would not have expected Commsave to have known of its existence.

Further, in order to demonstrate that the lending was unaffordable I would need to see statements for Mr H's former partner's account too. Because in order to uphold this part of Mr H's complaint I'd need to be satisfied that there was information in the statements that indicated the lending was unaffordable. Mr H is no longer with his former partner and therefore it seems doubtful he will be able to provide copies of these statements.

For all of these individual reasons, on balance I've no proper basis for finding that most likely the lending was unaffordable.

Why I don't find that the lending was irresponsible

Mr H does not only complain that the lending was unaffordable he also complains it was irresponsible. In particular, Mr H tells us he was engaged in problem gambling when he applied to Commsave for the loan. He indicates he was a vulnerable consumer by reason of this problem gambling. A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a financial business is not acting with appropriate levels of care. Therefore Mr H says Commsave acted irresponsibly in lending to him.

Regulated financial businesses are expected to provide their customers with a level of care that is appropriate given the characteristics of the customers themselves. The level of care that is appropriate for vulnerable consumers may be different from that for others and financial businesses should take particular care to ensure they are treated fairly. Therefore I have to consider if Commsave did act fairly taking into account Mr H's vulnerability due to his problem gambling.

Mr H tells us the lending was irresponsible as he used all of the money he borrowed for problem gambling. However, as I've already mentioned, it appears that Mr H used his pre-paid debit card account for his gambling transactions and no other account. That account does show evidence of daily gambling transactions that rapidly emptied the account, both before and after the August 2019 loan. But as I've already mentioned I've not seen details of this account on the credit search. Neither has Mr H said he disclosed this account to Commsave. So as I have previously mentioned I can't see how Commsave would have known about this account.

Mr H explains he took care to hide his gambling from his partner so there are no gambling transactions on the account he appeared to share with her. Moreover, no gambling transactions appear on the sole current account statements. So if Commsave had checked the statements for these accounts it would not have found gambling transactions never mind gambling transactions that suggested Mr H was engaged in problem gambling.

That said common warning signs that someone may have a gambling problem can include borrowing money on a regular basis which is something Commsave did know about and moving the money from account to account. This pattern of behaviour can also be indicative of someone whose financial situation is finely balanced. In other words the only way I think Commsave could have found out about Mr H's problem gambling is if it had looked forensically at all of his accounts and if it had had access to the statements for the top up debit card account. And I don't find it is reasonable to say Commsave acted unfairly because it did not require information about all of Mr H's accounts especially the sole current account. Moreover, I can't see how Commsave would have been able to ask for statements for the top-up debit card account when it would not have known it existed.

On balance based on what Commsave could reasonably have found out at the time I don't agree it ought reasonably have been aware of Mr H's problem gambling and therefore acted irresponsibly in lending to him.

Did Commsave set out to "trap" Mr H and did it let him down with its customer service

I don't see anything to suggest that Commsave set out to "trap" Mr H in relation to this loan. Neither have I seen anything that suggests Commsave's customer service fell below the level Mr H was entitled to expect.

Moreover Mr H complains that Commsave will not now lend to him, and this has contributed to his upset. Mr H complains that Commsave ought not to have lent to him in August 2019 therefore it seems inconsistent to also complain that Commsave subsequently would not lend to him. It follows I don't uphold these parts of Mr H's complaint.

Mr H has asked that I look at the decision he mentioned. But I am not bound by my colleague's decision in that complaint, because ombudsmen's decisions are not binding

precedents in the way that the courts' decisions are. I am required to form my own view of this complaint, rather than to follow the views of others in other complaints.

My provisional decision

My provisional decision is that I don't intend to uphold this complaint."

Both Mr H and Commsave responded to my provisional decision. Mr H expressed disappointment with the outcome. He also indicated we need not send him a final decision if it was going to be the same outcome as the provisional decision. Mr H appeared to reject the provisional decision. Commsave accepted the provisional decision and indicated it had nothing further to say.

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 thank Mr H and Commsave for their responses to my provisional decision. I've reviewed the file again and revisited my provisional decision. As I have received no new information or arguments in response to my provisional decision it follows that I've reached the same conclusions for the same reasons as I set out in my provisional decision which forms part of this final decision.

I recognise Mr H suggested we ought not to send him a final decision if it was going to be the same outcome as the provisional decision. However, Mr H has not withdrawn his complaint. Therefore in order to bring his complaint properly to a close I had to issue this final decision.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 July 2023.

Joyce Gordon
Ombudsman