DRN-4381774

The complaint

Mrs B complains that Valour Finance Limited trading as Savvy.co.uk ("Valour") gave her loans without carrying out the correct affordability checks. Mrs B says had it carried out better checks, Valour would've seen multiple late payments and evidence that she was clearly overindebted.

What happened

Mrs B was advanced three loans and I've included a summary of her borrowing below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment
1	£800.00	04/01/2021	25/06/2021	12	£133.33
2	£600.00	20/07/2021	25/03/2022	8	£150.00
3	£1,000.00	28/03/2022	27/03/2023	12	£166.66

Following Mrs B's complaint, Valour wrote to her to explain that it wasn't going to uphold the complaint because it said it had carried out proportionate checks, and those checks showed the loans were affordable. Unhappy with the response, Mrs B referred the complaint to the Financial Ombudsman Service.

Mrs B says after she received Valour's answer to her complaint, she again applied for and was granted a fourth loan by Valour without any proper checks being conducted. However, the adjudicator explained why this loan wouldn't be considered as being a part of this complaint.

In the adjudicator's latest assessment, she thought Valour shouldn't have provided any of the loans. The adjudicator went through the checks Valour had carried out for each loan - which included asking Mrs B for details of her income and expenditure, carrying out a credit search and then discussing the application with Mrs B on a phone call.

Due to the credit checks results as well as the loan term, the adjudicator thought that Valour should have carried out further checks before granting each loan. And the adjudicator concluded that if Valour had carried out further checks, it would've likely discovered Mrs B had a number of outstanding loans and was spending significant sums each month on gambling transactions.

Valour didn't agree with the proposed outcome, in summary it said:

- It completed comprehensive affordability assessments taking account of Mrs B's income and expenditure details, which it says showed them to be affordable.
- Mrs B's income was validated.
- Creditworthiness checks were conducted and then followed up with telephone conversations – where questions about her spending habits were asked, including asking questions about her gambling.

- Mrs B's gambling couldn't have been predicted at the time of the application – given the checks that were carried out.

The case was then passed to me and I proceeded to issue a provisional decision explaining the reasons why I was intending to uphold Mrs B's complaint in part and about loan three only.

Both parties were asked to provide any further submissions as soon as possible, but in any event, no later than 4 October 2023.

Mrs B acknowledged the provisional decision and said she accepted the findings. She also said that she would be exploring a complaint about the fourth loan that was granted.

Valour didn't respond to the provisional decision, but as the deadline for a response has now passed, I see no reason not to issue the final decision.

A copy of the provisional findings follows this in smaller font and forms 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 Mrs B could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Valour's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mrs B'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 Mrs B. These factors include:

- *Mrs B 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);*
- *Mrs B 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);*
- *Mrs B 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 Mrs B. The adjudicator didn't consider this applied to Mrs B's complaint and I agree considering there were only three loans.

Valour was required to establish whether Mrs B could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Mrs B was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

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

Loan 1

Mrs B declared she had a monthly income of £1,480 and Valour says an income verification check was carried out which it says confirmed Mrs B received at a minimum of that income for at least the last year. Valour was therefore satisfied that Mrs B's stated income was likely to be accurate.

Mrs B was also asked about her monthly expenditure. This included asking about her expenditure across a number of different areas - such as housekeeping, bills and travel, to name a few. It also looks like, as part of this expenditure check, Valour used information obtained from a credit search to look at what Mrs B's monthly credit commitments were.

Following the expenditure checks, Valour believed Mrs B's outgoings for this loan were £1,151.50 per month. This left a minimum disposable monthly income of £328.50 to afford her loan repayments of no more than £133.33.

Before the loan was approved, Valour says it also carried out a credit search. 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.

Therefore, it's entirely possible that the information Valour received may not entirely reflect the information Mrs B may be able to view in either her downloadable credit report or her bank statements. There could be a number of reasons for this, such as Valour only asking for certain pieces of information or recently opened loans not yet appearing in the search results. But what Valour couldn't do is carry out a credit search and then not react to the to the information it received.

Looking at the credit check results; Valour knew that Mrs B had at least two active credit accounts. One was a credit card that was within its limit of £900. There was no adverse payment markers – indicating that Mrs B had maintained her payments. Although it does appear that Mrs B had marginally exceeded her credit limit between June and October 2020.

The other active credit was a current account with an overdraft of £700. At the point the search was carried out, the report showed she wasn't overdrawn. But historically Mrs B had made use of the overdraft but there wasn't anything within that usage that ought to have been an immediate concern for Valour.

Valour was informed about two County Court Judgements (CCJs). These had been recorded in 2015 and 2016 and so were historic enough for Valour to not have been overly concerned by them either.

After the credit checks were carried out, Valour also spoke to Mrs B about the information she had declared as well as what Valour saw in the credit check results. I've listened to a copy of this call, and I can hear that details of her expenditure were discussed and confirmed with Mrs B including that her husband covered some of the bills such as the gas and electric. Valour was also told about a further credit card that Mrs B had recently opened but wasn't yet showing on the credit report – Mrs B confirmed she had a balance on that card of about £35.

