

## **The complaint**

Mr P complains that Valour Finance Limited trading as Savvy.co.uk ("Valour") didn't carry out sufficient affordability checks before it lent to him.

## **What happened**

Mr P was advanced one loan of £750 on 18 February 2023 and he was due to make 52 weekly payments of £28.27. Mr P was due to repay a total of £1,470.04. At the time of the final response letter an outstanding balance remained due.

In response to the complaint, Valour said it hadn't made an error when it approved the loan because proportionate checks had been carried out. Unhappy with this response, Mr P referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator, and he concluded Valour shouldn't have provided the loan. He said the credit check results Valour received ought to have led it to carry out further checks. Had it done so, perhaps by looking at Mr P's bank statements, Valour would've likely discovered that he was using a significant portion of his income each month towards gambling transactions. So, the loan wasn't affordable for him.

Valour didn't agree with the investigator's assessment and made the following points:

- Mr P had disposable income to afford the loan.
- The credit check results didn't indicate that Mr P was having problems.
- Mr P provided misleading information in his application because he told Valour he wasn't gambling.

The investigator explained why he didn't agree with the comments. He still thought the credit check results were of sufficient concern to have warranted further checks and those further checks would've identified Mr P's gambling. Valour then sent a link to a published decision on our website, and it explained it doesn't agree that refunding the full balance and interest is fair.

As no agreement could be reached the complaint has been passed to me to decide.

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

The obligation is and was on Valour to assess the lending to check to see if Mr P 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 P'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 P. These factors include:

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

Valour was required to establish whether Mr P 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 P 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 P's complaint.

Before the loan was approved, Valour took details of Mr P's income and expenditure as well as carrying out a credit search. Valour received details from Mr P about his income, which he declared to be £3,464 per month. Valour verified this income using an "...*automated income validation check*...". This check informed Valour that Mr P had received at least his declared income for the past year.

As part of his applications, Mr P provided Valour with details of his living costs and as part of the affordability assessment it used a figure of £2,054 per month – this left enough disposable income to be able to afford the repayments he was committed to making.

These costs were then discussed with Mr P 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 such as his employer and payment date, his living situation and details of his income and expenditure. As a result of these checks, Valour believed Mr P had sufficient disposable income to afford his repayments.

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. But what Valour couldn't do is carry out a credit search and then not react to the information it received.

Valour recorded that Mr P was spending around £454 per month on his existing credit commitments and given the results of the credit search, that amount appears to be broadly accurate given the credit cards and mail order account I can see.

However, the credit checks do, in my view indicate that Mr P may have been having some financial difficulties. Mr P had five credit cards, four of them were within £2 of the credit limits. While his remaining card was over the credit limit by £41. The creditor hadn't yet reported arrears markers with the credit reference agency – but Valour was on notice that Mr P had now breached the credit limit and was also close to his credit limits on his other credit card limits.

Secondly, Mr P had a hire purchase agreement which was costing him £307 per month but he had had some recent repayment problems with the account being marked as two months in arrears between October 2022 and January 2023.

In my view, these recent and sustained arrears along with the information Valour received about Mr P's credit cards ought to have led it to carry out further checks in order to make sure that Mr P wasn't having ongoing financial difficulties or whether there was anything else it needed to know about before it lent to him.

Valour could've gone about doing these additional checks a number of ways, it could've asked to see evidence of Mr P's outgoings such as copy bills, copy bank statements or any other documentation it felt it needed to gather.

I accept that there were a number of ways Valour could've carried out further checks, but Mr P has provided copies of his bank statements to us, so I think it's entirely fair and reasonable to consider these.

Having reviewed the copy bank statements show I'm persuaded that Mr P couldn't afford the loan given the value and frequency of the gambling transactions that Valour would've likely discovered had it conducted a proportionate check before lending.

I accept that Mr P declared to Valour he didn't have any gambling transactions, but the onus was on Valour to carry out proportionate checks. But what I would say is that in this complaint, Valour had reasonable grounds to carry out further checks before lending to Mr P. Had better checks been made than I think it would've likely discovered that Mr P was spending significant amounts of money on gambling each month which made the loan unaffordable and so Valour wouldn't have lent to him.

I've outlined below what Valour needs to do in order to put things right for Mr P.

### **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 P, 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 P 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 P 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 P 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 Mr P his loan. The below redress sets out what Valour needs to do to put things right, as it isn't clear that the loan has been repaid I've covered both options. But to be clear, Mr P will be expected to repay the capital amount that was advanced, it is only the interest, fees and charges that Mr P shouldn't have to repay.

- A. Remove all interest, fees and charges applied to Mr P's loan from the outset. The payments Mr P made, to Valour, should be deducted from the new starting balance – the £750 originally lent. If Mr P has already paid Valour more than £750 then it should treat any extra as overpayments. And any overpayments should be refunded to Mr P along with 8% simple interest per year from the date the over payment arose until 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 P and I would remind Valour of its obligation to treat Mr P fairly and with forbearance.
- C. Valour should remove any adverse information recorded on Mr P's credit file in relation to the loan.

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

### **My final decision**

For the reasons I've outlined above, I am upholding Mr P's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2024.

Robert Walker  
**Ombudsman**