DRN-4243316

The complaint

Mr M complains Valour Finance Limited trading as Savvy.co.uk ("Valour") provided him with a loan without carrying out appropriate affordability checks. Mr M says that had it asked to see his bank statements Valour would've discovered that he was spending all his income on gambling.

What happened

Mr M took one loan from Valour for £2,000 on 18 November 2020. Mr M was due to make 15 monthly repayments of £266.66. It seems that Mr M still has an outstanding balance to pay.

Valour considered Mr M's complaint and concluded it had made a reasonable decision to lend based on the checks it carried out which included asking Mr M about his income and expenditure and carrying out a credit check. The results of these checks showed Valour that Mr M could afford the loan repayments.

Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator. She concluded Valour made a reasonable decision to provide the loan because it had carried out proportionate checks which showed the loan repayments to be affordable. She also didn't think Valour needed to have verified the information Mr M had provided and so it wouldn't have known about Mr M's gambling. Mr M disagreed with the outcome the adjudicator had reached. In response he said;

> "*The reason I think savvy should have done more proportionate checks is because of the amount of pay day loans I was applying for and getting in the periods leading up to applying for a loan with savvy, this is all over my credit file.*
>
> *Also it was savvy the company that underwrite a lot of the other loans for example my loans with* [third party names removed] *and others.*
>
> *Probably in the 3 months lending up to savvy more than 10 pay day loans we're* [sic] *taking* [sic] *out Some of these companies accepted my complaint and then removed from credit file so might not be visible by you, but I have letters confirming this if you would like to see them.*"

As no agreement could be reached the complaint was passed to me. I then issued my provisional decision explaining the reasons why I was intending to uphold Mr M's complaint. Both parties were asked to provide anything further for consideration as soon as possible, but in any event no later than 14 July 2023.

Mr M says that he didn't have any further information to provide.

Valour didn't agree with the proposed outcome, and I've outlined its response below.

- Valour confirmed that it verified Mr M's income and it provided evidence to support this.
- The fact there were credit cards at or close to the limit doesn't mean Mr M was in financial difficulty.
- Valour says the overdrawn balances on the current account "*would not flag as metric for a decision*". This would've only become applicable if bank statements were requested – but in this case Valour didn't consider it necessary.
- Mr M confirmed he had not taken any further credit in the 30 days before this loan was approved and so Valour wouldn't have known of the recently opened payday loan.

A copy of the provisional findings follows this in smaller font and form part of this final decision.

What I said in my provisional decision:

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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Valour had to assess the lending to check if Mr M could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Valour's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr M's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Valour should have done more to establish that any lending was sustainable for Mr M. These factors include:

- *Mr M 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 particular level of income);*
- *Mr M having a large number of 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);*
- *Mr M 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 for Mr M. As there was only one loan, the adjudicator didn't think this applied in Mr M's case.

Valour was required to establish whether Mr M could sustainably repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr M was able to repay his loan sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and *thought about what this means for Mr M's complaint.*

Before this loan was approved, Valour asked Mr M for details of his income, which he declared he worked full time and received £2,350 per month. Valour says it carried out an electronic verification check of this amount – and the results confirmed that Mr M had received at least this amount, each month for the last 12 months. However, no evidence has been provided to support this check, but because this was the first loan, I think it was reasonable for Valour to have accepted what Mr M had said.

As part of his application Mr M provided Valour with details of his living costs, this was then discussed with Mr M on a telephone call with an agent as well as the information that Valour gathered from a credit search it carried out. As a result of these checks, Valour believed Mr M's monthly expenditure came to £1,840.35. Again, as it was the first loan Valour was entitled to rely on the information Mr M had provided.

Valour therefore reasonably believed Mr M had £509.65 per month of disposable income to be able to afford the monthly repayment of £266.66. The loan looked affordable.

Before this loan was approved Valour also carried out a credit search and it has provided the results it received from the credit reference agency. It is worth saying here that although Valour carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Valour couldn't do is carry out a credit search and then not react to the to the information it received. Valour was also entitled to rely on the results it was given as it didn't have anything to suggest the results were in anyway inaccurate.

Having reviewed the credit check results, I do think Valour ought to have been concerned by the information that was provided. Valour knew that Mr M had two active loan accounts costing £358 per month, he also had a hire purchase agreement costing £152 per month as well as a communication contract costing £21 per month. Finally, there was also a mail order account where Mr M owed £1,185 – but this wasn't all due to be paid at the next payment date.

The above accounts appeared to be being repaid without any undue difficulty –as there were no adverse payment markers. However, Mr M's overdrafts and credit cards, ought to have caused Valour to consider whether it knew enough about his finances.

Firstly, Mr M had five active credit cards, which isn't on its own a concern, but two of the credit cards were over the prescribed credit limit and one was within £1 of the credit limit. And for these cards that were at or over the limit, looking at the history, Mr M had, been near his limits for several months, indicating that he wasn't really making any headway into repaying his credit – he appeared to be merely servicing the debt.

