

Complaint

Mr M has complained that Commsave Credit Union Limited (“Commsave”) provided him with unaffordable loans. He says the loans were unaffordable because of a gambling addiction.

Background

Commsave provided Mr M with a total of ten loans. Mr M’s borrowing history with Commsave is as follows:

Loan	Taken	Amount	Term*	APR	Payment*	Settled
1	June 2021	£1,500.00	24	26.80%	£79.33	Into loan 2
2	October 2021	£1,925.13	6	26.80%	£320.86	November 2021
3	November 2021	£700	9	26.80%	£85.77	Into loan 4
4	December 2021	£2,000.00	5	26.80%	£424.32	January 2022
5	April 2022	£1,550.00	36	26.80%	£60.85	Into loan 6
6	May 2022	£3,629.73	36	26.80%	£128.39	June 2022
7	August 2022	£2,100.00	48	26.80%	£68.50	August 2022
8	September 2022	£3,150.00	48	26.80%	£102.71	September 2022
9	November 2022	£2,200.00	36	26.80%	£86.32	November 2022
10	December 2022	£7,200.00	60	26.80%	£207.19	

* Monthly

One of our investigators considered Mr M’s complaint. She told Commsave that it shouldn’t have provided Mr M with any of these loans as it ought to have seen that he was struggling financially and therefore not in a position to make the required repayments. So she upheld the complaint.

Commsave disagreed with our investigator’s assessment and asked for an ombudsman’s review. As this was the case the complaint was passed to me.

My provisional decision of 29 January 2024

I issued a provisional decision – on 29 January 2024 - setting out why I was intending to partially uphold Mr M’s complaint.

In summary, I thought that Mr M’s complaint should be partially upheld because Commsave didn’t act unfairly when agreeing to provide loans 1 to 7. But that it ought reasonably to have realised that it shouldn’t have provided loans 8 to 10 to Mr M and so it failed to act fairly and reasonably when providing him with these loans.

I then set out a method of putting things right which I considered addressed Commsave’s shortcomings and Mr M’s resulting loss.

Responses to my provisional decision

Commsave confirmed that it was happy to proceed with the conclusions in my provisional decision and also said that it would settle Mr M's complaint on receiving my final decision.

Mr M responded to my provisional decision stating:

- all of the bills were paid solely by him.
- any transfers from his partner on his bank statements were to repay gambling.
- there was no way he was only paying £70 a month towards credit commitments if he owed £12,500.00.
- other than those points he understood my conclusions even if they were different from the investigator's findings.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr M's complaint.

Having carefully considered everything, I'm still partially upholding Mr M's complaint. I'll explain why in a little more detail.

It's important to note that Mr M's agreements were unregulated and so Commsave's obligations aren't exactly the same as those for most lenders. In particular, as it is a Credit Union, Commsave's specialist sourcebook is the Credit Unions sourcebook ("CREDS") rather than the Consumer Credit Sourcebook ("CONC") given it wasn't carrying out credit-related regulated activities when providing these loans to Mr M.

Nonetheless, as it is a firm authorised by the Financial Conduct Authority ("FCA"), I consider it fair and reasonable to expect Commsave to have carried out reasonable enquiries into Mr M's circumstances to check that he'd be able to make the payments to these loans. I'd also only expect it to have proceeded in the event that those reasonable enquiries demonstrated that Mr M could make the payments.

Commsave's enquiries into Mr M's circumstances before it agreed to lend to him on each occasion

For loan 1, Commsave's enquiries suggested that Mr M had been employed by his current employer for more than ten years (Mr M was to remain with the same employer throughout the course of all his applications).

During the course of its enquiries, Commsave carried out a credit search which showed Mr M had some debts. But that this loan, which was being provided at a reasonable rate of interest, was going to consolidate at least some of those debts and meant that a lower proportion of his monthly income would be taken up with repayments to credit. It also appears to have obtained information about Mr M's household income and details of his expenditure too.

For loan 2, as well as doing what it did for loan 1, Commsave also obtained a bank statement from Mr M, which it says was to verify his income. Commsave's credit searches also appear to show that Mr M's other external debts had reduced drastically to around £12,000.00 from the £18,000.00 it was at the time of loan 1.

