

The complaint

Mr M says AvantCredit of UK, LLC lent to him irresponsibly.

What happened

On 21 December 2015 Mr M took out a 36-month instalment loan from AvantCredit for £2,600. The monthly repayment was £157.99 and the total repayable was £5,687.67.

Mr M says the loan was issued when he was already in debt and the interest rate was ridiculous.

The investigator said Mr M's complaint should be upheld. He said AvantCredit had not made a fair lending decision based on the checks it completed as they showed Mr M was already having financial difficulties.

AvantCredit disagreed saying the loan was affordable as it would have consolidated 52% of Mr M's active debt. It asked for an ombudsman's review, so the complaint was passed to me to make a decision.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The Financial Conduct Authority (FCA) was the regulator when AvantCredit lent to Mr M. Its rules and guidance, set out in its Consumer Credit Sourcebook (CONC), obliged AvantCredit to lend responsibly. Amongst other things, AvantCredit was required to carry out a reasonable and proportionate assessment of whether Mr M could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So AvantCredit had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr M. 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 M. Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for.

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

- the *lower* a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the *longer* the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether AvantCredit did what it needed to before agreeing to lend to Mr M, and have considered the following questions:

- did AvantCredit complete reasonable and proportionate checks when assessing Mr M's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did AvantCredit make a fair lending decision?
- did AvantCredit act unfairly or unreasonably in some other way?

AvantCredit asked for some information from Mr M before it approved the loan. It asked for details of his income and it says it verified this. It asked about his expenditure and it checked his credit file to understand his existing credit commitments and his credit history. It also asked about the purpose of the loan which was debt consolidation. From these checks combined AvantCredit concluded the loan would be affordable on the basis Mr M could have consolidated 50% of his active debt.

I think these checks were proportionate, but I am not persuaded AvantCredit made a fair lending decision based on the information it gathered.

The credit check AvantCredit completed showed Mr M was using payday loans. His most recent was from October 2015 and was still active, but more critically his credit history showed a reliance on this type of high-cost short-term credit. Mr M had taken out at least 47 short-term high-cost loans in the past six years (45 were settled, 1 had defaulted and 1 was active). Whilst the majority were settled, from that volume of loans AvantCredit ought to have realised Mr M was having problems managing his money and was in a harmful, long-term cycle of borrowing to repay. And giving this loan would extend and prolong his reliance on high-cost credit for a further 36 months.

I have thought carefully about the point that this loan was for debt consolidation so Mr M's outgoings would be reducing. But based on the available evidence I can't fairly conclude in the circumstances of this case that meant giving the loan could not cause adverse financial consequences for Mr M. I've seen no evidence the lender took any steps to understand which debt Mr M was looking to repay to know that its loan would be financially beneficial, not harmful. And it doesn't seem to have assessed how much the debt consolidation would reduce Mr M's monthly credit commitments by in order to validate its affordability assumptions. And Mr M's debt was almost £5,000 so he would still have debt to service. So, overall, this does not change my conclusion.

It follows I think it was irresponsible of AvantCredit to lend to Mr M. I note he went on to have problems repaying the loan only four months into the term.

I haven't found any evidence that AvantCredit acted unfairly or unreasonably in some other way. Mr M said the interest on the loan was ridiculous. I accept the interest rate was high, but Mr M had to actively engage in the application process, so I think it's likely that he was aware of what he was agreeing to pay. I haven't seen anything which makes me think that AvantCredit treated Mr M unfairly or breached industry practice regarding interest charges. But in any event, the interest and charges will be refunded as I've concluded this loan shouldn't have been given.

Putting things right

It's reasonable for Mr M to have repaid the capital amount that he borrowed as he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been given to him. So he has lost out and AvantCredit needs to put things right.

It should:

- Remove all interest, fees and charges on the loan and treat all the payments Mr M made as payments towards the capital.
- If reworking Mr M's loan account results in him having effectively made payments above the original capital borrowed, then AvantCredit should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking Mr M's loan account results in there being an outstanding capital balance AvantCredit should work to agree an affordable repayment plan with Mr M.
- Remove any adverse information recorded on Mr M's credit file in relation to the loan.

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

My final decision

I am upholding Mr M's complaint. AvantCredit of UK, LLC must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 April 2022.

Rebecca Connelley
Ombudsman