And as the information Mrs B told Valour didn't contradict what else it had been told by the credit reference report, I think it was entitled to rely on what it was told.

The adjudicator upheld this loan due to Valour needing to do further checks due the credit check results and the term of the loan. But the credit checks, in my view don't show anything of concern or any flags that ought to have prompted further checks. And I just don't agree that a loan term of 12 months ought to automatically mean further checks are needed, especially when Valour completed a comprehensive income and expenditure form and telephone call with Mrs B which showed the loan to be affordable.

Based on the credit check results Valour carried out there was no indication that Mrs B was either having or likely having financial difficulties – which may have prompted Valour to consider whether the loan was unsustainable for her. And the evidence that Valour did collect showed the loan to be affordable.

So, while Mrs B's bank statements do show lots of other lending and significant amounts of gambling. Valour didn't know about this. Mrs B hadn't disclosed it and the checks it carried out didn't indicate this either. And for the reason I've outlined above, I think the checks it did do were proportionate. So, I don't think Valour acted unfairly or unreasonably because it chose not to ask for further information (which may've shown it evidence of Mrs B gambling) such as bank statements.

I am therefore intending to conclude that for loan one, Valour carried out proportionate checks which showed that the loan was affordable for Mrs B. I'm therefore not upholding Mrs B complaint about this loan.

Loan 2

This loan was advanced shortly after loan one had been repaid. But loan one was repaid much sooner than Valour expected. Mrs B then returned for a smaller capital loan of £600 compared to loan one, which was £800. However, the loan term was smaller at only eight months which meant the monthly commitment Mrs B was due to make increased slightly.

The same sort of checks were carried out by Valour. This time Mrs B declared an income of £1,900 per month, which was more in keeping with the income range she declared on the telephone call for loan one. It was again reasonable for Valour to have relied on the information it was given.

Expenditure details were requested across the same categories as they were asked for loan one. This time Mrs B's outgoings were declared as £1,227.73. Which left disposable monthly income of around £672 which was more than enough for Valour to believe that Mrs B could afford the loan repayment of around £150.

A credit search was also carried out. I've reviewed the results to see what Valour was given at the time it made its lending decision. The results showed much the same as they had for loan one, the same credit card (with a £900 limit) and the current account with an overdraft was also well maintained.

However, in November 2020, Mrs B had taken a loan from another provider (this didn't show up in the credit check results for loan one) but Valour could see she had to make payments of £147 per month – which look to have been factored into Mrs B's monthly expenditure.

Valour also knew that Mrs B hadn't made her contracted payments in either May or June 2021 for this other loan – this resulted in the loan account being in arrears. But by the time the credit search was carried out the loan was showing as being up to date and the arrears had been cleared.

I've listened to the call between Mrs B and the agent. There was confirmation sought as to the amount per month Mrs B had for her credit commitments but there was no attempt to establish what had happened that led to Mrs B missing two months' worth of payments for the other loan. And I do think, as part of the application Valour ought to have at least asked about this.

But I don't think that the missed payments automatically meant Valour had to check Mrs B's bank statements. Instead, I think some further questions should've been asked to establish what'd happened. Valour didn't do this, but even if it had made further enquires, I can't be sure what Mrs B would've told it. And in any event, given the other information Valour had to hand; I doubt that Mrs B would've wanted to jeopardise her loan application by disclosing that she had lots of other loans (that may explain why payments weren't made) or there was some other reason.

Considering that before this loan, Mrs B had been indebted for around six months, she was potentially extending that by a further eight months and her first loan had been repaid without any obvious difficulties. And there were no significant flags to have given Valour cause for concern in either the income and expenditure details, the telephone call or the credit search results.

This means, for much the same reasons as loan one, I am also intending to not uphold loan two either, because I think Valour carried out proportionate checks which showed the loan to be affordable.

Loan 3

Loan two was repaid on time and as expected by Valour. So, the repayment history of loans one and two wouldn't have triggered Valour to automatically think that further checks ought to have been carried out. But I have kept in mind that this loan was advanced only three days after loan two was repaid and Mrs B was this time returning to repay the loan over a year (after already being indebted for more than a year) and she had increased the amount she was borrowing.

For this loan, Mrs B declared an increased income of £2,500 per month – and this was discussed on the phone with the agent. Valour said for this loan it did carry out an income verification check like it did for loan one, and this confirmed Mrs B received at least £1,900 per month for the past year.

As part of its affordability assessment Valour took the lower income figure of £1,900 which was, in my view a reasonable course of action to have taken, even though Mrs B's actual income was greater than this.

Mrs B's expenditure has been noted as being £1,514 per month. This left, £386 per month in disposable income to meet the loan repayment of around £167. The loan looked affordable.

The results of Valour's credit checks have also been provided; these contained the same credit facilities as there were for loan two. The loan with a monthly repayment of £147 was up to date and there hadn't been any further missed payments since loan two was granted. And Mrs B also had her credit card with a £900 limit – however whilst no adverse payment markers had been added, she was now over the credit limit on this card – owing the provider £918.