For loans 3 and 4, Commsave reverted to similar checks to those it carried out at the time of loan 1. It says that it did not request further bank statements given Mr M had only provided these in October 2021. Further credit checks were also carried out. For loan 3 it didn't show anything too different from that of loan 2. But for loan 4 there was another drastic reduction in the amount Mr M owed externally. He now owed around £8,000.00 – approaching £10,000.00 less than he did at the time of loan 1.

For loan 5, a further bank statement was requested from Mr M. This time the credit check carried out showed that Mr M's existing debts had increased to around £17,000.00. So to an amount that was only slightly less than it was at the time of loan 1. Another bank statement was obtained from Mr M at the time of loan 6 and another credit check was carried out. This time Mr M's external debts had once again significantly reduced as they were just over £10,000.00.

No bank statement was requested for loan 7. And the credit check carried out showed that Mr M's external debt had once again increased to around £12,500.00. Loan 8 didn't see any further information being requested either. In fact Commsave didn't request further bank statements for any of the remaining loans

It instead appears to have relied on the fact that Mr M had repaid loan 7, in full, within the month notwithstanding the fact that it was supposed to have a 48-month term. The credit check also showed a small reduction in what Mr M owed elsewhere too. At the time of loan 9, Commsave similarly relied on loan 8 having been settled in the month that it was taken even though it had a 48-month term. But this time the credit search that was carried out showed that Mr M's external debt had grown to almost the amount it was at the time of his first loan.

Finally, Commsave relied on similar checks for loan 10. Again it relied on the fact that Mr M had settled loan 9 in full, within the month even though it had a much longer term – although it was due to be repaid over 36 months, rather than the 48 months of loans 7 and 8. The credit check showed that Mr M's external debt was roughly the same as it had been at the time of the application for loan 9.

Having considered everything provided, bearing in mind Commsave says and it has evidenced that it obtained a significant amount of information on Mr M's circumstances, over the course of the 18-month period of its lending decisions, I'm prepared to accept that it did carry out reasonable enquiries into Mr M's financial circumstances – at least in terms of the information requested – before providing these loans.

However, it isn't enough for a lender to simply request information from a prospective borrower before deciding to lend to them. So even if a lender – such as Commsave here - may have obtained a reasonable amount of information, it may still be the case that it will not have acted fairly and reasonably towards the borrower if it didn't carry out a fair and reasonable evaluation of the information it had or ignored signs pointing to the lending being unaffordable.

I've therefore considered whether Commsave carried out a fair and reasonable evaluation of the information it obtained about Mr M.

Did Commsave carry out a fair and reasonable evaluation of the information it gathered before deciding to lend to Mr M on each occasion?

Loan 1

Our investigator said that Commsave shouldn't have provided loan 1 to Mr M as it ought to have seen that Mr M's payments to his credit commitments were higher than what he'd declared. I accept that this is the case. But what is also not in dispute is that the proceeds of this loan were to be used to clear some of Mr M's existing balances with his creditors.

So I don't think that the discrepancy is as large as our investigator has suggested. In particular, I think that Mr M was going to clear his payday loan with the funds borrowed and at a much lower rate of interest. So I don't think that this should be regarded as an ongoing commitment for Mr M going forward and when this is removed (as I think it should be), this shows the payments for loan 1 were affordable.

Bearing this in mind and the fact that quite a bit of information was provided, I'm satisfied that Commsave didn't act unfairly or unreasonably when providing loan 1 to Mr M. So I'm not upholding the complaint about this loan.

Loan 2

Mr M's second loan was provided in order for him to purchase a car or motorcycle. The information I've seen also shows that the income and expenditure assessment indicated that Mr M could afford this loan. Furthermore, the credit checks had shown that Mr M's external debt had reduced as well.

I also think that the bank statements provided supported what was on the income and expenditure assessment too. Our investigator confirmed that Mr M's rent was higher than he declared. But in my provisional I said that I thought Mr M declared an amount which was his share of the rent. And I also said that I didn't think that it was reasonable for Commsave to expect that Mr M's partner's income was available to repay these loans, without it actually checking that this was the case.

