

The complaint

Mr P has complained about a personal loan he took out with AvantCredit UK LLC (Avant). He says that Avant shouldn't have lent to him as the loan was unaffordable for him.

What happened

In August 2015, Mr P took out a loan with Avant for £4,500 over a period of 48 months, with a monthly repayment of £215.23, the first repayment being due in September 2015. The annual percentage rate for the loan was 63.18%. Mr P said Avant shouldn't have given him the loan as they hadn't considered his financial situation. He said although he was keeping up to date with his payments, he was having to use his overdraft and payday loans to do this. He complained to Avant.

Avant said they'd carried out sufficient checks that showed Mr P had enough disposable income each month to cover his monthly payments including the repayment of the new loan.

Mr P wasn't happy with Avant's response and referred his complaint to us.

Our investigator said Avant's checks weren't proportionate. But after checking Mr P's bank statements didn't agree that the loan was unaffordable or had been lent irresponsibly.

Mr P didn't agree and has asked for an ombudsman to decide.

I issued a provisional decision in May 2021 that said:

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

Having done so I'm currently minded to uphold this complaint. I'll explain why.

When someone complains about irresponsible and/or unaffordable lending, I need to consider whether the lender completed reasonable and proportionate checks to satisfy them the lending was affordable, and that the affordability was sustainable. Where reasonable and proportionate checks were carried out, I need to consider if the lending decision was fair. And if reasonable and proportionate checks weren't carried out, I need to consider if the loan would have been approved if the checks had taken place. In reaching my decision I've considered the relevant rules, guidance and good industry practice to determine.

CONC 5.2.4G(2) says:

A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.

This means Avant in lending to Mr P are required to carry out a reasonable assessment of whether he could afford to repay his loan in a sustainable manner. This is sometimes referred to as an “affordability assessment” or “affordability check”.

The affordability checks should be “borrower-focused” – so Avant needed to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr P. This means it wasn’t enough for them to only think about the likelihood that they would get their money back without considering the impact of repayment on Mr P himself.

Checks must also be proportionate considering the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

Consideration should also be given to the amount, type and cost of credit they’re applying for. This could mean a proportionate check could differ for the same borrower for different loan applications. So, I’ve considered whether Avant in lending to Mr P had been thorough in the checks they made. And whether they’ve taken all these factors into account in deciding to lend to him.

I can see Avant because of the wide ranging salary amounts showing on Mr P’s bank statement, used a monthly income of £4,800 taken from a recognised data source. And outgoings of £3830 leaving Mr P with a remaining amount of £970 in disposable income. Considering the repayment amount for the Avant loan of £215.23, Mr P would still have been left with at least £750 available income to spend. So, this would seem to show that the loan was affordable for Mr P.

But there may also be other factors which could influence how detailed a proportionate check should be for a given loan application – including (but not limited to) any indications of borrower vulnerability, and any foreseeable changes in future circumstances. I’ve thought about all the relevant factors in this case.

Avant said Mr P’s bank statement showed a salary for August 2015 of £17,543 and £4878 paid in July 2015. This would make me question why Mr P needed to borrow £4500 when he had just received a salary of £17,543 a few days before. The bank statement Avant saw was Mr P’s joint account. And having looked at the statements the account is well run and rarely in an overdraft, but there are regular transfers going in and out of the account to other bank accounts for both Mr P and his wife.

Avant had also seen from checking Mr P’s credit history that he’d two current accounts, and it was his other bank account that the loan amount was being paid into. So, while the loan appeared affordable on the checks Avant did, I think the payment was being paid into a different bank account – Mr P’s sole account. As I’ve already explained, Avant was required to establish whether Mr P could sustainably make his loan repayments. And as Mr P’s indebtedness was over 48 months, I think Avant should have checked Mr P’s sole account.

I have looked at Mr P’s sole account for the three months prior to the loan. The account has an overdraft facility of £3,000. I can see Mr P was constantly using his overdraft facility, often to its limit, incurring daily overdraft fee charges. I can also see Mr P had a number of payday loan commitments, and was making regular gambling transactions, at times in excess of £2,500 per month. I think it’s likely that with better checks Avant would reasonably have concluded that Mr P was having serious difficulties managing his finances and that he was most likely borrowing as a result of his gambling. Mr P was already using his overdraft limit and payday loans and so would also most likely need to continue to borrow elsewhere to repay his loan from Avant. I would have expected Avant to realise that it was unlikely that Mr

P would be able to sustainably repay his loan over the full loan term. So, it ought reasonably to have concluded that it was not appropriate to lend to him.

So, while on the surface it looked like Mr P could afford the loan. I think Avant should have done more before they lent to him as I think there was some doubt as to whether he'd be able to maintain the repayments. And this is shown as I can see Mr P has struggled from the very first payment – September 2015 to maintain his repayment commitments.

So, I don't think Avant focussed on Mr P as a borrower and his specific circumstances. And I think they acted irresponsibly in providing Mr P a loan that incurred a high interest rate as I don't think they'd carried out sufficient checks to determine whether Mr P could sustain the repayments.

Avant accepted my provisional decision. And Mr P made no further comments for me to consider.

Putting things right

Putting things right when it comes to complaints about irresponsible lending isn't straightforward as Mr P has had the loan in question and he's used the funds. I can also see that Mr P settled his account in May 2019. In these circumstances, I can't undo what's already been done. So, I ask AvantCredit UK LLC to:

- remove any interest and charges applied to Mr P's account from when it was opened;
- treat any payments that Mr P has made as a reduction of the principle amount, if this results in Mr P having paid more than what he was initially lent, then any extra should be treated as an overpayment and refunded to Mr P plus †8% simple interest on this amount from date of payment to date of settlement; and
- remove any adverse information on Mr P's credit file in relation to this loan.

† HM Revenue & Customs requires AvantCredit UK LLC to take off tax from this interest. AvantCredit UK LLC must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

I uphold this complaint. And ask AvantCredit UK LLC to put things right for Mr P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 July 2021.

Anne Scarr
Ombudsman