Given the history of the lending, that her monthly repayments were increasing with each loan and Valour was also aware by this stage that Ms B was having problems maintaining her existing credit commitments, as she was over her credit card limit. Ms B had been indebted to Valour for just over a year and was now committing to be indebted for a further year. All of these factors combined, in my view, ought to have led Valour to carry out more rigorous checks. So, I don't think, for this loan it was enough for it to have relied on the information Mrs B provided either on the application or the telephone call.

Therefore, I think Valour needed to gain a full understanding of Mrs B'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 her outgoings, looking at bank statements, reviewing Mrs B's full credit file or obtaining any other documentation Valour felt it may have needed.

This might've helped verify information provided and revealed whether there was any other information that Valour might've needed to consider about Mrs B's financial position. Mrs B has provided copies of her bank statements for the month leading up to the loan being approved and so I think it's entirely reasonable to view these.

I appreciate there was no regulatory requirement for Valour to have viewed the bank statements. But as I've said above, this was only one of a number of ways it could've gone *about verifying Mrs B's information. In the circumstances, I consider this needed to have been done in order for a proportionate check to have been conducted.*

Had further checks been carried out, before this loan, I think Valour would've thought any further lending was unaffordable for Mrs B. I say this because Mrs B's bank statements show she was significantly more indebted than Valour's credit search indicated. Indeed, most of the accounts that Mrs B was servicing at the time didn't appear in the credit check results.

Mrs B had a number of buy now pay later accounts which needed servicing, at least four home credit accounts, two payday loan account, a credit union account, three catalogue shopping accounts, a high cost credit loan and at least four active credit cards. Finally, in March 2022 there are multiple drawdowns from an online revolving credit facility / credit card provider of nearly £2,000 – all funds that would have to be repaid alongside the loan that she was applying for.

There are also many transfers to another account in Mrs B's name – Mrs B hasn't provided statements to this other account so I can't be sure what the money was being used for. But I can see from earlier on in the lending relationship that Mrs B was spending significant sums each month gambling. She also told us separately, that she is now receiving help for this – which I am pleased to hear about, and hope things continue to improve for her. So, on balance, it is likely that the funds were being moved to another one of her accounts in order to use for gambling / online betting.

But whether Mrs B was using this money to gamble (or not), I think the complaint about loan three ought to be upheld given the sheer number of outstanding credit accounts, especially as there were already a number of high-cost credit facilities outstanding - including payday, long term loans and home credit loans. A further check of the bank statements would've immediately shown Valour that it wasn't sustainable to advance any further funds to Mrs B at that point in time.

I've thought about what Valour has said around the fraud statement Ms B agreed with at the start of each call. But this loan is being upheld because I don't think Valour's checks were sufficient. It is the case that the relevant lending rules and regulations place the onus on Valour to ensure that a proportionate check was carried out – which it didn't do. I've then gone on to establish what those further checks may have shown it.

I've already explained why in this case, loans one and two aren't upheld. And I've explained why that is the case even though Mrs B's earlier bank statements show similar entries as they do for loan three. So while I understand the point Valour is making, for loan three, it didn't do enough before lending and that is why the loan is being upheld, as further checks would've shown it that Mrs B couldn't afford the loan repayments.

Taking everything into account, I don't think a responsible lender would've provided loan three, had proportionate checks been carried out. Because of this, I've outlined below what Valour needs to do in order to put things right for Mrs B.

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.

Mrs B has accepted the findings in the provisional decision and Valour hasn't responded. Given the response, I see no reason to depart from the findings I previously made, and I still think Valour needed to do further checks before it granted loan three. Had it done so, it wouldn't have advanced the loan to Mrs B as it would've likely discovered the loan was unaffordable for her.

The fourth loan wasn't considered as part of this complaint, and so I leave it up to Mrs B to take that matter forward – if that is something she wishes to do.

I am upholding Mrs B's complaint about loan three only, and I've set out below what Valour needs to do in order to put things right for her.

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 loan three to Mrs B.

Clearly there are a great many possible, and all hypothetical, answers to that question. For example, having been declined this lending, Mrs B may have simply left matters there, not attempting to obtain the funds from elsewhere. Alternatively, Mrs B may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Mrs B 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 she 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 reconstruct now accurately. 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 responsible lender would have been able to lend to Mrs B in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs B 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.

Valour shouldn't have given Mrs B loan three. So, to put matters right, Valour should:

A. Add together the total of the repayments made by Mrs B towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.
B. Calculate 8% simple interest* on the individual payments made by Mrs B which were considered as part of "A", calculated from the date Mrs B originally made the payments, to the date the complaint is settled.
C. Pay Mrs B the total of "A" and B".
D. Remove any adverse information recorded on Mrs B's credit file in relation to loan three.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs B's complaint in part about loan three only.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 2 November 2023.

Robert Walker

Ombudsman