I know that since my provisional decision Mr M has said that he paid all the bills. But as I've said Mr M declared a rent amount that was around half of his payments. The reality may have been different. But I don't think it was unreasonable for Commsave to proceed on the basis that Mr M's partner was covering the rest of the rent in these circumstances. And just because the full rent amount was going out of Mr M's account, it does not mean that he was not getting a contribution from his partner especially as I can see deposits into his account on his statements – albeit I do accept that Mr M now says that these credits were for things other than the rent or bills.

Bearing this in mind and the information in the bank statements not directly contradicting the income and expenditure assessment or showing that Mr M was gambling either, I'm satisfied that Commsave didn't act unfairly or unreasonably when providing loan 2 to Mr M. And this means I'm not upholding the complaint about this loan either.

Loans 3 and 4

Loan 3 was provided to Mr M only six months or so after loan 1. And at this stage Mr M had already repaid loans 1 and 2. As I've explained Commsave didn't obtain anything further to verify Mr M's income and expenditure. It relied on the assessment that had been carried out and the fact that it had already obtained a bank statement from Mr M by this stage.

It's fair to say that the assessment completed did show loans 3 and 4 to be affordable. Ordinarily, I would say that a borrower regularly returning for funds ought reasonably to trigger a lender into obtaining further information in order to verify what is being declared.

But I have to take into account that while Commsave didn't request bank statements that doesn't mean that it didn't verify any of Mr M's declarations. It, to some degree, verified some of Mr M's declarations by carrying out credit checks. And the amount that Mr M owed elsewhere wasn't increasing. Indeed, as I've explained that by the time of loan 4 Mr M's external debts had decreased by almost £10,000.00 in the six months between his application for loan 1 and his application for loan 4, suggesting that his overall financial position was improving.

Bearing all of this in mind and what Commsave's checks showed, I'm satisfied that Commsave didn't act unfairly when providing loans 3 and 4 to Mr M. And this leaves me not upholding the complaint about these loans.

Loans 5 and 6

As I've explained Commsave's checks showed that Mr M's external indebtedness had increased by the time of loan 5. So I think that this ought to have been a warning sign for Commsave. And, in these circumstances, I don't think that it would have been fair and reasonable for Commsave to have simply relied on what Mr M had said in its income and expenditure assessment.

But Commsave didn't simply rely on what Mr M said. It obtained further bank statements from Mr M before it provided these loans to him. For loan 5 there isn't anything in the bank statements which contradicts what Mr M declared for his expenditure in the assessment, or suggests that he wouldn't be able to make the low monthly repayment required for this loan.

For loan 6 as well as the bank statements showing a similar picture, I also have to take into account that Mr M's external indebtedness had once again reduced significantly to just over £10,000.00. So when this is combined with what the income and expenditure assessment showed, it's difficult for me to reasonably conclude that Commsave ought to have concluded that Mr M would struggle to repay what he borrowed, or that it ought to have declined Mr M's application.

In reaching my conclusions on loans 5 and 6, I have seen that Mr M's statements don't show any indication of gambling on them. I know what Mr M has said about his problem gambling and what further information would have shown. I also understand that Mr M had previous applications declined and it's possible that he provided statements which didn't show this in an attempt to get his application approved.

But it wasn't simply the case that there was no gambling on the statements provided, there also wasn't anything obvious that suggested there were large amounts of funds being funnelled elsewhere for gambling purposes either. So I don't think that Commsave ought to have suspected that Mr M was gambling problematically, particularly as this didn't appear to be reflected in his indebtedness increasing uncontrollably elsewhere either.

Bearing all of this in mind, I'm satisfied that Commsave didn't act unfairly when providing loans 5 and 6 to Mr M. And this leaves me not upholding the complaint about these loans either.

Loan 7

Commsave didn't request bank statements before providing loan 7. It is not clear to me why it thought it was fair and reasonable to simply proceed with Mr M's declaration of income and expenditure, given that he'd now been taking loans for a period of over a year and his external indebtedness had once again increased. Nonetheless, the amount of the increase

wasn't huge – Mr M now owed around £12,500.00 and the monthly payments for loan 7 were really low – less than £70.

