

The complaint

Mr O complains Valour Finance Limited trading as Savvy.co.uk (“Valour”) provided him with a loan without carrying out appropriate affordability checks. Mr O also says that interest was added to the outstanding balance even though he had told Valour about his difficulties.

What happened

Mr O received one loan from Valour on 30 May 2022 for £1,000 payable through 12 monthly payments of £166.61. Mr O has had some problems repaying his loans and the most up to date information from Valour shows there is still an outstanding balance to pay.

In response to Mr O’s complaint, Valour said it hadn’t made an error when it approved the loan because proportionate checks had been carried out, which showed Mr O would be able to afford it.

Valour then issued a second final response letter which explained the account was sufficiently enough in arrears for a default notice to be issued. However, as a gesture of goodwill, Valour said that as long as the terms of the payment plan were kept then the default wouldn’t be registered.

Mr O referred the complaint to the Financial Ombudsman. Where the complaint was considered by an investigator. The investigator concluded Valour made a reasonable decision to provide the loan because it had carried out a proportionate check which showed the repayments to be affordable. The investigator also explained that Valour hadn’t added any extra interest to the balance beyond what Mr O agreed to when he took the loan.

Mr O disagreed with the outcome saying;

- At the time his credit cards and overdraft were “maxed...” and Valour should’ve seen his other lending and asked more questions.
- Mr O also says he mentioned his gambling and issues around this right at the beginning and Valour made his situation worse by adding further interest.
- Even though a payment arrangement had been set up no checks were made to see if this was affordable.
- Mr O says he was vulnerable, and they threatened him with legal action if he didn’t pay.

The investigator explained to Mr O why his comments hadn’t changed her mind about the outcome. Mr O said as a compulsive gambler he couldn’t be expected to have been honest and he didn’t consider it fair that interest continued to be added. Later, Mr O confirmed a default about this loan had been added to his credit file.

As no agreement could be reached the complaint was passed to me and I issued a provisional decision outlining why I was intending to uphold Mr O’s complaint in part.

Both parties were asked for any further submissions. Valour didn't respond to the provisional decision. Mr O did and he didn't agree with the findings that were reached, he said, in summary;

- he wasn't in control of his finances when he applied for the loan which is reflected by the fact it was taken early in the morning
- Mr O has pointed to guidance that where gambling is concerned a customer may not always provide a full picture – had bank statements been requested Valour would've seen the gambling
- after being told about Mr O's vulnerability interest continue to be added
- Mr O doesn't feel the default is fair because it was recorded while waiting for the Financial Ombudsman Service to review the complaint and while the loan was in dispute and Valour didn't hold the collecting action while it was waiting for our response.

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.

I've split this decision into two parts, firstly, I will deal with what happened when Mr O applied for and was granted the loan. Secondly, I'll review what happened when the repayment plan was agreed and the actions that Valour took at the time.

The lending decision

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 O 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 O'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 O. These factors include:

- *Mr O 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 O 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 O 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 O. As there were only one loan, I agree with the investigator that this wouldn't apply in this complaint.

Valour was required to establish whether Mr O 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 O was able to repay his loan 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 Mr O's complaint.

Before the loan was approved, Valour took details of Mr O's income and expenditure as well as carrying out a credit search. Having reviewed the information it gathered, and the amount lent to Mr O I am satisfied Valour carried out a proportionate check which showed it that Mr O would likely be able to afford his repayments and I've outlined my reasons for doing so below.

Valour received details from Mr O about his income, which he declared to be £3,800 per month. Valour says it carried out an income check which confirmed Mr O had received at least this amount for the last year. For a first loan I do think it was reasonable for Valour to have accepted what Mr O declared about his income. This income was also discussed on the affordability phone call I mention below.

As part of his applications Mr O provided Valour with details of his living costs, these were then discussed with Mr O in a telephone call (a copy of the call has been provided which I have listened to) in which he confirmed details of his application. As a result of these checks, Valour for its affordability assessment used monthly outgoings of £2,291.27. This left Mr O with sufficient disposable income to afford his repayments for the loan.

Before the 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.

From the information it received, Valour knew Mr O had 2 outstanding loans costing him £197 per month – both loans were up to date. There were three current accounts, and I can see that Mr O was utilising an overdraft on one of them but he was within his limit and there didn't appear from the credit file, to show that Mr O was struggling to keep on top of this.

Mr O did have a number of credit cards – six in total. All were either right at their limit or slightly over. But Valour noticed this because this issue was raised with Mr O on the telephone call that it had with him and he provided what I consider to be fair and reasonable answers. So, while some of the cards were over the credit limits Mr O had a reasonable explanation for that. This wouldn't have prompted Valour to have carried out further checks.

The credit file didn't show any defaults, insolvencies or any County Court Judgements and so there wasn't anything within the credit file which showed that Mr O was having or had recent financial difficulties. For a first loan I think it was reasonable for Valour to have relied on the results without having to make further enquires with Mr O – beyond what it did.

