

The complaint

Mr K has complained that AvantCredit of UK, LLC was irresponsible in lending to him.

What happened

In April 2016 AvantCredit provided Mr K with a loan of £5,000. The loan was repayable over 36 months and the monthly repayments were £211.60. The APR was 34.5%.

Mr K said the purpose of the loan was to consolidate his debts.

Mr K complained that AvantCredit hadn't properly checked he could afford the loan. Our adjudicator upheld Mr K's complaint. She thought AvantCredit was wrong to have offered the loans to Mr K.

As AvantCredit didn't agree, the complaint has been passed to me.

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 unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, I think the overarching questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did AvantCredit complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay the loan in a sustainable way?
- If not, would those checks have shown that Mr K would have been able to do so?
- Did AvantCredit act unfairly or unreasonably in some other way?

The rules and regulations in place required AvantCredit to carry out a reasonable and proportionate assessment of Mr K's ability to make the repayments under the loan agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower-focused" – so AvantCredit had to think about whether repaying the loan would be sustainable. In practice this meant that the business had to ensure that making the repayments on the loan wouldn't cause Mr K undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payment he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for AvantCredit to simply think about the likelihood of it getting its money back - it had to consider the impact of the loan repayments on Mr K. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a consumer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr K's complaint.

Mr K was entering into a significant financial commitment with AvantCredit. He would need to pay almost 15% of his income on loan repayments for the next three years. Before granting this loan, AvantCredit asked Mr K about his income and expenses. Mr K told it that his net monthly income was £1,450. It verified that figure using a standard industry tool. Mr K also said his expenses were £500 a month. It's not clear to me how this figure was reached as I note from the credit search that he had a joint mortgage on which the total monthly repayment was £431 a month.

AvantCredit carried out a credit search. That showed Mr K had eleven credit accounts on which he owed a total of £5,800. He'd opened one new account in the last three months. In 2014 he'd defaulted on two credit card accounts and in 2014/15 he'd failed to keep up repayments on two other loan accounts suggesting he'd had some financial difficulties. So, I'd have expected AvantCredit to gather some more detailed information about Mr K's finances before it agreed to lend to him.

Although I don't think the checks AvantCredit did before agreeing the loan were sufficient, that isn't a good enough reason for me to uphold Mr K's complaint. In order for Mr K's complaint to succeed, I need to be able to say that proportionate checks would have shown AvantCredit that there was a real risk Mr K wouldn't be able to afford the repayments sustainably.

I've looked at what I think proportionate checks would have shown.

Mr K has sent us some bank statements including those for the month before he took out the loan. It appears he had another bank account and transfers into and out of this account are shown on the bank statement I've seen. I haven't seen the bank statement for the other account. It looks like most of Mr K's everyday household expenditure would have been paid out of that other account.

The bank statement I've looked at shows that in March 2016 Mr K spent £565.81 being over a third of his income on various credit commitments (excluding his mortgage). Overall he spent more than he earned even without taking into account household utility bills. I think if AvantCredit had carried out proportionate checks it would have realised that due to his spending habits Mr K had become over-reliant on credit he couldn't afford and he was unlikely to be able to sustainably afford the new loan repayment over a three year period. I don't think AvantCredit treated Mr K fairly in approving this loan.

I appreciate that the purpose of the loan was said to be debt consolidation. Mr K could have used the £5,000 loan to repay some of his short-term loans which in turn could have reduced his credit commitments going forward. However, AvantCredit didn't pay off any of these loans directly. So it couldn't be sure it wasn't putting him in a worse position by increasing his overall indebtedness. The stated purpose of debt consolidation isn't enough in itself to make me think that the loan was fairly provided or that it proved helpful in the event to Mr K.

I've also thought about whether AvantCredit acted unfairly in some other way and I haven't seen any evidence that it did.

Putting things right

I think it is fair and reasonable for Mr K to repay the principal amount that he borrowed, because he's had the benefit of that lending. But as I have concluded AvantCredit shouldn't have provided the loan, it should look to remove the interest and fees from the amount due under the loan agreement. If AvantCredit has sold the outstanding debt, it should buy it back if it is able to do so and then take the following steps. If it is not able to buy the debt, it should liaise with the new debt owner to achieve the results outlined below.

AvantCredit should:

- remove all interest, fees and charges applied to the loan;
- treat any payments made by Mr K as payments towards the capital amount of £5,000;
- If Mr K has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, AvantCredit should come to a reasonable repayment plan with Mr K; and
- remove any negative information about the loan from Mr K's credit file.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr K a certificate showing how much tax it's deducted, if he asks for one.

My final decision

For the reasons given above, I uphold Mr K's complaint and require AvantCredit of UK, LLC to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 May 2022.

Elizabeth Grant
Ombudsman