

The complaint

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

What happened

AvantCredit provided a loan to Mr C as follows:

Date taken	Loan amount	Term	Typical monthly repayment	Total amount repayable	Date repaid
June 2015	£1,000	48 months	£51.10	£2452.89.	outstanding

Mr C said that he was repeatedly taking out loans and borrowing more and more from different lenders to repay other loans.

Mr C also raised another complaint issue and our adjudicator explained why she didn't think we could follow that up. As Mr C seems to have accepted what our adjudicator said about this, I don't think I need to say any more about it and in this decision I'm concentrating on Mr C's irresponsible lending complaint.

Our adjudicator who looked into the complaint didn't think AvantCredit should have provided Mr C with the loan as its own checks showed that he had multiple payday loans outstanding and his credit spending was such a significant proportion of his monthly income that the repayments were unlikely to be sustainably affordable for him. Our adjudicator set out the steps she said AvantCredit should take to put things right.

AvantCredit didn't respond to our adjudicator's assessment so as the complaint hasn't been resolved informally, 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 C's complaint for broadly the same reasons as our adjudicator. I'll explain my reasons.

Before agreeing to lend, lenders must work out if a borrower can 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 lender must take reasonable steps to satisfy itself that the borrower can sustainably repay the loan – in other words, without needing to borrow elsewhere.

The rules don't say what a lender should look at before agreeing to lend. But reasonable and proportionate checks should be carried out. For example, when thinking about what a borrower has left to spend on a new loan after paying other expenses, as well as taking into account the loan amount, the cost of the repayments and how long the loan is for, a proportionate check might mean a lender should also find out the borrower's credit history and/or take further steps to verify the borrower's overall financial situation.

And even if a loan looked affordable, a lender still needed to think about whether there was 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 more money problems for a borrower who is already struggling with debt that can't be repaid in a sustainable way.

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

I have reviewed the information AvantCredit gathered when it agreed to provide this loan. It did some background checks and verified that Mr C's minimum income was approximately £1,100 monthly.

It recorded information about what Mr C had said he was spending each month on all his outgoings and noted down a total monthly expenditure figure of around £200.

AvantCredit also carried out its own credit checks which it has sent me – so I can see the same information that I think AvantCredit could have seen when it made its affordability calculations.

Like our adjudicator, I think AvantCredit should have been concerned to see that when Mr C applied for this loan the credit checks AvantCredit obtained showed that he had 7 active payday loans which cost him more than £1,000 a month.

I think that this amount was such a significant proportion of his take home pay (almost all of his net income), it was a clear indication that Mr C was unlikely to be able to maintain such a high level of debt sustainably.

I think AvantCredit ought reasonably to have been aware that taking further, costly lending was likely to be detrimental to Mr C.

I've taken into account that the loan purpose was recorded as 'debt consolidation' – in other words, to pay off other debt. But AvantCredit hasn't shown it knew which lending was to be repaid and its loan was paid into Mr C's bank account, so AvantCredit didn't have any control over whether any of the other credit was paid off. So, AvantCredit couldn't have been sure it wasn't putting him in a worse position by increasing his overall debts.

And even if Mr C had used this loan to repay some existing debt, I don't think AvantCredit had sufficient reason to think this would've improved his overall position sufficiently to achieve a significant and sustainable improvement in his financial situation – given his outstanding indebtedness overall. I think the scale of his debt overall compared to the much smaller value of the loan, and the extent of his evident reliance on taking out expensive credit, would suggest that he would remain in serious financial trouble regardless.

Based on all the information AvantCredit had gathered, I don't think it was reasonably able to say that the loan was likely to be sustainably affordable for Mr C. So I think AvantCredit shouldn't have provided the loan for this reason.

And I think that's borne out by the fact that Mr C ran into payment problems on this loan – which I think was reasonably foreseeable for the reasons I've explained above.

So, I am upholding Mr C's complaint that he should not have been given the loan.

Putting things right

Our adjudicator didn't recommend that AvantCredit should pay any additional redress. Mr C hasn't commented on that and I haven't seen anything which makes me think AvantCredit acted unfairly towards Mr C in any other way. So I'm not awarding any additional redress.

I think it is fair and reasonable for Mr C 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 C shouldn't repay more than the capital amount he borrowed.

If AvantCredit sold any outstanding debt it should buy this back if able to do so and then take the following steps. Otherwise, AvantCredit should liaise with the new debt owner to achieve the results outlined below and do the following:

- add up the total amount of money Mr C received as a result of having been given the loan. The repayments Mr C made should be deducted from this amount.
- If this results in Mr C 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).
- If there is a shortfall in repayments which leaves a capital amount outstanding, then AvantCredit should try and arrange an affordable payment plan with Mr C bearing in mind its obligation to treat Mr C sympathetically and fairly if he still needs further time to pay.
- Whilst it's fair that Mr C'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 C's credit file regarding the loan.

*HM Revenue & Customs requires AvantCredit to deduct tax from this interest. AvantCredit should give Mr C 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 C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 March 2022.

Susan Webb
Ombudsman