So, taking everything into account, there wasn't, in my view, anything solely from the credit file which would've led to Valour declining Mr O's application or to have prompted it to carry out further checks. There was also nothing else in the information Valour either received or was told that I've seen that would've led it to believe that it needed to go further with its checks – such as verifying the information Mr O had provided.

At the time Mr O says he was gambling and was in a vulnerable position – but that information wasn't reflected in either what he told Valour or what Valour discovered from carrying out proportionate checks. This means that Valour couldn't take this into account when carrying out its affordability assessment.

An outstanding balance does appear to be due, and I would remind Valour of its obligation to treat Mr O fairly and with forbearance.

Mr O has referred to the investigator details of another complaint he has about another lender at the Financial Ombudsman. My role is to consider each complaint on its individual merits, which does mean that there can and will be situations where similar complaints do have different outcomes because it will depend on the individual facts and checks that were carried out by each business. I'm satisfied, that in relation to this lending decision, Valour didn't do anything wrong.

*I'm therefore intending to not uphold Mr O's complaint about the sale of the loan.
Repayment plan*

The crux of this part of the complaint is that Mr O says that despite him being in a vulnerable position Valour carried on charging interest.

Mr O initially let Valour know in July 2022 that he was having some short-term financial difficulties, caused by unexpected bills. Valour responded and offered to move the payment to the end of the term, which would in effect extend the time in debt. But, given what Mr O had told Valour this doesn't seem to have been an unreasonable course of action.

Mr O contacted Valour in October 2022 about an unexpected increase in bills – Valour at this time took appropriate steps to find out more about the specific problems Mr O was having, again this is the course of action I'd expect it to take. This is also the time that Mr O raises an unaffordable lending complaint. Which Valour then investigates. It doesn't appear that Valour was made aware of Mr O's gambling until 7 December 2022 when a note has been made in its records – this seems to have triggered some internal process which given what it was told was the right thing to do. It is from this point onwards however where I think Valour could've and should've done more to assist Mr O.

Valour accepted, that Mr O was vulnerable due to his gambling and further information was provided from him about this in an email on 13 January 2023.

I appreciate a payment plan was set up shortly afterwards, and at the time no evidence was needed from Valour to enable it to be put into place – the notes suggest that it accepted what Mr O had told it about his other debts and the payments that he was going to be making. Although, it does seem, from the contact notes that Mr O confirmed the amount of the repayment plan was affordable for him. I've taken on board what Mr O has said but I don't think at the time the payment plan was being put in place that Valour treated him unfairly in relation to this.

I've also looked at the statement of account as well as the credit agreement. Had Mr O repaid his loan in full and as expected he would've paid a total of £1,999.33. Looking at the statement of account (up to July 2023) and thinking about what Mr O had paid to date and the outstanding balance due, it does seem that Valour is going to be collecting the full balance that was outlined in the credit agreement. Meaning, that it hasn't charged any extra interest, fees or charges but it has charged Mr O the amount it said it would charge in the credit agreement.

However, by December 2022 Mr O was already in arrears with his account due to missed payments, and then Valour is told further information about Mr O's vulnerabilities. As such, the regulatory guidance in the Consumer Credit Sourcebook (7.3.5G) says that forbearance needs to be offered and then lists some of the actions a lender could take these include;

- (1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

Given the statement and balance of the account, it's clear that the interest wasn't frozen on the account. Valour charged the interest up to the amount it said it would in the credit

agreement. So, while the credit agreement also says that interest is charged at a daily rate, I do think, once Valour was told about Mr O's vulnerability it ought to have stopped interest from being added to the account. I acknowledge the credit agreement allows interest to be charged up to the full amount but equally Valour also had to be mindful of its other obligations within the regulations.

Taking account of the fact that Mr O had already missed payments and CONC 7.3.5(1) does suggest that one way of helping would be to cancel any further interest that may be charged. In this case, I think that would've been the fairest thing to have done. This would limit Mr O's indebtedness rather than the situation where the level of his proposed payments and his wider issues meant the debt would continue to grow up to the point that it was capped by the credit agreement. So, I do not think that it was fair for Valour to have charged any further interest, fees or charges after 7 December 2022 – and so I am intending to ask Valour to recalculate the outstanding balance to reflect this.

Due to Mr O having issues with the repayment plan that he agreed, payments continued to be missed, which resulted in Valour sending him a default notice in March 2023. Valour confirmed the default was then applied to Mr O's credit file in November 2023.

I've thought about good industry practice which was issued by the Information Commissioner's Office when thinking about this. The account was already in arrears before Valour was aware of Mr O's difficulties, and then he agreed a repayment plan that he said he could afford.

By agreeing to a repayment plan Mr O was accepting that he couldn't meet the contractual repayments that were due to Valour and this would've continued to put the account into arrears. So, I don't think Valour did anything wrong when it issued the default notice. Valour has now confirmed the default has been applied to the credit file due to continued non-payment of the account.

