

The complaint

Mr L complained that AvantCredit of UK, LLC lent to him irresponsibly and provided him with unaffordable lending.

What happened

AvantCredit provided a loan to Mr L as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable
20/10/2014	£1,100	18 months	£94.28	£1,697.01

When Mr L complained to AvantCredit it didn't uphold his complaint.

One of our investigators looked at the complaint and thought that AvantCredit shouldn't have provided the loan. Our investigator explained why he was recommending that the complaint should be upheld and he set out directions indicating what AvantCredit should do to put things right.

AvantCredit disagreed with our investigator. It mainly said that it had verified Mr L's income and after allowing for his stated outgoings and monthly repayments on his credit file and its loan, he would still have around £246 disposable income left. It acknowledged a recent default but said that Mr L hadn't taken out any new accounts since then and his total indebtedness hadn't gone up in the 3-6mths prior to him applying for this loan.

AvantCredit asked for an ombudsman to review the complaint so it comes 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 approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding this complaint. Having done so, I am upholding Mr L's complaint for broadly the same reasons as our investigator. I'll explain my reasons.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. Lenders must work out if a borrower can sustainably afford the loan repayments alongside other reasonable expenses the borrower also has to pay. This should include more than just checking that the loan payments look affordable on a strict pounds and pence calculation – a proportionate check might also require the lender to find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

If reasonable and proportionate checks weren't carried out, I need to consider if a loan would've been approved if the checks had been done. If proportionate checks were done and a loan looks affordable, a lender still needs to think about whether there's any other reason why it would be irresponsible or unfair to lend. For example, if the lender should've realised that the loan was likely to lead to significant adverse consequences or more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

I have reviewed the information AvantCredit gathered when it agreed to provide this loan. AvantCredit verified Mr L's declared income and recorded that his pay was around £960 per month. Alongside asking Mr L about his monthly expenses, AvantCredit also carried out its own credit checks to understand his credit history and current credit commitments.

Like our investigator, I think AvantCredit should have been concerned to see that when Mr L applied for this loan the credit report it obtained for him showed that he had a default shown that had occurred just 4 months earlier – and this was his third default in three years.

Over the previous year his total debt balance had increased by £3,748 and his total balances on active accounts (not including any mortgage) was £5,092, costing him £219 per month.

Whilst having other outstanding lending or an impaired credit history wouldn't be unusual for a borrower applying for this type of expensive borrowing, and it wouldn't necessarily be a fair reason not to lend, I don't think AvantCredit took properly into account what the information it had gathered showed about Mr L's overall financial situation and the likelihood of him being able to pay its loan in a sustainable manner.

AvantCredit understood that Mr L intended to spend the money on home improvements so it was aware its loan would add to his overall indebtedness at a time when all the indications were that he wasn't able to sustainably afford his existing credit commitments. Also, bearing in mind the repayment of this loan on top of the debt AvantCredit saw Mr L was already responsible for paying, I think it's fair to say that Mr L needed to pay a significant portion of his income towards credit – by my reckoning, almost a third.

In my opinion, as a responsible lender, AvantCredit should've realised that Mr L would likely struggle to repay this loan with this level of take home pay committed just to servicing his unsecured debt– especially bearing in mind he'd signed up to pay the loan over the next 18 months and Mr L's relatively low income also didn't leave him much of a margin for any fluctuation in his outgoings or emergency spending needs.

I think our investigator was right to say that, whatever its affordability calculations suggested, the signs were that, in reality, Mr L's finances were already over-stretched and he couldn't support the debt he already had.

I don't think AvantCredit was reasonably able to be satisfied in these circumstances that Mr L would be able to make its loan repayments in a sustainable way. And I agree with our investigator that the payment problems Mr L soon ran into with the loan were reasonably foreseeable and bear out the lack of sustainable affordability that the information AvantCredit had gathered suggested. The fact that Mr L repaid the loan in April 2017 doesn't mean that he was able to do so in a way that was sustainably affordable. So this doesn't affect my view overall.

Thinking about all the information AvantCredit had gathered, I can't reasonably say that it made a fair lending decision based on the information in front of it. I don't think

AvantCredit was able to safely conclude that its loan would be sustainably affordable for Mr L. So it shouldn't have provided it and AvantCredit needs to put things right.

Putting things right

I think it is fair and reasonable for Mr L to repay the capital amount that he borrowed, because he had the benefit of that lending. But he has paid extra for lending that should not have been provided to him. In line with this Service's approach, Mr L shouldn't repay more than the capital amount he borrowed. AvantCredit should do the following:

- add up the total amount of money Mr L received as a result of having been given the loan. The repayments Mr L made should be deducted from this amount
- if this results in Mr L having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement)
- whilst it's fair that Mr L's credit file is an accurate reflection of his financial history, it's unfair that he should be disadvantaged by any adverse information recorded about a loan that was unfairly provided. So AvantCredit should remove any negative information recorded on Mr L's credit file regarding the loan.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr L a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct AvantCredit of UK, LLC to take the steps I've set out above to put things right for Mr L.

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

Susan Webb
Ombudsman