Secondly, Mr M had three current accounts, one with an overdrawn balance of around £1,300, and one without an overdrawn balance of £7,495 overdrawn against an overdraft limit of £7,500.

I accept that Mr M's bank(s) wouldn't have expected the money to be repaid all in one go, but the fact the credit file shows that Mr M had overdraft debts of over £9,000 ought to have been of a concern considering this was significantly more than his monthly pay. So even after being paid and assuming all that pay went towards reducing his overdraft – Mr M still would've had a significant amount owing.

I am not suggesting that the credit checks alone was enough to uphold the complaint, but what I am suggesting that there were indicators that Mr M could've been overextended and so I think it's entirely reasonable for further checks to have been carried out.

Overall, given that Mr M was borrowing a further £2,000 to be repaid over 15 months, which wasn't an insignificant period of time for this type of loan and the concerns in the information with regards to his credit limit on this credit card as well as his overdraft I do think Valour had to think carefully whether extending further credit was the right thing to do.

So given the factors I've mentioned above, I think Valour needed to gain a full understanding of Mr M's actual financial position to ensure the loan was affordable and sustainable. This could've been done in several ways, such as asking for evidence of his outgoings, looking at bank statements and/or collecting any other documentation Valour felt it needed to obtain in order to have satisfied itself the loan was affordable for Mr M. This might've helped verify information provided and revealed whether there was any other information that Valour might've needed to consider about Mr M's financial position.

However, that isn't the end of the matter. For me to be able to uphold the loan, I have to be satisfied that had Valour carried out what I consider to be a proportionate check it would've likely discovered that Mr M couldn't afford it, or Valour was given some other evidence which indicated the loan was unsustainable in some other way.

Mr M has provided a copy of his bank statement for the period leading up to the loan being approved – and as this was one of the documents that Valour could've used to verify Mr M's financial situation, it is, in my view entirely reasonable to review them.

Having reviewed his bank statements from October 2020 and November 2020 I can see that by the time this loan was approved, Mr M had at least three active payday loans, he was paying £131.24 for one, £535 for another and had recently received a credit of £500 from another loan provider. And he was also utilising a revolving credit facility from another well-known high-cost credit provider.

The bank account statements also show that Mr M was significantly overdrawn even after receiving his salary. And, I do consider that to be problematic because Mr M was in effect, using his overdraft – which isn't his money – to pay other creditors that he had.

Therefore, given the number of active payday loans, as well as the overdraft and the term of the loan I think Valour's better checks would've led it to conclude that Mr M couldn't sustainably repay this loan over a 15-month term.

I am therefore intending to uphold Mr M's 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.

Mr M didn't have anything further to add, so I've considered the comments raised by Valour in response to the provisional decision. Having done so, I am still of the view that this loan ought to not have been granted.

I appreciate, that Valour has carried out an income verification check, and so, on balance it was satisfied the amount Mr M declared was broadly accurate. I say no more about that because it has little impact on the outcome that I've reached.

I've considered Mr M's credit card balances, and as I explained in the provisional decision, that doesn't necessarily mean that Mr M was having financial difficulties, only that he owed balances and was near his credit limits. Which as I said, does indicate that Mr M wasn't really repaying the debt but merely servicing what he owed. This doesn't mean he was having financial difficulties, but it is a factor that in my view Valour ought to have considered. And the same came be said for the overdraft.

And as I previously explained, given what Valour knew at the time, as a result of its affordability assessment it carried out, I explained why further checks were carried out. And this could've been done a number of ways, one way may have been to have reviewed his bank statements – but this isn't the only method it could've used.

The provisional decision explains why, in my view, given the total number of outstanding payday loans and how Mr M was managing his current account and existing debts it ought to have led Valour to have concluded that this loan wasn't sustainable for him. And Valour's response hasn't persuaded me to change my mind.

Putting things right

In deciding what redress Valour should fairly pay in this case I've thought about what might have happened had it not lent to Mr M, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr M may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 M 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 M would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Valour's liability in this case for what I'm satisfied it has done wrong and should put right.

I planning to decide that Valour shouldn't have given Mr M this loan.

If Valour has sold the outstanding debt, it should buy it back and then take the following steps. If Valour isn't able to buy the debts back then Valour should liaise with the new debt owner to achieve the results outlined below.

A. Valour should remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr M as though they had been repayments of the principal on the loan. If this results in Mr M having made overpayments then Valour 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.
B. However, if there is still an outstanding balance then Valour should try to agree an affordable repayment plan with Mr M. Valour shouldn't pursue outstanding balances made up of principal Valour have already written-off.
C. Valour should remove any adverse information recorded on Mr M's credit file in relation to the loan.

*HM Revenue & Customs requires Valour to deduct tax from this interest. Valour should give Mr M a certificate showing how much tax Valour has deducted, if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr M's complaint.

Valour Finance Limited trading as Savvy.co.uk should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 August 2023.

Robert Walker
Ombudsman