I've thought about this carefully, but ultimately, there is an outstanding balance that needs to be repaid, constructed of both principle and some interest (once the recalculation has been conducted). As there is nothing to suggest Mr O's finances have improved or why payments through a plan (or a new plan weren't made). I therefore think it likely the account would've always defaulted. So, I am not going to ask Valour to make any adjustment to the credit file. I've set out below what Valour needs to do in order to put things right for Mr O.

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.

In this section I've dealt with the submissions raised by Mr O in response to the provisional decision. But this should be read in conjunction with the findings that can be found above which provided further reasons for why the complaint has been partly upheld.

I've taken on board what Mr O says about his gambling as well as his vulnerable situation when the loan was granted. I do not underestimate how difficult things were for him at the time and I do hope that things have improved for him since.

I fully accept, given what he says, that he may not have been in control of his finances. I would expect Valour to have reacted to this information if it knew, or ought reasonably to have known, that Mr O was in a vulnerable position.

Unfortunately, the information I've seen which includes the checks that Valour carried out at the time the loan was granted, there isn't anything to suggest that Mr O was vulnerable at the time or was having financial difficulties. This doesn't mean Mr O wasn't experiencing difficulties, only it wasn't reflected in the information gathered by Valour.

As such, I can't fairly and reasonably, have expected Valour to know that the information Mr O provided may not have been entirely accurate or that it needed to factor this into its affordability assessment.

Mr O is quite right that the Financial Ombudsman has guidance (which can be found on its website) about the actions that a lender may need to take. But the key aspect with this is what the lender knew or ought reasonably to have been aware of. And I am sorry to say that for the reasons I've outlined above, there wasn't any indication that Mr O was having, or likely to be having, financial difficulties. Or anything else to suggest that Valour needed to carry out more checks. This means, that while I appreciate Mr O believes Valour ought to have checked his bank statements – in the circumstance of this complaint I think that would've been disproportionate.

I've explained in the provisional decision why I don't think Valour's actions were reasonable (and therefore Mr O wasn't treated fairly) once it became aware of Mr O's vulnerability - it made a note on its system – and this seems to have triggered some internal processes. But as I've explained, I really don't think that went far enough especially because interest continued to be charged. So, for the reasons I've already explained, I still think Valour needed to have stopped the interest from being added to the balance from 7 December 2022.

I know Mr O says that the loan was applied for so early in the morning that this was a sign that he was in financial distress and I would agree that in some situations that maybe accurate reflection of why a loan was applied for, especially if this was a known pattern or there were other indicators of distress.

However, thinking about the individual circumstances of this complaint, I don't think Valour would've been too concerned by this – after all there are a number of reasons why a loan could be applied for early in the morning – such as the consumer working night shifts. But whatever the reason for the application being made at that time, this wouldn't in my view, for a first loan where proportionate checks were conducted ought to have led Valour to believe that further checks were needed.

I know Mr O is disappointed by Valour's decision not to hold the collection activity while his complaint was investigated by the Financial Ombudsman. It does seem from the notes that while the repayment plan was being discussed and set up that collection activity was held – and I think that was a reasonable course of action.

But, there isn't a requirement for a lender to do so. Some lenders do take the view that perhaps it's better to wait for the outcome of a complaint before taking action, whereas as is the case here – Valour felt it was a reasonable course of action to continue with the collection activity. As such I can't say that Valour made an error by not providing further holds to the collection activity.

I also understand Mr O's frustration about the default being applied to the credit file and he is correct that it will remain on his credit file for a period of six years. But when thinking about whether this ought to be removed, I've considered that the account was in arrears for a significant period of time and there was also a failed repayment plan.

So even though, there was an ongoing dispute about the loan that wouldn't prevent a lender from registering a default. As far as I can see Valour has followed the guidance issued by the Information Commissioner's Office and as such the default is an accurate reflection of how the account has been maintained.

I've thought about what Mr O has said about what should happen to the default – that being it should be removed, and then only reapplied if there are further failed payments. There are real dangers with this especially as Mr O has already shown difficulty sticking to a repayment plan and should Mr O only be able to make a “token” payment then the account could in theory default straight away. I have thought about this carefully as a suggestion for a way forward, but overall, given the arrears and the default is an accurate reflection of the conduct of the account, I am not going to be asking Valour to remove it.

Having reviewed the evidence provided by both parties as well as Mr O's submissions, I am still of the opinion that Valour needed to have done more once it became aware of Mr O's vulnerabilities and this included freezing the interest and charges. So, I've set out below what Valour needs to do in order to put things right for Mr O.

Putting things right

In order to put things right for Mr O Valour needs to re-work the loan balance as if all interest, fees and charges had been stopped from 7 December 2022. This will still likely leave an outstanding balance but should reduce the amount that Mr O owes.

Mr O and Valour should then try and come to a mutual agreement to repay what is owed, but I would remind Valour of its obligation to treat Mr O fairly and with forbearance.

My final decision

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 25 April 2024.

Robert Walker
Ombudsman