

## The complaint

Mr D complains about two loans provided to him by AvantCredit Limited trading as “AvantCredit”, which he says were unaffordable.

## What happened

AvantCredit provided Mr D with two guarantor loans. The details of which are given in this table:

Number	Date	Amount	Instalments	Repayments
1	30/03/2015	£2000	18	£135.20
2	25/01/2016	£5000	36	£224.06

Our investigator assessed the complaint and recommended that it be upheld. She concluded AvantCredit didn't carry out proportionate checks on either occasion. She then went on to conclude that if AvantCredit had carried out further checks, it would have seen the loans were not affordable for Mr D.

AvantCredit partially agreed with our investigator. It said it agreed with the findings she gave for loan 1. But it disagreed with what she said about loan 2. It says it did nothing wrong when it provided the second loan to Mr D. It says loan 2 was used for debt consolidation and any short term loan Mr D had, could have been paid off and then his monthly repayment for credit would decrease by a lot and give Mr D more disposable income.

AvantCredit has agreed with our investigator's findings for loan 1. So as there is no dispute here, I will not look any further into this other than to say that I have looked into this loan and agree with the findings made by the investigator. I will be including loan 1 in the section for putting things right at the end of my decision. I will though be looking into loan 2 in further detail.

As this complaint hasn't been resolved informally, it has come to me, as an ombudsman, to review and 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

When AvantCredit lent to Mr D the regulator was the Financial Conduct Authority and relevant regulations and guidance included its Consumer Credit Sourcebook (CONC).

AvantCredit was entering into a regulated credit agreement. So, it had to carry out a reasonable assessment of Mr D's creditworthiness before it entered the agreement. This means that AvantCredit had to consider both the risk to it that Mr D wouldn't make the repayments under the agreement when due, and the risk to Mr D of not being able to make these repayments. In particular, AvantCredit had to consider Mr D's ability to make repayments under the agreement as they fell due over the life of the agreement, without him having to borrow to meet the repayments, without him failing to make any other repayment he had a contractual or statutory duty to make, and without the repayments having a significant adverse effect on his financial situation.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But the lender should take into account the borrower's income (over the full term of the loan) and their ongoing expenditure for living expenses and other debts. Whilst it is down to the lender to decide what specific checks it wishes to carry out these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments and the total cost of the credit. So, a lender's assessment of creditworthiness would need to be flexible and what is appropriate for one person might not be for another. And what might be sufficient for a borrower in one circumstance might not be so for the same borrower in other circumstances.

In general, I'd expect a lender to require more assurance the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance by carrying out more detailed checks:

- 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 longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of credit is likely to be greater and the borrower is required to make repayments for an extended period).

Bearing all of this in mind, in coming to a decision on Mr D's case, I have considered the following questions:

- Did AvantCredit complete reasonable and proportionate checks when assessing Mr D's loan application to satisfy itself that he would be able to repay the loan in a sustainable way? If it did, did AvantCredit then make fair lending decisions?
- If not, what would reasonable and proportionate checks have shown?

I can see that AvantCredit asked Mr D about his income and expenditure when it assessed his affordability for loan 2. It has told our service that it adjusted Mr D's income and expenditure based on an online verification tool for his income, and its own calculations using what it had in front of it for expenditure. It says it made its calculations about Mr D's expenditure by using what it saw in his credit report and what Mr D declared to it.

It increased Mr D's declared income slightly to £4875 after verifying this. It then increased what Mr D says his expenditure was, based on checks it carried out this included a credit search.

I've carefully considered what AvantCredit has said about how it calculated Mr D's disposable income when it agreed to the loan. I don't think its checks were proportionate for this loan because I think it would have seen enough from its checks that ought to have given

it concerns. At least enough that I think, the checks should have alerted it to wanting to find out more.

I say this because I can see there was a discrepancy between what Mr S said about his expenditure and what it says it could see through its checks. I don't think AvantCredit should have accepted the loan knowing or having reason to suspect Mr S wasn't being truthful about his expenditure in this case. In this instance the discrepancy between what Mr S said his expenditure was and what AvantCredit would've calculated it was, was wide. The credit report shows Mr S was paying over £1200 a month in credit repayments alone, whereas he declared all of his expenditure was less than this. In addition, his credit search results listed that he had taken out 5 short term loans within the past 3 months. So, I think AvantCredit should either have carried out further checks to see if there were good reasons for this, or it shouldn't have provided Mr S with the loan. This leads me to think that AvantCredit needed to take additional steps to verify what Mr S's actual monthly expenditure was.

I don't think that the checks AvantCredit carried out before providing Mr D with this loan were reasonable and proportionate, bearing in mind Mr D would need to meet his loan repayments over 36 months and the amount he was asking to borrow had increased quite a bit from his first loan application. So, as I have concluded that AvantCredit needed to carry out further checks for the loan, I need to consider what it would have seen if it had done so.

AvantCredit was required to establish whether Mr D could make his loan repayments without experiencing significant adverse consequences – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

I've carefully considered the information provided by Mr D. He was able to provide bank statements for the weeks leading up to the day he was granted this loan. I've looked through these statements and having done so, it's clear Mr D was heavily reliant on using finance by other short-term lenders. I can see on these statements that Mr D was regularly borrowing and repaying money from 4 different short-term loan providers and had in the month leading up to him asking for a loan with AvantCredit repaid around £4500 in repayments to them. I agree with our investigator when she said Mr D was paying out more than was coming into his account, and the primary reason for this was that he was borrowing heavily in short term finance. It is clear to me after seeing this that Mr D was struggling to manage his finances and the repayments he had to make on these loans, meant he would have had to carry on lending in order to meet his commitments. In short, the loan repayments for this loan from AvantCredit wouldn't have been sustainable.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have shown AvantCredit that Mr D would not have been able to sustainably repay this loan. So, I'm satisfied that AvantCredit's failure to carry out proportionate checks for this loan resulted in it unfairly providing it to Mr D.

So, it follows that I uphold Mr D's complaint about both loans and AvantCredit needs to put things right for the reasons given above.

### **Putting things right**

In line with this Service's approach, Mr D shouldn't repay more than the capital amount he borrowed for loans 1 and 2. With this in mind, AvantCredit should:

- add up the total amount of money Mr D received as a result of being given loans 1 and 2. The payments Mr D made should be deducted from this amount. Any payments made after the total repaid exceeds the amount Mr D was given should be treated as overpayments and refunded to him;

- If there is a balance still to repay, then AvantCredit should look to work out an affordable payment plan with Mr D
- add interest at 8% per year simple on any overpayments from the date they were paid by Mr D to the date of settlement†;
- remove any adverse information placed on Mr D's credit file because of loans 1 and 2

\*HM Revenue & Customs requires AvantCredit to take off tax from this interest. AvantCredit must give Mr D a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

My final decision is that I uphold Mr D's complaint for the reasons set out above and require AvantCredit Limited, to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 June 2022.

Mark Richardson  
**Ombudsman**