Having re-read this section of my provisional decision, I can understand why Mr M might have formed the impression that I concluded that his total payments to all of his credit commitments was less than £70. I apologise for not making this clear as possible. But to be clear and for the avoidance of doubt, the finding in my provisional decision was and my finding now is that Mr M's monthly repayments towards loan 7 would be lower than £70, which it was at £68.50.

In any event, what's important here is that I think that it is fair and reasonable to give Commsave the benefit of the doubt on this loan. This is particularly as the income and expenditure showed that Mr M could afford the loan payments and he'd settled loans 5 and 6 early. Furthermore, it wouldn't have known that Mr M would return for loans 8 to 10 at this stage either.

As this is the case, I'm not upholding Mr M's complaint about loan 7.

Loans 8, 9 and 10

Commsave didn't require any additional information to that gathered for loan 7 before providing loans 8 to 10 to Mr M. By the time of loan 8, Mr M had been borrowing from Commsave for around 15 months. Yet he was returning for his second highest loan amount and his external indebtedness had increased to close to where it was at the time that Commsave had started lending to him.

So, in my view, it was no longer fair and reasonable to simply rely on what the income and expenditure assessments were showing. The number of loans Mr M had taken combined with his external indebtedness level and him returning for an amount only slightly less than that of loans 7, 8 and 9 combined and almost double the amount for his previous highest loan at the time he took loan 10, meant that Commsave ought to have realised that it was increasing Mr M's indebtedness unsustainably.

In reaching this conclusion, I have considered that loans 8 and 9 were settled in full in the months that they were taken. But Commsave wouldn't have known this at the time that these loans were being provided. Furthermore, I don't think that this in itself was a reason for Commsave to conclude that it was fair and reasonable to lend Mr M an amount of more than loans 8 and 9 combined, particularly as his indebtedness elsewhere hadn't really reduced either.

Bearing in mind all of this, I'm upholding to uphold Mr M's complaint about loans 8, 9 and 10.

So overall and having considered everything, I'm satisfied that Commsave didn't act unfairly or unreasonably when providing loans 1 to 7 to Mr M. But that it did act unfairly and unreasonably towards Mr M when providing loans 8 to 10 to him.

As Mr M had to pay (and in the case of loan 10 is being expected to pay) interest, fees and charges on loans he should never have been provided with – loans 8 to 10 - I'm satisfied that he had lost out as a result of Commsave failing to act fairly and reasonably towards him when providing loans 8 to 10.

Fair compensation – what Commsave needs to do to put things right for Mr M

Having thought about everything, I'm directing Commsave to put things right for Mr M by:

- refunding all interest, fees and charges Mr M paid on loans 8 and 9;
- adding interest at 8% per year simple on any refunded amounts from the date they were paid by Mr M to the date of settlement†
- removing all interest, fees and charges applied to loan 10 from the outset. The payments Mr M made should be deducted from the new starting balance – the £7,200.00 originally lent. In the unlikely event Mr M has already repaid more than £7,200.00 then Commsave should treat any extra as overpayments. And any overpayments should be refunded to Mr M. Should as is likely an outstanding balance remaining remain after all adjustments have been made, Commsave can use any compensation due from loans 8 and 9 to reduce and/or clear whatever is left to pay on loan 10;
- removing any and all adverse information it may have recorded about loans 8 and 9 from Mr M's credit file. If, after all adjustments have been made, no outstanding balance remains on loan 10, Commsave should also remove any adverse information it has recorded about this loan.

† HM Revenue & Customs requires Commsave to take off tax from this interest. Commsave must give Mr M a certificate showing how much tax it has taken off if he asks for one.

Should an outstanding balance remain on loan 10 after all adjustments have been made, I think it's fair and reasonable to expect Commsave to exercise forbearance and due consideration should it be the case that Mr M is experiencing financial difficulty.

My final decision

For the reasons I've explained above and in my provisional decision of 29 January 2024, I'm partially upholding Mr M's complaint. Commsave Credit Union Limited should put things right in the way that I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 March 2024.

Jeshen Narayanan
Ombudsman